

MINUTES OF CONVOCATION

Thursday, 28th June, 2007
9:00 a.m.

PRESENT:

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

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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ANNOUNCEMENT OF TREASURER ELECTION

The Secretary announced that after the close of nominations on May 25, 2007 there was only one candidate for the position of Treasurer. Gavin MacKenzie was nominated by Beth Symes and Derry Millar. He was declared elected as Treasurer.

TREASURER'S REMARKS

The Treasurer introduced newly elected bencher Bonnie Tough and newly appointed benchers Dr. Aslam Daud, Seymour Epstein, Rabbi Dow Marmur, Jack Rabinovitch, Baljit Sikand and Catherine Strosberg.

Condolences were extended to the family of the Honourable Marvin Catzman, a Justice of the Ontario Court of Appeal who passed away on June 14, 2007.

The Treasurer, on behalf of Convocation extended congratulations to Mr. Raj Anand who was recently named Professional Man of the Year by the Indo-Canada Chamber of Commerce. Congratulations were also extended to Mr. Nick Pustina who was called to the bar 50 years ago on June 27, 2007.

The Treasurer thanked Elise Brunet and the volunteers from the Law Society, the Court of Appeal and the Ministry of the Attorney General who volunteered their time at Osgoode Hall for Doors Open Toronto on May 27 and 28, 2007.

The Treasurer reported on his activities since last month.

NOTICE OF MOTION

It was moved by Ms. Ross, seconded by Mr. Millar, that –

WHEREAS self-governance is a privilege bestowed upon the legal profession in consideration of the public interest in an independent bar.

AND WHEREAS the integrity of self-governance is enhanced by the appointment and participation of lay benchers.

AND WHEREAS Convocation recognizes the particular and significant contributions of those six lay benchers whose terms are now completed.

BE IT RESOLVED THAT Convocation expresses its profound gratitude for the tremendous work, interest, energy and stimulation brought to its various affairs by:

Andrea Alexander of Toronto
Andrew F. Coffey of Thunder Bay
Anne Marie Doyle of Ottawa
Dr. Sy Eber of Toronto
Dr. Richard Filion of Sturgeon Falls
Dr. Allan Gotlib of Toronto

Carried Unanimously

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of May 25, 2007 were confirmed.

MOTION – APPOINTMENTS TO COMMITTEES, BOARDS AND TASK FORCES

It was moved by Ms. Curtis, seconded by Mr. Banack, that the proposed list of appointments set out at Schedule A be approved.

Carried

PROPOSED COMMITTEE, TASK FORCE, AND
BOARD COMPOSITION
June 2007

SCHEDULE A

Committees and Task Forces

Access to Justice

Marion Boyd (Co-Chair)
Judith Potter (Co-Chair)
Paul Schabas (Vice-Chair)
Paul Dray
Avvy Go
Jennifer Halajian
Susan McGrath
Bonnie Tough

Appeal Panel

Mark Sandler (Chair)
Ab Chahbar
Dan Chilcott
Alan Gold
Janet Minor
Sydney Robins
Allan Rock
Bradley Wright

Audit

Beth Symes (Chair)
Marshall Crowe (Vice-Chair)
Ab Chahbar
Ross Murray
Vern Krishna

Compensation

Gavin MacKenzie (Chair)
Ab Chahbar
Derry Millar
Beth Symes

Compensation Fund

Bradley Wright (Chair)
Bob Aaron

Marshall Crowe
Gerald Swaye

Equity and Aboriginal Issues

Joanne St. Lewis (Chair)
Raj Anand (Vice-Chair)
Paul Copeland
Mary Louise Dickson
Avvy Go
Doug Lewis
Judith Potter
Robert Topp

Federation of Law Societies Representative

John Campion

Finance

Derry Millar (Chair)
Bradley Wright (Vice-Chair)
Melanie Aitken
Susan Hare
Carol Hartman
Janet Minor
Paul Schabas
Gerald Swaye

Governance Task Force

Tom Heintzman (Chair)
Vern Krishna (Vice-Chair)
Abe Feinstein
Janet Minor
Linda Rothstein

Government Relations

James Caskey (Co-Chair)
Doug Lewis (Co-Chair)
Laurie Pawlitza (Vice-Chair)
Marion Boyd
Allan Lawrence
Susan McGrath
Julian Porter
Judith Potter
Alan Silverstein

Hearing Panel

Larry Banack (Chair)
Bonnie Warkentin (Vice-Chair)
Robert Aaron
Melanie L. Aitken
*Andrea Alexander
Raj Anand
Constance Backhouse
Larry Banack
Marion Boyd
John A. Campion
Kim A. Carpenter-Gunn
James R. Caskey
Abdul A. Chahbar
W. Dan Chilcott
Thomas G. Conway
Austin M. Cooper
Paul Copeland
Marshall Crowe
Carole Curtis
Aslam Daud
Mary Louise Dickson
*Anne Marie Doyle
W. Paul Dray
E. Susan Elliott
Seymour Epstein
Abraham Feinstein
Neil Finkelstein
George D. Finlayson
Patrick Garret Furlong
Avvy Yao Yao Go
Alan D. Gold
Gary Lloyd Gottlieb
Jennifer A. Halajian
Susan M. Hare
Carol Hartman
Thomas G. Heintzman
Paul J. Henderson
Vern Krishna
Brian J. Lawrie
Laura L. Legge
Doug Lewis
Susan T. McGrath
Ronald D. Manes
Dow Marmur
W.A. Derry Millar
Janet E. Minor
Daniel J. Murphy
Ross W. Murray
Laurie H. Pawlitza

Julian Porter
Judith M. Potter
Nicholas John Pustina
Jack Rabinovitch
Sydney L. Robins
Allan M. Rock
Linda Rothstein
Heather J. Ross
Clayton Ruby
Mark Sandler
Arthur R.A. Scace
Paul B. Schabas
Baljit Sikand
Alan G. Silverstein
Joanne St. Lewis
Cathy Strosberg
Harvey T. Strosberg
Gerald A. Swaye
Beth Symes
Robert Topp
Bonnie A. Tough
J. James Wardlaw
Bonnie R. Warkentin
Bradley H. Wright
Roger D. Yachetti

*Approved by the Attorney General pursuant to s. 49.21 (3)(c) of the *Law Society Act* for appointment to the Law Society Hearing and Appeal Panels to assist the Law Society during the transition to a new group of adjudicators, including newly appointed lay benchers.

Heritage

Connie Backhouse (Chair)
Gary Lloyd Gottlieb (Vice-Chair)
Bob Aaron
Patrick Furlong
Allan Lawrence
Laura Legge

Law Foundation of Ontario Board

Larry Banack
Mark Sandler
Paul Schabas

LawPro Board

Kim Carpenter-Gunn (Chair)
Connie Backhouse
James Caskey
Ab Chahbar
Susan Elliott
Abe Feinstein

LibraryCo Board

Abe Feinstein (Chair)
Tom Conway
Paul Henderson
Gerald Swaye

Licensing & Accreditation Task Force

Vern Krishna (Chair)
Connie Backhouse
Carole Curtis
Carol Hartman
Laurie Pawlitza

Litigation

Allan Rock (Chair)
John Campion
Kim Carpenter-Gunn
James Caskey
Linda Rothstein
Clayton Ruby
Bonnie Tough

Ontario Bar Association Council

Tom Conway
Susan McGrath

Paralegal

Paul Dray (Chair)
Bonnie Warkentin (Vice-Chair)
Marion Boyd
James Caskey
Seymour Epstein
Michelle Haigh
Tom Heintzman
Paul Henderson
Margaret Louter
Brian Lawrie

Doug Lewis
Stephen Parker
Cathy Strosberg

Proceedings Authorization

Julian Porter (Chair)
Beth Symes (Vice-Chair)
Alan Gold
Alan Silverstein

Priority Planning

Gavin MacKenzie (Chair)
Tom Heintzman (Vice-Chair)
Carole Curtis
Derry Millar
Heather Ross

Professional Development & Competence

Laurie Pawlitza (Chair)
Connie Backhouse (Vice-Chair)
Mary Louise Dickson (Vice Chair)
Alan Silverstein (Vice-Chair)
Bob Aaron
Carole Curtis
Susan Hare
Laura Legge
Daniel Murphy
Judith Potter
Nicholas Pustina

Professional Regulation

Clayton Ruby (Chair)
Heather Ross (Vice-Chair)
Julian Porter (Vice-Chair)
Linda Rothstein (Vice-Chair)
Melanie Aitken
Tom Conway
Brian Lawrie
George Finlayson
Patrick Furlong
Gary Lloyd Gottlieb
Ross Murray
Sydney Robins
Bonnie Tough
Roger Yachetti

Summary Disposition

Tom Heintzman
Paul Schabas (Alternate)

Tribunals

Mark Sandler (Chair)
Bonnie Warkentin (Vice-Chair)
Raj Anand
Larry Banack
Carole Curtis
Jennifer Halajian
Derry Millar
Joanne St. Lewis

Working GroupsHuman Rights Monitoring (Equity)

Heather Ross (Chair)
Raj Anand
Paul Copeland
Mark Sandler
Joanne St. Lewis

Real Estate (PD&C)

Bob Aaron
Clare Brunetta
Sally Burks
Ray LeClair
Greg Mulligan
Nicholas Pustina
Alan Silverstein
Don Thompson
Bradley Wright

Retention of Women (Equity)

Laurie Pawlitza (Co-Chair)
Bonnie Warkentin (Co-Chair)
Natalie Boutet
Marion Boyd
Kim Carpenter-Gunn
James Caskey
Soma Choudhury
Paul Copeland
Katherine Hensel
Janet Minor
Julie Ralhan

Linda Rothstein
Mark Sandler
Joanne St. Lewis
Beth Symes

Sole and Small Firm (PD&C)

Carole Curtis (Co-Chair)
Judith Potter (Co-Chair)
Mandy Fricot (OBA)
Brian Howe (OBA)
Randall Bobcock (CDLPA)
Orm Murphy (CDLPA)

SCHEDULE B

Certified Specialist Board (Appointed by PD&C)

Gerald Swaye (Chair)
Larry Banack
Kim Carpenter-Gunn
Ab Chahbar
Alf Mamo
Mark Sandler

Outside Appointments

Canadian National Exhibition Representative

Bob Aaron (September 2007)

CanLII Board Representative

Carole Curtis (March 2009)

Civil Rules Committee

Robert Harrison (October 2008)
Don Jack (October 2008)
Kristopher Knutsen (October 2008)
Ron Slaught (October 2008)

Criminal Rules Committee

Marie Henein
Leonard Short

Diane Martin Medal for Social Justice through Law Selection Committee

Treasurer or designate

Family Rules Committee

Carolyn Gray (September 2008)
Judy Shea (September 2008)
Adrianna Doyle (September 2008)
Laurie Pawlitza (September 2008)

Federal Judicial Advisory Committees

Margaret Ross (December 2008)
James Caskey (December 2008)
Shelia Block (December 2008)

Ontario Judicial Appointments Advisory Committee

Alan Gold (January 2008)

Justices of the Peace Appointments Advisory Committee

T.B.A.

Justice of the Peace Review Council

T.B.A.

Law Commission of Ontario

Neil Finkelstein (November 2007)

Law Commission of Ontario Research Advisory Board

James Leal

Law Society Foundation

Marion Boyd (Chair)
Bob Aaron (Vice-Chair)
Malcolm Heins
Ian Hull
Bradley Wright

Legal Aid Ontario Board of Directors

Derry Millar (May 2009)
Aly Alibhai (May 2009)
Raj Anand (December 2009)
Paul Dray (December 2009)

Ontario Centre for Advocacy Training

Kim Carpenter-Gunn

Ontario Courts Accessibility Committee

Mary Louise Dickson

Ontario Judicial Council

Julian Porter (at the pleasure of the Treasurer - Treasurer's designate)
Bruce Carr-Harris (September 2009)

Ontario Justice Education Network

Marion Boyd (November 2007)

Ontario Lawyers' Assistance Program Board of Directors

Janet Minor (November 2008)
Malcolm Heins (November 2008)

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCETO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADAASSEMBLED IN CONVOCATION

The Director of Professional Development and Competence presents the following candidates for Call to the Bar of Ontario pursuant to By-Law 11, section 7:

(a) Transfer from another Province

The following candidates have 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, June 28th, 2007:

| | |
|-------------------------------|------------------------------|
| Penny Becklumb | Province of Alberta |
| Michelle Lee Campbell | Province of Nova Scotia |
| David William Ertl | Province of British Columbia |
| Mariott Victor Chukuma Gilpin | Province of Nova Scotia |
| Lisa Marie Hamilton | Province of Nova Scotia |
| Jacqueline Dawn Hawkins | Province of Manitoba |
| Linda Huynh | Province of Alberta |
| Susan Elizabeth Marsh | Province of Newfoundland |
| Lesley Anne Mercer | Province of Newfoundland |
| Julie Elizabeth Smith | Province of Nova Scotia |
| Michael David Tripp | Province of Nova Scotia |
| Leslie Ellen Wilbur | Province of New Brunswick |
| Sharon Andrea Worthman | Province of Newfoundland |

(b) Transfer from another Province

The following candidate has successfully completed the transfer examinations, filed the necessary documents, paid the required fee and now applies to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, June 28th, 2007:

Michel El Meouchi

Province of Quebec

(c) Licensing Process

Pursuant to By-Law 11, section 7(2) the following candidate has satisfied the requirements and has been excused from participating in a call day ceremony. The following candidate has successfully completed the Licensing Process, filed the necessary documents, paid the required fee, and now applies to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, June 28th, 2007:

Robert Hugh Leggett

Licensing Process

ALL OF WHICH is respectfully submitted

DATED this the 28th day of June, 2007

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

Carried

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PARALEGAL STANDING COMMITTEE REPORT

Mr. Dray presented the Paralegal Standing Committee Report.

Report to Convocation
June 28th, 2007

Paralegal Standing Committee

Committee Members
Paul Dray, Chair
Bonnie Warkentin Vice-Chair
Andrea Alexander
Marion Boyd
James Caskey
Anne Marie Doyle
Michelle Haigh
Abraham Feinstein
Thomas Heintzman
Brian Lawrie
Margaret Louter
Stephen Parker

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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For Decision

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For Information.....TAB H

Position of Vice-Chair

Working Group on Trust Accounts

COMMITTEE PROCESS

1. The Paralegal Standing Committee met on June 14th, 2007. Committee members participating were Paul Dray, Chair, Andrea Alexander, Marion Boyd, Anne Marie Doyle, Abe Feinstein (by telephone), Michelle Haigh (by telephone), Thomas Heintzman, Brian Lawrie (by telephone), Margaret Louter, Stephen Parker and Bonnie Warkentin. Staff members in attendance were Malcolm Heins, Zeynep Onen, Diana Miles, Terry Knott, Elliot Spears, Roy Thomas, Sheena Weir, Janice Laforme, Allyson O'Shea and Julia Bass.
2. The Committee met further on June 27th.

FOR DECISION

INTRODUCTION: FURTHER REQUESTS FOR EXEMPTION

3. The first five agenda items concern further requests that the Law Society has received from groups seeking an exemption for their members from the requirement to apply for a licence as a paralegal. For ease of reference, the discussion of exemptions from the 2004 Report of the Law Society's Task Force on Paralegal Regulation is set out below:

150. *The Task Force is proposing a model with initially, three categories of persons:*
- a. *Licensees, who will be authorized to provide prescribed advocacy services for a fee, so long as they hold a valid licence;*
 - b. *Those providing the same services as those in paragraph (a), but without charging a fee to the public, such as*
 - (i) Family members or friends acting free of charge;*
 - (ii) In-house, salaried non-lawyer advocates, such as municipal prosecutors, community legal workers, insurance company representatives, etc., regardless of whether they are supervised by a lawyer. They will not be required to hold a licence, but will be encouraged to obtain a licence so that they would be entitled to move to private practice at a later date. (Their scope of practice would be limited in the same way as those in category (a), except for files that are supervised by a lawyer).*
 - c. *Persons providing services under the supervision of a lawyer, such as law clerks, legal assistants, etc., and those working for independent service providers whose only clients are law firms. (This model does not change their situation, although some persons in this category may be interested in acquiring a licence voluntarily).*
151. *It may in time be appropriate to exempt other persons. A mechanism is therefore required for considering the suitability of other applications for exemption, based on consumer protection and access to justice.*

Recommendation Thirteen

152. *As a first step in regulation, mandatory licensing should be applied only to those paralegals providing legal services to members of the public who pay for those services, either directly or indirectly.*

INJURED WORKERS OUTREACH SERVICES (IWOS)

MOTION

4. That Convocation approve an exemption from licensing for the volunteers working with member groups of the Injured Workers Outreach Services funded by the Workplace Safety and Insurance Board (WSIB).

Background

5. The Law Society has received a request for exemption from a group of organizations known as Injured Worker Outreach Services, composed of 15 Injured Worker Support Groups across the province, including the Injured Workers Support Network Kingston

and Area. Further information on both IWOS and the Kingston group is attached at Appendix 1.

6. The bulk of the groups' funding comes from the WSIB. The IWOS groups typically provide free advice and representation to injured workers, although some charge a nominal fee such as \$40 a year for membership. Most of the workers helped do not belong to a trade union.
7. The representatives are generally volunteers, most of whom are themselves workers who have been injured in workplace incidents. They would not fit under any of the existing exemptions, since
 - a. Although they are volunteers, their work is not 'occasional';
 - b. They work for a 'non-profit', but the non-profit is not funded by government or by Legal Aid Ontario.
 - c. They generally do not carry E&O insurance. Informal discussions indicate that they have explored obtaining insurance but have found it unaffordable.

Arguments against providing an exemption

8. The quality of representation offered cannot be assessed, as there does not seem to be systematic quality control.
9. The lack of insurance means that there are questions about what recourse a client would have in case of problems. (Unlike the Office of the Worker Adviser, there is only a volunteer board of directors standing behind the organization, although the ultimate source of funding is the WSIB).

Arguments in favour of an exemption

10. Since most of the clients of these organizations are low-income persons who do not belong to a trade union, they may have no other realistic hope of representation.
11. It is unlikely that the volunteers running these groups will have the resources to become licensed and insured, especially in the short run. This means that failure to grant an exemption may effectively close down these organizations, causing distress to injured workers who may have no other recourse.

The Committee's Deliberations

12. The Committee was of the view that, on balance, these groups should be exempted for the time being, and the future situation should be monitored.
13. The wording for the by-law will be submitted to Convocation if available in time.

ONTARIO FEDERATION OF LABOUR (OFL)

Motion

14. That Convocation approve an exemption from paralegal regulation for the Directors of the Ontario Federation of Labour and the consultants seconded to the OFL programme called the Occupational Disability Response Team (ODRT), including their work in representing the families of deceased workers.

Background

15. The Law Society has received a request for exemption from the Ontario Federation of Labour (OFL). A letter and enclosures from the President of the OFL, Wayne Samuelson, are attached at Appendix 2.
16. The request refers to the activities of OFL staff and instructors in representing union members in workers' compensation matters. Since receipt of this letter, the OFL has pointed out that this work includes representation on behalf of the families of deceased workers, where there is a workers' compensation claim related to a union member's death on the job. Such deceased workers could be argued not to be 'members' of a union within the meaning of the Act. The OFL would like clarification on this point as well.
17. The services are provided under a programme called the Occupational Disability Response Team, or ODRT, funded by the Workplace Safety and Insurance Board (WSIB). More detail is provided in the brochure in the attachment.
18. Under the ODRT, OFL staff and instructors provide services to members of unions that lack the necessary in-house expertise. Unions are charged a flat rate of \$48/hour, payable to the OFL. There is no payment to the staff and instructors other than their normal salary and there is no charge to the worker or survivors being represented.
19. The total numbers involved are small – the full time OFL staff known as Directors, of whom there are about three, and a number of seconded advisers (who normally work elsewhere and are seconded to the ODRT for a period of time), of whom there are about 40 at a time.

Are they covered by an existing provision?

20. Subsection 1 (8) of the *Law Society Act* excludes 'an employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union.' The OFL argues that, when drafted, this provision was intended to cover OFL staff, and in fact OFL executives were involved in arguing for this provision in the Act. However, the OFL is not a 'trade union' and it does not fit the plain meaning of this subsection.
21. The staff who work full-time for the OFL would not be covered by the existing exemption for in-house staff in section 32 (1) 1 of By-law 4, as they provide legal services to persons other than their employer, that is, the injured worker or surviving family.

22. They do not fit under the wording of the Law Society's By-law on the exemption for 'Not-for-profit organizations', as their services are not funded by a provincial, federal or municipal government, although the OFL is a non-profit organization.

Arguments in favour of an exemption

23. The OFL staff and instructors are a relatively small group, providing services to smaller and less well-resourced unions. The services are non-profit and low cost to the unions concerned. The advisers provide these services as an addition to their usual job description.
24. Exempting them would be in keeping with the rationale for the existing exclusion for trade union staff in the statute.
25. While the clientele in question could be characterized as vulnerable, there does not seem to be any dispute about the good quality of the services provided. The staff and instructors are well trained and in fact, part of the service they provide consists of training staff at small trade unions.
26. While the OFL instructors do not carry individual E&O insurance, the OFL would probably have the resources to satisfy a judgment in the case of legal proceedings against a staff person.
27. The seconded advisers would already be exempt under the *Law Society Act* in their 'home' employment (from which they have been seconded to the OFL). It does not seem practical to require them to be licensed for the period of time they are working with the OFL programme.

Arguments against an exemption

28. The OFL staff would probably qualify to apply as grandparents and would probably have no difficulty in passing the licensing examination, and the OFL would arguably have the resources to pay their licensing fees. However, this may be less applicable to the temporary seconded advisers.

The Committee's Deliberations

29. The Committee was of the view that it would be within the spirit of the statutory exemption for trade union representatives for the OFL staff and consultants to be exempted.

UNITED STEEL WORKERS UNION: REPRESENTATION OF RETIRED WORKERS

Motion

30. That Convocation approve an amendment to the By-law 4 to exempt trade union representatives while acting on behalf of retired persons who were formerly members of the trade union, and while providing services to another local of the same union.

Background

31. United Steel Workers (USW), seek clarification that 'acting on behalf of a trade union member' includes acting on behalf of a retired member, as set out in their letter at Appendix 3. This turns on whether a retired member can be regarded as a 'member' within the meaning of the *Act*.
32. Since sending this letter, the USW also asked for clarification that the exemption applies in the case of an employee of one union local acting on behalf of a member of another local of the same union.

The Committee's Deliberations

33. The Committee was of the view that it would be within the spirit of the statutory exemption for trade union representatives for them to be exempted while representing a retired member and while providing services to another local of the same union.

TRADE UNION REPRESENTATIVES AT CORONERS' INQUESTS

Motion

34. That Convocation approve an exemption for union representatives assisting the family of a deceased worker at a Coroner's inquest.
35. The Law Society has received an enquiry from the Chief Counsel of the Office of the Chief Coroner about the status of union representatives at Coroner's Inquests. Such union representatives often advise the family of the deceased worker at coroner's inquests into occupational health and safety fatalities.
36. While paragraph 1 (8) 4 of the amended *Law Society Act* provides an exemption for trade union representatives 'acting on behalf of the union or a member of the union', the family of the deceased worker is not a 'member' of the union.
37. It is clear that coroner's inquests are covered by the scope of practice, as the *Coroners Act* was one of the pieces of legislation amended by Bill 14 to preclude the appearance of 'agents' without Law Society approval. As of May 1st, the Act will include the following:

43. (1) A witness at an inquest is entitled to be advised as to his or her rights by a person authorized under the Law Society Act to advise him or her, but such person may take no other part in the inquest without leave of the coroner. 2006, c. 21, Sched. C, s. 104 (2).
38. This wording means that the Coroner would have no jurisdiction to permit the union representative to advise the party if the Law Society does not permit it.
39. Unions are sometimes granted standing as parties at inquests, in which case the activity of the union representatives would be covered by the exclusion in the *Law Society Act*.

40. One of the factors that the Committee has considered important is whether there would be recourse for a party if problems arise. In this situation, this would turn on whether unions in the industrial and construction sectors have resources that an aggrieved party could access.
41. The Director of Occupational Health and Safety for the ministry of labour reports that the service provided to families in this situation is provided free of charge and is very important to the families. The ministry would strongly support an exemption for this service.

The Committee's Deliberations

42. The issue was decided in principle at the meeting on April 25th and discussed further at the meeting on June 14th. The Committee recommends approval of an exemption for this situation.

MEMBERS OF VOLUNTARY PROFESSIONAL ASSOCIATIONS

Motion

43. That Convocation approve an exemption for members of the listed voluntary associations, on the terms set out below.

Background

44. The Law Society has received several applications for exemption from professionals who belong to standard-setting bodies that are either voluntarily incorporated or established by a private act of the legislature. These include:
 - a. Human Resources Professionals of Ontario (HRPAO), incorporated under the *Human Resources Professionals Act of Ontario, 1990* – see Appendix 4;
 - b. Ontario Professional Planners Institute (OPPI), incorporated under the *Ontario Professional Planners Institute Act, 1994* - see Appendix 5;
 - c. Board of Canadian Registered Safety Professionals – voluntary incorporation – see Appendix 6;
 - d. Appraisal Institute of Canada - voluntary incorporation – see Appendix 7.
45. These professionals all have in common that their primary expertise is in a field other than legal services. In that capacity, they often take part in advocacy proceedings as expert witnesses, giving evidence on such matters as proper human resources practices, planning design, occupational health and safety standards or the value of buildings.
46. Some members of these professions feel they have enough practice in hearings that they are able to conduct the hearing itself on behalf of a client (usually a sophisticated business client). This is generally ancillary to their primary professional role.
47. These associations have professional standards and codes of conduct, but a person is not required to join the relevant organization in order to carry on the professional work

involved. So, for example, there are persons who call themselves 'planners' or 'human resources consultants' who do not belong to the relevant body. Such bodies do however protect their professional designation and it is prohibited for persons to indicate they are members when they are not. Persons in these occupations who do not belong to such associations should clearly be required to have a licence to provide any legal services.

48. A distinction could be drawn between the associations incorporated under a statute and those voluntarily incorporated, as a statutory incorporation has more permanence and cannot change its objects in the absence of legislative approval. However, the role and objectives of both kinds of bodies are the same.
49. These professionals are similar to those within the statutory exclusion for those regulated by another statute, as the legal services they provide are incidental to their primary occupation. It can also be argued that the public is not at risk from such persons, since these associations have complaints processes to end the membership of persons who are the subject of complaints.
50. It can be argued these professions do not fall within the original intent of the paralegal regulation model, as they do not represent vulnerable clients and are not primarily providing advocacy services. On the other hand, they may not be providing competent advocacy services.

The Committee's Deliberations

51. The Committee was of the view that the appropriate approach is to develop an exemption for members of such organizations on the following terms:
 - a. that their appearances before tribunals are only occasional; where such persons make the provision of advocacy services a major part of their occupation, they should be required to be licensed.
 - b. that the services are provided in conjunction with the person's primary professional services;
 - c. that advisory work in their primary area of expertise should not be regarded as the provision of legal services;
 - d. that they do not appear before any other tribunal or court, and
 - e. that the exemption be monitored for any resulting concerns.

WORDING CHANGE: OFFICES OF THE EMPLOYER ADVISER/WORKER ADVISER

Motion

52. That Convocation approve the change to the wording of the exemption for the Office of the Employer Adviser and the Office of the Worker Adviser requested in the correspondence attached at Appendix 8.

Background

53. The Office of the Employer Adviser and the Office of the Worker Adviser are both exempted in the current By-law 4. Both these offices have written to the Law Society to

express their thanks at being granted an exemption and to request a small adjustment of the wording of their exemption, to mirror the services they provide. This is set out in the letters in the Appendix.

54. For the Office of the Employer Adviser, the revised wording would read:

“advise an employer with respect to their rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any version of the *Workers’ Compensation Act*.”

55. For the Office of the Worker Adviser, the revised wording would read:

“advise workers, who are not members of a trade union, or their survivors regarding matters relating to a claim or potential claim under the *Workplace Safety and Insurance Act, 1997* or any version of the *Workers’ Compensation Act*.”

The Committee’s Deliberations

56. The Committee recommends implementing these wording changes.

CORRESPONDENCE WITH THE PROSECUTORS’ ASSOCIATION OF ONTARIO

Motion

57. That Convocation approve a response to the letter from the Prosecutors’ Association stating that, should any of the current exemptions be removed in the future, a further grandparenting period will be considered at that time.

Background

58. A letter from Jane Moffatt, the President of the Prosecutors’ Association of Ontario, requesting clarification of the Law Society’s position of the status of municipal prosecutors, is attached at Appendix 9.
59. In response to this letter, the Committee considered the issue of the need for future ‘grandparenting’ provisions for municipal staff, should the current exemption be removed after the planned two-year review.
60. The Committee is of the view that, should any of the current exemptions be removed in the future, it would be in accordance with fundamental fairness for a further grandparenting period to be considered. Accordingly, while it is not possible to fetter the future discretion of Convocation, the Committee recommends that appropriate transitional provisions be considered at that time.

FOR INFORMATION

POSITION OF VICE-CHAIR

61. With the departure of Bill Simpson, the Paralegal Standing committee had a vacancy for the position of Vice-Chair. The 2004 Task Force Report to Convocation specifies that the Vice-Chair is to be an elected lawyer benchers or an appointed benchers. The Committee elected Bonnie Warkentin to fill this position.

WORKING GROUP ON TRUST ACCOUNTS

62. The Committee has established a Working Group on Trust Accounts, consisting of Michelle Haigh, Brian Lawrie, Stephen Parker and Bonnie Warkentin. At the meeting of the Committee on June 14 the Working Group presented the report attached at Appendix 10.
- (1) Copy of information on the Injured Workers Outreach Services and the Kingston group.
(Tab A, Appendix 1, pages 7 – 39)
- (2) Copy of letter and enclosures from the President of the Ontario Federation of Labour, Wayne Samuelson.
(Tab B, Appendix 2, pages 43 – 47)
- (3) Copy of a letter from the United Steel Workers Union, Ken Neumann, National Director.
(Tab C, Appendix 3, pages 49 – 50)
- (4) Application for exemption from the Human Resources Professionals of Ontario.
(Tab E, Appendix 4, pages 55 – 60)
- (5) Application for exemption from the Ontario Professional Planners Institute.
(Tab E, Appendix 5, pages 61 – 71)
- (6) Application for exemption from the Board of Canadian Registered Safety Professionals.
(Tab E, Appendix 6, pages 72 – 75)
- (7) Application for exemption from the Appraisal Institute of Canada.
(Tab E, Appendix 7, pages 76 – 79)
- (8) Copy of letter from Michael Zacks, Office of the Employer Adviser to Paul Dray, Chair of the Paralegal Standing Committee dated May 14, 2007 and copy of letter from Jorma Halonen, Office of the Worker Adviser to Paul Dray dated June 4, 2007.
(Tab F, Appendix 8, pages 81 – 84)
- (9) Copy of a letter from Jane Moffatt, President, Prosecutors' Association of Ontario to Paul Dray dated May 30, 2007 re: Subsection 12 of Bylaw 4 – ongoing need for "grandparenting".
(Tab G, Appendix 9, pages 86 – 88)

- (10) Copy of the Report of the Working Group on Trust Accounts of their meeting on June 14, 2007.

(Tab H, Appendix 10, pages 90 – 93)

Re: Exemption Requests

The following was accepted as a friendly amendment:

- That the exemptions in paragraphs 4, 14, 30, 34 and 43 indicate “exemption from licensing”.

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve an exemption from licensing for the volunteers working with member groups of the Injured Workers Outreach Services funded by the Workplace Safety and Insurance Board (WSIB).

Carried

ROLL-CALL VOTE

| | | | |
|-----------|---------|--------------|---------|
| Aitken | For | Millar | For |
| Anand | For | Minor | For |
| Backhouse | For | Pawlitza | For |
| Banack | Against | Porter | For |
| Boyd | For | Potter | Against |
| Campion | For | Pustina | For |
| Caskey | For | Rabinovitch | For |
| Chahbar | For | Robins | For |
| Conway | For | Rock | For |
| Crowe | For | Ross | Against |
| Curtis | Against | Rothstein | For |
| Dray | For | St. Lewis | For |
| Epstein | For | Sandler | For |
| Finlayson | For | Schabas | For |
| Go | Against | Sikand | Abstain |
| Gottlieb | Against | Silverstein | For |
| Halajian | Against | C. Strosberg | For |
| Hare | Against | Swaye | For |
| Hartman | For | Symes | For |
| Henderson | For | Tough | For |
| Krishna | For | Warkentin | For |
| McGrath | For | Wright | For |
| Marmur | Abstain | | |

Vote: 35 For; 8 Against; 2 Abstentions

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve an exemption from licensing for the Directors of the Ontario Federation of Labour and the consultants seconded to the OFL programme called the Occupational Disability Response Team (ODRT), including their work in representing the families of deceased workers.

Carried

ROLL-CALL VOTE

| | | | |
|----------------|---------|--------------|---------|
| Aitken | For | Millar | For |
| Anand | For | Minor | For |
| Backhouse | For | Pawlitza | For |
| Banack | Against | Porter | For |
| Boyd | For | Potter | Against |
| Campion | For | Pustina | For |
| Carpenter-Gunn | For | Rabinovitch | For |
| Caskey | For | Robins | For |
| Chahbar | For | Rock | For |
| Conway | For | Ross | Against |
| Crowe | For | Rothstein | For |
| Curtis | Against | St. Lewis | For |
| Dray | For | Sandler | For |
| Epstein | For | Schabas | For |
| Finlayson | For | Sikand | Abstain |
| Go | For | Silverstein | Against |
| Gottlieb | Against | C. Strosberg | For |
| Halajian | Against | Swaye | For |
| Hare | For | Symes | For |
| Hartman | For | Tough | For |
| Henderson | For | Warkentin | For |
| Krishna | For | Wright | For |
| McGrath | For | | |
| Marmur | Abstain | | |

Vote: 37 For; 7 Against; 2 Abstentions

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve an amendment to the By-law 4 to exempt from licensing trade union representatives while acting on behalf of retired persons who were formerly members of the trade union, and while providing services to another local of the same union.

Carried

ROLL-CALL VOTE

| | | | |
|----------------|---------|-------------|---------|
| Aitken | For | Millar | For |
| Anand | For | Minor | For |
| Backhouse | For | Pawlitza | For |
| Banack | For | Porter | For |
| Boyd | For | Potter | For |
| Campion | For | Pustina | For |
| Carpenter-Gunn | For | Rabinovitch | For |
| Caskey | For | Robins | For |
| Chahbar | For | Rock | For |
| Conway | For | Ross | Against |
| Crowe | For | Rothstein | For |
| Curtis | Against | St. Lewis | For |
| Dray | For | Sandler | For |
| Epstein | For | Schabas | For |

| | | | |
|-----------|---------|--------------|---------|
| Finlayson | For | Sikand | Abstain |
| Go | For | Silverstein | For |
| Gottlieb | Against | C. Strosberg | For |
| Halajian | For | Swaye | For |
| Hare | For | Symes | For |
| Hartman | For | Tough | For |
| Henderson | For | Warkentin | For |
| Krishna | For | Wright | For |
| McGrath | For | | |
| Marmur | Abstain | | |

Vote: 41 For; 3 Against; 2 Abstentions

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve an exemption from licensing for union representatives assisting the family of a deceased worker at a Coroner's inquest.

Carried

ROLL-CALL VOTE

| | | | |
|----------------|---------|--------------|---------|
| Aitken | For | Millar | For |
| Anand | For | Minor | For |
| Backhouse | For | Pawlitza | For |
| Banack | For | Porter | For |
| Boyd | For | Potter | Against |
| Campion | For | Pustina | For |
| Carpenter-Gunn | For | Rabinovitch | For |
| Caskey | For | Robins | For |
| Chahbar | For | Rock | For |
| Conway | For | Ross | Against |
| Crowe | For | Rothstein | For |
| Curtis | Against | St. Lewis | For |
| Dray | For | Sandler | For |
| Epstein | For | Schabas | For |
| Finlayson | For | Sikand | Abstain |
| Go | For | Silverstein | For |
| Gottlieb | Against | C. Strosberg | For |
| Halajian | For | Swaye | For |
| Hare | For | Symes | For |
| Hartman | For | Tough | For |
| Henderson | For | Warkentin | For |
| Krishna | For | Wright | For |
| McGrath | For | | |
| Marmur | Abstain | | |

Vote: 40 For; 4 Against; 2 Abstentions

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve an exemption from licensing for members of the listed voluntary associations, on the terms set out in the Report at paragraphs 44 to 51.

Carried

ROLL-CALL VOTE

| | | | |
|----------------|---------|--------------|---------|
| Aitken | For | Millar | For |
| Anand | For | Minor | For |
| Backhouse | For | Pawlitza | For |
| Banack | Against | Porter | For |
| Boyd | For | Potter | Against |
| Campion | For | Pustina | For |
| Carpenter-Gunn | For | Rabinovitch | For |
| Caskey | For | Robins | For |
| Chahbar | For | Rock | For |
| Conway | For | Ross | Against |
| Crowe | For | Rothstein | For |
| Dray | For | St. Lewis | For |
| Epstein | For | Sandler | For |
| Finlayson | For | Schabas | For |
| Go | Against | Sikand | Abstain |
| Gottlieb | Against | Silverstein | Against |
| Halajian | Against | C. Strosberg | For |
| Hare | Against | Swaye | For |
| Hartman | Against | Symes | For |
| Henderson | For | Tough | For |
| Krishna | For | Warkentin | For |
| McGrath | For | Wright | For |
| Marmur | Abstain | | |

Vote: 34 For; 9 Against; 2 Abstentions

It was moved by Mr. Banack, seconded by Ms. Curtis, that the exemptions passed by Convocation be for a two-year time limit.

Mr. Banack withdrew as mover.

It was moved by Ms. Curtis, seconded by Ms. Potter, that the exemptions passed by Convocation be for a two-year time limit.

Lost

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve the change to the wording of the exemption for the Office of the Employer Adviser and the Office of the Worker Adviser requested in the correspondence attached at Appendix B of the Report.

Carried

It was moved by Mr. Dray, seconded by Ms. Warkentin that Convocation approve a response to the letter from the Prosecutors' Association stating that, should any of the current exemptions be removed in the future, a further grandparenting period will be considered at that time.

Carried

MOTION – BY-LAW 4 [LICENSING]

It was moved by Mr. Dray, seconded by Ms. Warkentin, that the following By-Law 4 motion circulated to Convocation be approved:

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

1. Clauses 9 (2) (b) and (c) of By-Law 4 [Licensing] are deleted and the following substituted:
 - (b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position;
 - (c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position; or
 - (d) the applicant was previously licensed to practice law in Ontario as a barrister and solicitor.

- b) le requérant ou la requérante est doyen ou doyenne d'une faculté de droit agréée et a entamé la deuxième année consécutive à ce poste;
- c) le requérant ou la requérante est membre permanent du corps professoral d'une faculté de droit agréée et a entamé la troisième année consécutive dans ces fonctions;
- d) le requérant ou la requérante avait déjà le permis d'exercice du droit en Ontario à titre d'avocat.

2. Clauses 9 (3) (b) and (c) of the By-Law are deleted and the following substituted:
 - (b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position;
 - (c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position; or
 - (d) the applicant was previously licensed to practice law in Ontario as a barrister and solicitor.

- b) le requérant ou la requérante est doyen d'une faculté de droit agréée et a entamé une deuxième année consécutive à ce poste;
- c) le requérant ou la requérante est membre permanent du corps professoral d'une faculté de droit agréée et a entamé une troisième année consécutive dans ces fonctions;

- d) le requérant ou la requérante avait déjà le permis d'exercice du droit en Ontario à titre d'avocat.
3. The By-Law is amended by deleting sections 11 and 22.
4. Section 30 of the By-Law is deleted and the following substituted:

Not practising law or providing legal services

30. For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

Aboriginal Courtwork Program

1. A person who delivers courtworker services to Aboriginal people through an Aboriginal delivery agency that has contracted with the Government of Ontario or the Government of Canada to deliver courtworker services as part of the Aboriginal Courtwork Program.

Other profession or occupation

2. A person whose profession or occupation is not the provision of legal services or the practice of law, who acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body.

Non-exercice du droit et non-prestation de services juridiques

30. Aux fins de la Loi, les personnes suivantes sont réputées ne pas exercer le droit ni offrir de services juridiques :

Programme d'assistance parajudiciaire aux Autochtones

1. toute personne qui offre des services d'assistance parajudiciaire aux Autochtones par l'intermédiaire d'un organisme autochtone de prestation de services qui a conclu un contrat avec le gouvernement ontarien ou le gouvernement canadien pour la prestation de services d'assistance parajudiciaire dans le cadre du Programme d'assistance parajudiciaire des Autochtones.

Autre profession ou emploi

2. Toute personne dont la profession ou l'emploi ne consiste pas à offrir des services juridiques ni d'exercer le droit, qui agit dans le cadre normal de sa profession ou de son emploi, et ne représente pas une personne dans la conduite d'une instance devant un organe juridictionnel.

5. Subsection 32 (1) of the By-Law is amended by adding the following:

Other profession or occupation

6.1 An individual,

- i. whose profession or occupation is not the provision of legal services or the practice of law,

- ii. who provides the legal services only occasionally,
- iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
- iv. who is a member of,
 - A. the Human Resources Professionals Association of Ontario,
 - B. the Ontario Professional Planners Institute,
 - C. the Board of Canadian Registered Safety Professionals, or
 - D. the Appraisal Institute of Canada.

Autre profession ou emploi

6.1 Toute personne :

- i. dont la profession ou l'emploi ne consiste pas à fournir des services juridiques ni à exercer le droit,
- ii. qui fournit des services juridiques à l'occasion seulement,
- iii. qui fournit des services juridiques comme auxiliaire dans le cadre de sa profession ou de son emploi,
- iv. qui est membre,
 - A. de la *Human Resources Professionals Association of Ontario*,
 - B. de l'*Ontario Professional Planners Institute*,
 - C. du Conseil canadien des professionnels en sécurité agréés,
 - D. de l'Institut canadien des évaluateurs.

6. Section 33 of the By-Law is deleted and the following substituted:

Interpretation

33. (1) In this section,

“employer” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

“injured workers’ group” means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

“public servant” has the meaning given it in the *Public Service Act*;

“survivor” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

“worker” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*.

Office of the Worker Adviser

(2) An individual who is a public servant in the service of the Office of the Worker Adviser may, without a licence, provide the following legal services through the Office of the Worker Adviser:

1. Advise a worker, who is not a member of a trade union, or the worker's survivors of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*.
2. Act on behalf of a worker, who is not a member of a trade union, or the worker's survivors in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Office of the Employer Adviser

(3) An individual who is a public servant in the service of the Office of the Employer Adviser may, without a licence, provide the following legal services through the Office of the Employer Adviser:

1. Advise an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.
2. Act on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Injured workers' groups

(4) An individual who volunteers in an injured workers' group may, without a licence, provide the following legal services through the group:

1. Give a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*.
2. Act on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Interpretation

33.1 (1) In this section,

“dependents” means each of the following persons as were wholly or partly dependent upon the earnings of a member of a trade union at the time of the member's death or

who, but for the member's incapacity due to an accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the member.
2. Sibling or half-sibling.
3. Grandparent.
4. Grandchild;

“survivor” means a spouse, child or dependent of a deceased member of a trade union;

“workplace” means,

- (a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union; and
- (b) in the case of a survivor, a workplace of the deceased member when he or she was a member of the trade union.

Trade unions

(2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:

1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.
2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.

Définitions

33. (1) Dans le présent article,

« employeur » S'entend au sens de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents de travail*. (« employer »)

« fonctionnaire » S'entend au sens de la *Loi sur la fonction publique*. (« public servant »)

« groupe de travailleurs blessés » S'entend d'un organisme à but non lucratif financé par la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail pour fournir des services juridiques précis aux travailleurs. (« injured workers' group »)

« survivant » S'entend au sens de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents de travail*. (« survivor »)

« travailleur » S'entend au sens de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents de travail*. (« worker »)

Bureau des conseillers des travailleurs

(2) Une ou un fonctionnaire au service du Bureau des conseillers des travailleurs peut, sans permis, fournir les services juridiques suivants par l'entremise du Bureau :

1. Informer un travailleur ou une travailleuse, qui n'est pas membre d'un syndicat de salariés, ou les survivants du travailleur ou de la travailleuse de leurs intérêts en droit et de leurs droits et responsabilités en vertu de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents de travail*.
2. Agir au nom d'un travailleur ou d'une travailleuse, qui n'est pas membre d'un syndicat de salariés, ou les survivants du travailleur ou de la travailleuse devant la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail ou le Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail ou dans d'autres instances connexes.

Bureau des conseillers des employeurs

(3) Une ou un fonctionnaire au service du Bureau des conseillers des employeurs peut, sans permis, fournir les services juridiques suivants par l'entremise du Bureau :

1. Informer un employeur de ses intérêts en droit et de ses droits et responsabilités en vertu de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents de travail* ou de toute disposition antérieure.
2. Agir au nom d'un employeur devant la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail ou le Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail ou dans d'autres instances connexes.

Groupes de travailleurs blessés

(4) Toute personne qui fait du travail bénévole dans un groupe de travailleurs blessés peut, sans permis, fournir les services juridiques suivants par l'entremise du groupe :

1. Informer un travailleur ou une travailleuse de ses intérêts en droit, droits ou responsabilités en vertu de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents de travail*.

2. Agir au nom d'un travailleur ou d'une travailleuse devant la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail ou le Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail ou dans d'autres instances connexes.

Définitions

33.1 (1) Dans le présent article :

« lieu de travail » S'entend :

- a) dans le cas d'un ancien membre d'un syndicat, du lieu de travail de l'ancien membre lorsqu'il ou elle était membre du syndicat;
- b) dans le cas d'un survivant, du lieu de travail d'un membre décédé lorsqu'il ou elle était membre du syndicat. (« workplace »)

« personne à charge » S'entend de chacune des personnes suivantes au moment de son décès, qui vivait entièrement ou partiellement de son salaire, ou qui, n'eût été l'incapacité résultant de l'accident, aurait été ainsi à sa charge :

1. Parent, beau-parent ou personne qui tenait le rôle de parent du membre.
2. Sœur, frère ou demi-sœur ou demi-frère.
3. Grands-parents.
4. Petits-enfants. (« dependents »)

« survivant » S'entend d'un conjoint ou conjointe, d'un enfant ou d'une personne à charge d'un membre décédé d'un syndicat de salariés. (« survivor »).

Syndicats de salariés

(2) Un employé de syndicat, un représentant bénévole de syndicat ou une personne désignée par l'*Ontario Federation of Labour* peut, sans permis, fournir les services juridiques suivants au syndicat, à un membre du syndicat, à un ancien membre du syndicat ou à un survivant :

1. Informer la personne sur ses intérêts en droit, ses droits et responsabilités relativement à un problème ou un différend portant sur le lieu de travail.
2. Agir au nom d'une personne relativement à un problème ou un différend portant sur le lieu de travail ou sur une instance devant un organe juridictionnel autre qu'une cour provinciale ou fédérale.

7. Section 34 of the By-Law is deleted and the following substituted:

Review

34. Not later than May 1, 2009, the Society shall assess the extent to which permitting the individuals mentioned in sections 32, 33 and 33.1 to provide legal services without a licence is consistent with the function of the Society set out in section 4.1 of the Act and the principles set out in section 4.2 of the Act and determine whether the sections, in whole or in part, should be maintained or revoked.

Révision

34. Avant le 1^{er} mai 2009, le Barreau doit évaluer dans quelle mesure le fait d'autoriser les personnes visées aux articles 32, 33 et 33.1 à fournir des services juridiques sans permis est conforme à la fonction du Barreau énoncée à l'article 4.1 de la Loi et aux principes établis à l'article 4.2 de la Loi et il doit déterminer si les articles doivent être maintenus ou abrogés, en tout ou en partie.

Carried

Items for Information

- Position of Vice-Chair
- Working Group on Trust Accounts

PARALEGAL STANDING COMMITTEE SUPPLEMENTARY REPORT

Report to Convocation
June 28th, 2007

Paralegal Standing Committee

SUPPLEMENTARY REPORT ON
PARALEGAL TRUST ACCOUNTS

Committee Members
Paul Dray, Chair
Bonnie Warkentin Vice-Chair
Marion Boyd
James Caskey
Michelle Haigh
Abraham Feinstein
Thomas Heintzman
Brian Lawrie
Margaret Louter
Stephen Parker

Purpose of Report: Decision

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

COMMITTEE PROCESS

1. The Paralegal Standing Committee met on June 27th, 2007. Committee members participating were Paul Dray, Chair, Bonnie Warkentin, Vice-Chair, Marion Boyd, Michelle Haigh (by telephone), Thomas Heintzman, Brian Lawrie (by telephone), Margaret Louter (by telephone), and Stephen Parker. Benchers Catherine Strosberg also attended. Staff members in attendance were Zeynep Onen, Diana Miles, Terry Knott, Elliot Spears, Sheena Weir, Leslie Greenfield, Andrea Waltman, Jim Varro, Allyson O'Shea and Julia Bass.

FOR DECISION

TRUST ACCOUNT REQUIREMENTS FOR PARALEGALS

Motion

2. That Convocation approve the following trust account requirements for paralegals:
 - a. That paralegals be required to have trust accounts if they will be receiving money belonging to their clients, but that block fees of under \$1,000 be exempted from the requirement to be placed in trust and may be deposited in paralegals' general accounts;
 - b. that all block fees above the \$1,000 threshold, and all other client moneys such as settlement funds, be required to be deposited in a trust account - paralegals who do not wish to operate a trust account would be required to have all settlement funds made payable to the client;
 - c. that a prescribed retention letter explaining the clients' rights be developed and be required to be used by paralegal licensees;
 - d. that rules be developed governing the handling of funds and the keeping of books and records by paralegals;
 - e. that educational supports and resources be developed for paralegals pertaining to the keeping of books and records and the use of trust accounts;
 - f. that the rules be effective when licences are granted, estimated to be in spring 2008, permitting a suitable transition period;
 - g. that the trust account rules be reviewed in two years time as part of the statutory review required at that time

Background

3. The Committee considered the Report of the Working Group on Trust Accounts, attached at Appendix 1.

4. Materials prepared for the Working Group are attached at Appendix 2. The Working Group considered the three options previously approved by the Committee for further study for the development of trust account rules for paralegals, as follows:
 - a. Option 1 – adopt the same trust account rules as lawyers;
 - b. Option 2 – exempt all ‘block fees’ from the trust account rules (block fees being fees of a set, agreed-upon amount, payable in advance, for a specific future service, as opposed to fees calculated on an hourly rate);
 - c. Option 3 – exempt ‘block fees’ under a specified threshold from the trust account rules.

The Committee’s Deliberations

5. The Committee considered the Working Group’s recommendations and considered them to be appropriate as an approach to the trust account requirements for paralegals, given that most paralegal practitioners operate a high-volume, low cost practice with no support staff. This approach would promote low-cost access to justice and provide consumer protection - in particular, appropriate handling and safekeeping of client funds.

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

- (1) Copy of the Report of the Working Group on Trust Accounts.
(Appendix 1, pages 4 – 7)
- (2) Copy of materials prepared for the Working Group re: Paralegal Trust Account Working Group Discussion Papers, June 20, 2006.
(Appendix 2, pages 8 – 36)

Re: Motion - Paralegal Trust Accounts

That Convocation approve the following trust account requirements for paralegals:

- a. That paralegals be required to have trust accounts if they will be receiving money belonging to their clients, but that block fees of under \$1,000 be exempted from the requirement to be placed in trust and may be deposited in paralegals’ general accounts;
- b. that all block fees above the \$1,000 threshold, and all other client moneys such as settlement funds, be required to be deposited in a trust account - paralegals who do not wish to operate a trust account would be required to have all settlement funds made payable to the client;
- c. that a prescribed retention letter explaining the clients’ rights be developed and be required to be used by paralegal licensees;
- d. that rules be developed governing the handling of funds and the keeping of books and records by paralegals;

- e. that educational supports and resources be developed for paralegals pertaining to the keeping of books and records and the use of trust accounts;
- f. that the rules be effective when licences are granted, estimated to be in spring 2008, permitting a suitable transition period;
- g. that the trust account rules be reviewed in two years time as part of the statutory review required at that time.

LostROLL-CALL VOTE

| | | | |
|----------------|---------|--------------|---------|
| Anand | Abstain | Marmur | Against |
| Backhouse | Abstain | Millar | Against |
| Banack | Against | Minor | Against |
| Boyd | For | Pawlitza | Abstain |
| Campion | Against | Porter | Against |
| Carpenter-Gunn | Against | Potter | Against |
| Caskey | Abstain | Pustina | Against |
| Chahbar | Against | Rabinovitch | Against |
| Conway | Against | Robins | Against |
| Crowe | Against | Rock | Against |
| Curtis | Against | Ross | Against |
| Dray | For | Rothstein | Against |
| Epstein | Against | St. Lewis | Against |
| Finlayson | For | Sandler | Against |
| Go | Against | Schabas | Against |
| Gottlieb | Against | Sikand | Abstain |
| Halajian | Against | Silverstein | Against |
| Hare | Against | C. Strosberg | Against |
| Henderson | Abstain | Swaye | Against |
| Krishna | Against | Symes | Against |
| McGrath | Against | Tough | Against |
| | | Warkentin | For |
| | | Wright | Against |

Vote: 4 For; 34 Against; 6 Abstentions

It was moved by Mr. Porter, seconded by Mr. Epstein that the motion on paralegal trust accounts be tabled.

LostFINANCE AND AUDIT COMMITTEE REPORT

Mr. Millar presented the Report.

Report to Convocation
June 28, 2007

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

Purposes of Report: Decision and Information

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

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2. General Fund - Audited Financial Statements For The Three Months Ended March 31, 2007
3. Lawyers Fund For Client Compensation - Financial Statements For The Three Months Ended March 31, 2007
4. LibraryCo Inc. - Financial Statements For The Three Months Ended March 31, 2007
5. Statements of Investment Compliance – Short-Term & Long-Term Portfolio
6. Investment Compliance Report – General Fund and Compensation Fund - Foyston, Gordon & Payne

COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on June 14, 2007. Committee members in attendance were: Derry Millar (c.), Beth Symes (v.c.), Abdul Chahbar, Andrew Coffey, and Marshall Crowe.
2. Staff in attendance were Wendy Tysall, Fred Grady and Andrew Cawse.

FOR DECISION

AUDIT COMMITTEE MANDATE

FINANCE COMMITTEE MANDATE

Motion

3. That Convocation approve the mandates for the new Audit Committee and Finance Committee as attached.
4. The new mandates for the two new committees will be incorporated into By-Law 3. The required amendments to By-Law 3 will be sent to benchers under separate cover. Background and support for the mandates is set out below.
5. On March 27, 2007, Convocation approved the recommendations included in the Second Report of the Governance Task Force relating to the responsibilities of a Finance Committee and an Audit Committee. Specifically:

RECOMMENDATION 2

That Convocation establish a standing committee called the Audit Committee which shall replace and include the mandate of the existing Audit Sub-Committee of the Finance and Audit Committee and such other matters as Convocation may direct.

RECOMMENDATION 3

That Convocation replace the existing Finance and Audit Committee with a Finance Committee whose mandate will be to continue the functions of the present Finance and Audit Committee that are not assigned to the Audit Sub-Committee, including the following:

- *to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item;*
- *to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation; and*

- *to undertake such other responsibilities of a financial nature assigned to the Finance Committee by Convocation.*

6. Since the above recommendations were approved, the Finance & Audit Committee and the Audit Sub-Committee (with our auditors and the Chair and Vice-Chairs of the Finance & Audit Committee) have met to discuss their respective mandates and the allocation of responsibilities between the two committees. As a general philosophy, the mandates of the two committees should clearly articulate the role each of the committees is to play in the governance structure of the Society. The mandates should ensure that no duplication of effort or responsibility exists and that no gaps in financial management exist.
7. Prior deliberations of the two committees have concluded that, in broad terms, the Audit Committee should fulfill an oversight role assessing the application of policy and the Finance Committee should be a policy recommending committee, charged with the responsibility of formulating and recommending annual budgets and reviewing and recommending in-year program plans not included in the annual budget.
8. Charters of the two committees approved by the Finance & Audit Committee are attached which have been used to draft committee mandates for inclusion in By-Law 3.

AUDIT COMMITTEE CHARTER

PURPOSE OF THE COMMITTEE

9. The purpose of the Audit Committee (the "Committee") of the Law Society of Upper Canada (the "Law Society") is to act on behalf of Convocation in the oversight of the:
 - integrity of the Law Society's financial statements and its financial reporting process;
 - risk management and internal control systems, and
 - independence and performance of the Law Society's independent auditor;
10. The Committee shall also perform any other activities consistent with this Charter and the Law Society's by-laws or as Convocation deems necessary or appropriate.
11. The Committee's role is one of oversight. Management is responsible for preparing the Law Society's financial statements and the independent auditor is responsible for auditing those financial statements. Management is responsible for the fair presentation of the information set forth in the financial statements in accordance with generally accepted accounting principles ("GAAP"). Management is also responsible for establishing and maintaining appropriate accounting and financial reporting principles and policies, a strong system of internal controls, and procedures designed to assure compliance with accounting standards and all applicable laws and regulations.
12. The independent auditor's responsibility is to express an opinion, based on its audit, whether the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Law Society in accordance with GAAP.

13. The Committee shall make recommendations for the appointment, compensation and oversight of the work of the external auditor (including the resolution of any disagreements between management and the external auditor regarding financial reporting) to Convocation. The external auditor shall report directly to the Committee.

AUTHORITY AND RESPONSIBILITIES

14. Minutes of meetings shall be kept, approved and maintained in the Chief Financial Officer's Office. In performing its oversight responsibilities, the Committee shall:

Financial Reporting:

- Review and discuss the interim and annual financial statements with management. The Committee has oversight responsibility for the General Fund and Compensation Fund. The Committee will also receive and review the interim and annual financial statements of Lawyers Professional Indemnity Company, the Errors and Omissions Insurance Fund, LibraryCo Inc., the Law Society Pension Fund and any other subsidiary or related statements relevant to the Committee;
- Review with management the adequacy and effectiveness of the Law Society's accounting, information and financial controls systems and the integrity of its financial reporting processes;
- Oversee the selection of accounting policies used in the preparation of the financial statements, including consideration of all relevant alternatives;
- Review other financial information e.g. the annual report, for consistency with the audited financial statements;
- Maintain an effective communications policy, including disclosure of the Audit Committee's mandate.

Audit Activities:

- Review with the external auditor and management the annual audit plan, including the overall scope of the audit and the areas of identified risk;
- Monitor the independence of the external auditor by reviewing all relationships between the auditor and the Law Society;
- Review with management and the external auditor the annual audited financial statements and related note disclosures;
- Review with the external auditor the results of the audit and determine if there were any difficulties or disputes with management, any significant changes in the audit plan, any significant changes in accounting policies and any management estimates that required significant judgment;
- Review with the external auditor any internal control weaknesses, and if appropriate, determine whether effective steps have been taken by management to overcome them;
- Recommend approval of the audited financial statements to Convocation;
- Recommend the appointment of the external auditor to Convocation;
- The Committee shall meet 'in camera' with the external auditor without members of management present at least once a year at the post-audit meeting.

Pension Fund

The Audit Committee shall have administrative oversight duties for the registered pension plan for the employees of the Society.

Risk Management and Internal Control Systems

- Review and assess the Law Society's financial risk management policies and processes;
- Have a clear understanding of the risks of fraud and error in the entity and review management's response to those risks;
- Oversee management's establishment of an adequate system of internal controls and risk management systems to mitigate the financial risks facing the Law Society and to ensure a strong internal control environment exists;
- Consider the potential risk of management's override of controls or other inappropriate influence over the financial reporting process;
- Enquire into the condition of the books and records and the adequacy of resources committed to the accounting function and internal controls;
- Review the Law Society's procedures established for the receipt, retention and treatment of complaints regarding accounting, financial disclosure, internal controls or auditing matters. The Law Society's policy in this respect is contained in the Business Conduct Policy. Law Society employees having knowledge of any matter which in their judgment might affect adversely the Society's reputation or operations shall bring such knowledge promptly to the attention of a senior manager, or the Chief Executive Officer, or the Treasurer or the Chair of the Finance Committee or Chair of the Audit Committee who shall notify each other of such information at the appropriate time.
- Conduct or authorize investigations into any matters that the Committee believes is within the scope of its responsibilities.
- Monitor the litigation risks faced by the Society including the recognition of contingent or other liabilities.
- Receive reports on bencher remuneration and expenses.

MEMBERSHIP REQUIREMENTS

15. Members of the Audit Committee should be able to maintain an independent mind, and be financially literate, particularly in the area of not-for-profits and fund accounting. Members of the Audit Committee should educate themselves through bencher orientation and with the assistance of management, auditors and third party sources, concerning the knowledge and skills required to fulfill the committee's mandate.
16. Members of the Audit Committee should not also be members of the Finance Committee.

FINANCE COMMITTEE CHARTER

17. The purpose of the Finance Committee is:
 - a) To review the plans and projections of the annual budget of the Society, including the Compensation Fund and the Paralegal Fund, or any special or extraordinary budget required for the purpose of the Society, to provide comments and advice

to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item.

- b) To review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.
 - c) To undertake such other responsibilities of a financial nature assigned to the Finance Committee by Convocation. The Committee will review and make recommendations to Convocation on issues such as:
 - policies such as the Law Society's investment policies and policies on benchers remuneration, counsel fees and the allocation of overheads
 - J.S. Denison Fund grants and other programs
 - banking resolutions and similar agreements
 - financial relationships with entities such as the Law Foundation of Ontario, CDLPA, the Federation of Law Societies, Pro Bono Law Ontario, LibraryCo Inc., Lawyers Professional Indemnity Company and the Errors & Omissions Insurance Fund
 - commercial projects such as the member directory.
18. The Chair of the Finance Committee shall perform the duties of the Treasurer if the elected Treasurer is unable to perform the functions of the office.

FOR DECISION

CORPORATE RESOLUTION ERRORS AND OMISSIONS INSURANCE FUND

Motion

19. The Finance and Audit Committee recommends the corporate resolution for the Errors and Omissions Insurance Fund set out below be approved by Convocation.

RESOLVED that any two of following officers of the Lawyers Professional Indemnity Company (LawPRO) (one of whom shall be either the President and CEO or the Vice President, Finance and Treasurer) are authorized, in respect of the Law Society of Upper Canada's Errors and Omissions Insurance Fund investment portfolio with CIBC Global Asset Management Inc. (CGAM), that is administered by LawPRO, to:

1. Execute legal documentation required in connection with the portfolio including the parameters relative to the management of the portfolio.
2. Direct CGAM to raise funds to accommodate cash disbursements or to effect other transactions.
3. Advise CGAM of any appointments or termination of agents.
4. To provide instructions/documents to CGAM in all respects that relate to CGAM management of the accounts of the Law Society's Errors and Omissions Insurance Fund

Authorized signing officers of LawPRO:

- 20. President and CEO
- 21. Vice President, Finance and Treasurer
- 22. Vice President, Claims
- 23. Vice President, Underwriting and Secretary
- 24. Vice President, TitlePLUS
- 25. Vice President and Actuary
- 26. Controller

Background

- 20. The Law Society provides professional liability insurance to the legal profession through the Errors and Omissions Insurance Fund ("E&O Fund") and the Lawyers Professional Indemnity Company ("LawPro"). LawPro took over underwriting the program in 1990 and administers the E&O Fund run-off under an administrative services agreement with the Law Society.
- 21. At the end of 2006, the stand alone E&O Fund had an investment portfolio with a market value of \$68 million. CIBC Global Asset Management manages part of this portfolio and requested the above Corporate Resolution to comply with the regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* relating to the powers to bind the Law Society in respect of the investment account.

FOR DECISION

WOMEN BENCHER'S ROBINING ROOM

Motion

- 22. That Convocation approve unbudgeted expenditures totaling \$315,000 to renovate the women bencher's robing room. Funding for this amount will be from the Capital Allocation Fund.
- 23. This year, 19 of the 40 elected benchers are women, the highest number of women elected in Law Society history. In 2003, 11 women were elected. The total number of women benchers including lay benchers, and ex-officio benchers is currently 23. The women bencher's robing room was already restrictive and the significant increase in women benchers means renovations to the robing room are urgently required.
- 24. The proposed renovations will also allow both women's robing rooms to be fully accessible.
- 25. The women barrister's robing room is adjacent to the women bencher's robing room and the basic plan is to swap the two rooms, upgrading both. This will result in the number of lockers for benchers increasing from 17 to approximately 30. The washrooms will be made wheelchair accessible.
- 26. It is estimated that up to six women barristers use their robing room on a given day and the new location will provide comfortable space.

27. Renovation planning is in the early stages but it is important that the renovation be completed over the summer when bench activity is relatively low. The contemplated renovations will take six weeks and as they also effect the barrister's robing room, renovations should be carried out during the court recess. The renovation will be staged to ensure a robing area is always available.
28. This renovation project is not included in the 2007 capital budget approved by Convocation in October 2006. A preliminary construction budget for the project, prepared by our design consultants, Intercede Facility Management Ltd. is attached, estimating a total cost of just under \$300,000 for the renovation. An additional \$15,000 is being added for computers and other equipment. At the end of 2006 there was \$3.5 million in the Capital Allocation Fund and it is proposed the financing be sourced from this fund. At the current time, approved capital projects of \$2.4 million are projected to adhere to the approved capital budget for 2007.

FOR INFORMATION

PENSION PLAN ANNUAL FINANCIAL STATEMENTS PENSION PLAN GOVERNANCE REPORT

Pension Plan Annual Financial Statements

29. In June 2005, Convocation resolved to delegate the administrative oversight duties set out in the Pension Fund Governance Guidelines to the Finance & Audit Committee. The Committee received and reviewed the financial statements of the Fund of the Pension Plan for the Employees of the Law Society of Upper Canada for the year ended December 31, 2006. The plan appears properly funded and no legal issues were identified.
30. The financial statements were audited by Deloitte & Touche LLP, Chartered Accountants. The financial statements were prepared for purposes of filing with the Ontario Ministry of Finance under the Pension Benefits Act and the Federal Income Tax Act which require audited financial statements be prepared and filed each year in respect of pension funds in excess of \$3 million. The information reported in the financial statements follows the requirements specified in the Pension Benefits Act.
31. The financial statements are Appendix I of the Pension Fund Governance Report

Pension Fund Governance Report

32. In the Governance Guidelines it states that the Pension Committee will prepare an annual report to the Finance & Audit Committee that includes the following:
 - Confirmation that required reports have been filed with the authorities and required disclosure made to Plan members
 - Confirmation the Plan has been administered in accordance with legislation and Plan documents
 - A summary of investment performance.

33. The Committee reviewed the annual report on Pension Plan activities, from the Law Society's Pension Committee for the 2006 year. A copy of the report is attached for information.

PENSION FUND GOVERNANCE REPORT
FOR THE YEAR ENDED DECEMBER 31, 2006

Plan Description and Statistical Reporting

34. Plan Member Enrollment, Terminations, Retirements and Deaths
- (a) Permanent employees must join the pension plan after one year of service. Pension enrollment information is provided to the new employee during benefits orientation within the first three months of employment. After eleven months of service the HR Representative contacts eligible employees to commence the enrolment process. The employee completes a Plan membership application form, selects their investment choices, and returns it to Human Resources. The original is sent to Standard Life Assurance Company ("Standard Life"), the Custodian, a copy goes to Payroll and a copy is put in the employee's file.
 - (b) Each new plan member completes and signs a "Group Pension Plan Contribution Authorization" form, which serves as authorization to make the payroll deduction each pay. Members elect to contribute to the Plan an amount between 1% and 6% of his/her annual earnings. The Law Society matches the member's contribution.
 - (c) Members may change their elected deduction percentage on an annual basis. If a member chooses to change the percentage, they indicate their decision on a new Group Pension Plan Contribution Authorization form.
 - (d) Human Resources advises Payroll and Standard Life of terminations, retirements or deaths. Payroll ceases deductions as instructed and Standard Life notifies the member, with options for consideration, within 15 days of notification by the Law Society. Thereafter members terminating or retiring deal directly with Standard Life.
35. Payment Procedures for Plan Members Terminating from the Plan
- (a) Upon termination, a non-vested member (less than 2 years plan participation) is eligible to receive only the value of their own contributions in the plan, adjusted for any gains or losses. These monies can be paid in cash or transferred to another retirement arrangement.
 - (b) Upon termination, a vested member is entitled to the value of their employee and employer contributions, adjusted for any gains or losses. These monies are locked-in (this means that the funds must be used to provide an income at retirement) and are not eligible for cash payment. The member may choose to remain in the Law Society's Pension Plan as an inactive member or transfer the monies to their own retirement savings plan or new employer, if allowed. If the

member is retiring they may elect to transfer to a registered retirement income fund or purchase a deferred life annuity contract.

- (c) No changes were made in 2006 to these procedures.

36. Remittance of Plan Member Contributions

Payroll has committed to remitting member contributions to Standard Life within two business days of the date of deduction. In practice, remittance has been within one business day.

37. Statistical Data on Enrolments, Terminations, Retirements and Deaths in the Plan for 2006 and 2005

| Statistical Data | 2006 | 2005 |
|--|--------------|--------------|
| • Number of active members at December | 346 | 351 |
| • Number of inactive members at December | 83 | 69 |
| • New Entrants | 32 | 61 |
| • Terminations / Retirements / Deaths | 37 | 33 |
| • Contributions made by employees | \$1,186,238 | \$1,128,955 |
| • Contributions - employer | \$1,339,475 | \$1,277,544 |
| • Investment balances: | | |
| • Opening Balance | \$19,121,109 | \$15,907,872 |
| • Closing Balance | \$22,878,948 | \$19,121,109 |

Administrative Compliance

38. The Pension Committee comprised of Malcolm Heins, CEO, Wendy Tysall, CFO and Laura Cohen, Director HR met six times in 2006. Highlights of the meetings are as follows:

- (a) January 30, 2006 – Peter Beca, our pension consultant and actuary from Aon¹, presented the investment review of the plan for the period ending June 2005 (a detailed report is available). There was a discussion of the funds that were “put on watch”² with the decision to leave them on watch until the next investment

¹ One of Aon’s roles as the Law Society’s pension consultant and actuary is to provide independent advice on the investment performance of the funding vehicles offered by Standard Life.

² A recommended action is shown where a fund is identified as either not meeting quantitative objectives or having qualitative concerns. Where the issues are not considered serious, the recommendation is “Continue to Monitor” which means that the issues have been noted but no

review. The funds are Standard Life Diversified, US Equity, International Equity and Jarislowsky Fraser International Equity. The 2005 pension fund governance report and the 2005 CAP guidelines report were approved. The Pension Committee approved the addition of a spousal RRSP to the Law Society Group RRSP. The Law Society Group RRSP is an employee paid savings arrangement in addition to the Pension Plan. The Pension Committee agreed to notify The Law Foundation of Ontario that its members can no longer participate in the Law Society Pension Plan, as it is a single employer plan.

- (b) March 22, 2006 – Andrew Marshall and Dilip Jobanputra of Standard Life presented their review of the investments of the pension plan for the year ending 2005 to the combined Pension and Employee Advisory Committees (a detailed report is available). This was another strong year with double-digit returns. GE and Standard Life Investments did not perform as well as others due to their investment strategies. The global and North American economic situation and its implications on markets were discussed. Standard Life provided an update on member activity to the Standard Life call centre and online usage. Peter Beca of Aon attended the meeting.
- (c) April 5, 2006 - Peter Beca of Aon presented the investment review for the year ending 2005 (a detailed report is available). In addition to the investment review a discussion on the transfer of the Law Foundation of Ontario (“LFO”) employees out of the Law Society’s Pension Plan took place. Highlights of the investment review follows:
 - Each investment fund was reviewed at a fund and manager level. The investment review highlighted any qualitative or quantitative concerns and recommended actions. Generally speaking funds that were under-invested in energy and oil and gas under performed in 2005.
 - Seven funds continue to be monitored: Trimark Income Growth, Standard Life Canadian Equity, GEAM US Equity, Jarislowsky Fraser US.Equity, Standard Life US Equity Index, Standard Life International Equity and McLean Budden Fixed Income. These funds are being monitored because of management personnel changes or under performance against their benchmarks.
 - Five funds have been put on watch, due to management changes and under performance against benchmarks. The funds put on watch were: McLean Budden Balanced Growth and MB Canadian Equity Growth, Trimark Canadian Equity and Standard Life Mortgage and Real Estate.
 - Four funds remain on watch: Standard Life Diversified, US and International Equity funds, Jarislowsky Fraser International Equity Fund.
 - Standard Life Bond fund remains blocked to new contributions.

further action need be taken at this time. The situation would be reviewed at the time of the next report. Where the issues are considered serious, the recommendation is usually to “Put on Watch”. This suggests that the issues noted are serious enough that if not rectified, further action such as blocking future contributions or replacing the fund may be taken. Usually, a fund on Watch is scrutinized more carefully even prior to the time of the next monitoring report and some definitive action recommended at the time of the next review.

- More in-depth information is available in the Aon Performance Review report as at December 31, 2005. (Detailed report is available).
 - A communiqué to employees on the results of the 2005 investment performance was posted on ELF, the Law Society intranet.³
- (d) May 31, 2006 – A meeting was held with Wendy Tysall, CFO, Laura Cohen, Director HR and Peter Beca from Aon to review the Law Society's options for the transfer of LFO employees out of the Law Society's Pension Plan. The options presented were to partially wind up the Law Society Pension Plan with respect to LFO plan members or enter into an agreement with LFO to affect a group transfer of assets to a new pension arrangement for LFO employees or no retirement vehicle. The decision was made that a partial windup was the best solution.
- (e) June 9, 2006 – Mary Shannon Brown, Executive Director of the Law Foundation of Ontario, Peter Beca from Aon, Laura Cohen and Wendy Tysall, members of the Pension Committee met to discuss the options available to the LFO. Peter Beca presented the options available (their own pension plan, group RRSP or no retirement vehicle). The Committee informed Ms. Brown that Standard Life was prepared to offer the LFO a Group RRSP on the same terms as the Law Society Group RRSP. Ms. Brown indicated that she would bring the information forward to the LFO Board. Peter Beca was instructed to proceed with preparing all the relevant administrative and legislative documentation required by the Financial Services Commission of Ontario ("FSCO") to partially windup the Law Society's Pension Plan to remove the LFO employees from the Plan.
- (f) September 22, 2006 – Aon (Peter Beca) presented to the Committee, Malcolm Heins, Wendy Tysall and Laura Cohen an investment review of the Plan for the period ending June 30, 2006.
- (i) Two new funds, Beutel Goodman International Equity and McLean Budden American Equity funds were added to the investment options. Funds were made available as of September 1, 2006. On August 10, 2006 employees were informed, by a communication piece on the intranet, of the new funds available to them.⁴
 - (ii) Peter Beca presented an updated SIP&P effective September 2006, which the Committee accepted.⁵
- (g) March 13, 2007 - Peter Beca of Aon presented the investment review for the year ending 2006 (a detailed report is available). 2006 was a strong year for equity markets and funds performed better than the average. In 2006 Canada was the market to be in with emphasis on materials, energy, and the financial sectors. The value style of

³ Communiqué – Important Announcement: Law Society Pension Plan Investments attached as Appendix B

⁴ Communiqué – Two new funds to be added to the Law Society Pension Plan attached as Appendix C

⁵ SIP&P dated September 2006 attached as Appendix D

investment outperformed the investment styles and large cap stocks did better than small caps. Highlights of the review follow:

- There were no issues at the plan level. The Committee discussed the mix in the 9-box sample investment mixes. Peter Beca of Aon suggested that the Law Society increase the percentage of foreign content in the sample investment mixes. Aon to consult with Standard Life on the appropriate percentage mix and funds in the sample investment mixes. 17.8% of the assets in the Pension Plan are in GICs. This percentage continues to decrease from the past few years.
- Aon recommends that The Law Society should consider moving the default option from the Daily Interest Accumulator account to the most “Conservative -10 years” in the 9- sample investment mixes. A default option is used when a plan member makes no investment selections.
- A variety of personnel changes at McLean Budden and Standard Life due to retirements and positioning for 2007 onwards took place in 2006.
- Aon reviewed all the funds on watch and recommended no changes, with the exception of one fund (see below), as the fundamentals of the funds continue to be sound. Aon will continue to monitor performance. The issues at Standard Life and McLean Budden are at an organizational level, due to significant senior personnel changes or departures. As well, once personnel changes are finalized, Aon anticipates removing Standard Life and Aim Trimark from the watch list within the next 12 months. Jarislowsky Fraser International Equity underperformed against its benchmark and peer group objectives and shows little signs of improvement. Aon recommends removing this fund from the 9 –box sample investment mixes and will consult with Standard Life for an alternate fund. Aon suggested blocking future contributions to the JF International Equity fund.
- The secretary took the suggestions regarding the change in default option, increased foreign investment in the 9-box sample investment mixes and blocking of the JF International Equity fund back to the Employee Advisory Committee for comment and feedback.

39. On September 28, 2006 Convocation approved a resolution to partially windup the Pension Plan with respect to the employees of the LFO. Convocation directed the Pension Committee to complete all regulatory filings and to advise the employees of the LFO as to the effective date. FSCO approved the windup report on November 15, 2006. Employees of the LFO were given written notification in July 2006 of member termination from the Plan. Aon prepared the regulatory filings for the partial plan windup.⁶ Standard Life prepared the necessary documentation for the start-up of the LFO Group RRSP for LFO employees.

40. In 2006 the Employee Advisory Committee (EAC) met three times:

- (a) March 22, 2006, for the Standard Life investment performance presentation for 2005.

⁶ Partial Plan windup documents attached as Appendix E

- (b) April 4, 2006 – Aon investment review of 2005 performance. Concern was voiced at the number of funds either on watch or being monitored. The concern was forwarded to the Pension Committee at their following meeting on April 5, 2006.
- (c) September 12, 2006 – Investment review to June 30, 2006. Nine funds continue on watch. Information sessions for new members of the plan were scheduled for March 27, 2006 and April 11, 2006

Notable Actions Taken in 2006

- 41. It was decided by the Pension Committee following legal advice provided by Elizabeth Brown and Jean-Pierre Laporte, legal counsel with Hicks Morley, that employees of the Law Foundation of Ontario could not remain in the Law Society's pension plan as it is a single employer plan. On July 27, 2006 LFO employees received notification from the Law Society that they could no longer participate in the Law Society plan effective August 4, 2006 and that there would be a partial windup of the plan. LFO members would receive documents outlining their options for their funds. The board of the LFO has approved the creation of a group RRSP for its employees. Standard Life will provide the group RRSP at the same rates as offered to members of the LS pension plan.
- 42. March 27, 2006 – A meeting for new members of the plan was scheduled for March 27, 2006. The meeting was cancelled due to lack of interest. Future "new member" information sessions have been made mandatory to ensure new members are informed on the Pension Plan.
- 43. Plan members were offered individual sessions with Carol Greenwood, a Standard Life/ financial consultant, and were invited to a group information session to be held on April 11, 2006.
- 44. October 19, 2006 – Stephen Arcand, a financial planner with Standard Life provided individual sessions for employees around retirement and investment selections as well as a mid-day seminar on retirement planning.
- 45. Two additional funds were added to the investment options available for members, Beutel Goodman International Equity fund and McLean Budden US Equity fund to provide more choice for plan members. These funds were made available effective September 1, 2006. Malcolm Heins signed a Request to Add Additional Funds, in July 2006 that was forwarded to Standard Life.⁷
- 46. The Employee Advisory Committee expressed concerns about the number of funds on watch or being monitored. Greg Komatch of Aon explained the reason that Aon puts funds on watch was due to management changes or performance of the funds. The fundamentals of the companies on watch or being monitored are sound. It is Aon's practice, working on our behalf, to actively monitor funds in our portfolio when they do not meet qualitative and quantitative objectives or there have been multiple management changes. Aon confirmed that they will continue to scrutinize carefully the funds being monitored and on watch, and will make definitive recommendation at the time of the next

⁷ Addition of Funds document attached as Appendix F

investment review. If required further action, such as blocking any future investment in these funds or replacing the funds in question, may be taken by the Pension Committee.

Investment and Legislative Review

47. Compliance with the Income Tax Act

- (a) The Annual Information Return is prepared, on behalf of the Law Society, by Standard Life and signed by the Director of Human Resources. The Annual Information Return for 2006 will be filed on or before June 30, 2007.
- (b) The audited statement of net assets available for benefits for *The Fund of the Pension Plan for the Employees of the Law Society of Upper Canada* for the year ending December 31, 2006 was finalized and signed by the Law Society's external auditors, Deloitte & Touche, on April 20, 2007. The statements will be reviewed by the Finance and Audit Committee on June 14, 2007 and sent to Convocation for information on June 28, 2007 and filed with FSCO before June 30, 2007.
- (c) No plan amendments were made in 2006.

48. Pension Benefits Act

- (a) Standard Life provides members with year-to-date statements on a quarterly basis. The statements are mailed to the member's home address.⁸
- (b) Thirty-seven members terminated from the plan in 2006. They received their statements from Standard Life within 15 business days of notification by the Law Society. Payouts were processed within 15 business days of all documentation and selection instruction received by Standard Life. If no instructions are received the terminated member is deemed ceased (becomes a former member) and the assets are moved to the terminated sub group of the Pension Plan ninety days after they have been notified of their options.
- (c) The Pension Committee has delegated the processing of retirement benefits to Standard Life. Retiring members obtain information regarding pension amounts and options directly from Standard Life. One member died in 2006. The beneficiary transferred the funds out of the plan. One member retired and was provided with their options prior to their retirement date.
- (d) No members made written requests to view Plan documents, annual information returns, financial statements, the Statement of Investment Policies and Procedures, or any correspondence with regulatory authorities in 2006.

49. The 2006 Standard Life Compliance Report is attached as Appendix H. The Pension Committee confirms that the Plan has been administered in accordance with applicable legislation and the filed Plan documents.⁹

⁸ Sample Plan Member Statement 2006 attached as Appendix G

⁹ 2006 Standard Life Compliance Report attached as Appendix H

Auditor's Report¹⁰

50. The Pension Committee met on June 11, 2007 and reviewed the *Auditor's Report on Pension Fund Financial Statements for 2006* that acknowledged that contributions, and payments, from the Plan, were made in accordance with the Plan terms and applicable legislation. The Report also acknowledged that investments of the Plan comply with the SIP&P and applicable legislation.
51. The Auditor's Report is being provided to the Finance & Audit Committee for review on June 14, 2007.

FOR INFORMATION

GENERAL FUND - AUDITED FINANCIAL STATEMENTS FOR THE THREE MONTHS ENDED MARCH 31, 2007

52. The Committee recommends the financial statements for the General Fund for the first quarter of 2007 be received by Convocation for information.

Law Society of Upper Canada
General Fund
Financial Statement Highlights
For the three months ended March 31, 2007

53. The first quarter of 2007 has been completed and the General Fund ("the Fund") reports a deficit of \$224,000 compared to a deficit of \$860,000 for the same period in 2006. A deficit at this point of the year is anticipated and should continue to increase, as expected, over the course of 2007. The deficit is driven primarily by two factors, the amortization of capital assets and expenditures on paralegal start-up costs.
54. Amortization is a non-cash expenditure of the Society and no revenue is raised to offset it. As a result, a deficit at least equivalent to the amount of amortization charged would be normal. Paralegal regulation start up costs have just begun in the first quarter. These expenses will continue to increase and are reported in a separate Paralegal Fund. This will be partially offset later in the year with revenues from grandparent applicants. Acceptance of applications for grandparenting began on May 1, 2007. Additional discussion on the Paralegal Fund is provided later in this report.

Accounting Standards Change – Financial Instruments

55. The Canadian Institute of Chartered Accountants (CICA) introduced a new accounting standard for reporting financial instruments. A financial instrument is defined as any contract that gives rise to a financial asset of one party and a financial liability or equity instrument of another party. Financial instruments include cash, receivables, payables,

¹⁰ Representations letter, Auditor's Report and Financial Statement for The Fund of the Pension Plan for the Employees of the Law Society of Upper Canada attached as Appendix I

investments in equity and debt instruments. Under this requirement financial instruments are reported at fair (market) value.

56. Fair value is “the amount for which an asset or liability could be exchanged between knowledgeable, willing parties in an arm’s length transaction.” The fair value objective should be to reflect the market’s view, rather than an entity’s or its management’s preferences and expectations.
57. As required by this standard, we reviewed the nature and intent of the long-term investments held and classified them as “held for trading”. The Audit Sub-Committee approved this classification in December 2006. This classification method most appropriately discloses the results of the Law Society’s long-term investment transactions.
58. Selection of the held for trading classification requires that all gains and losses, realized or unrealized, be reported as income of the period. As a transitional step, accumulated unrealized gains of \$254,000 as at January 1, 2007 are reported on the Statement of Changes in Fund Balances.

Paralegal Fund

59. Convocation approved the paralegal start up budget in February 2007. The budget projects a deficit in the fund of \$2.4 million at the end of 2007. This deficit is expected to be reduced to \$1.5 million early next year with the collection of examination fees from grandparent applicants writing the licensing exam in first quarter of 2008.
60. Convocation approved funding of this deficit from the Society’s cash reserves with recovery from paralegal licensees over a number years, yet to be determined.
61. As set out in the Statement of Changes in Fund Balances, a separate fund to track activity related to paralegal regulation has been set up. In the first quarter of 2007, \$80,000 was spent on paralegal exam development. Given the relatively late approval of the budget in February, spending in the first quarter is behind budget. Spending will accelerate through the balance of the year as implementation progresses.

Balance Sheet

62. In 2007, portfolio investments are shown at market value compared to valuation at cost in 2006. Portfolio investments at March 31, 2007 are shown at market value of \$11.225 million (cost: \$10.9 million). Portfolio investments at March 31, 2006 are shown at a cost of \$10.580 million (market: \$10.604 million). The balance sheet value has therefore increased by \$645,000. \$371,000 of this increase is the reinvestment of income and realized capital gains earned by the portfolio and \$274,000 is unrealized gains recognized with the change in accounting standards for financial instruments. Of these unrealized gains, \$254,000 is accumulated unrealized gains as at January 1, 2007 reported on the Statement of Changes in Fund Balances and \$20,000 is unrealized gains included in income for 2007.
63. Cash and short-term investments have increased by \$1.3 million from the first quarter of 2006.

- 64. Accounts payable and accrued liabilities have decreased from \$9.8 million to \$7.9 million primarily as a result of the payment or elimination of litigation provisions in 2006.
- 65. Deferred revenue of \$37.6 million is comprised largely of lawyers' fees billed but not yet earned, Licensing Process revenue billed but not yet earned.

First Quarter Revenues and Expenses

- 66. Annual fee revenue is recognized on a monthly basis. Fees have increased from \$9.8 million in 2006 to \$10.5 million in 2007 with an increase of approximately 750 lawyers and a fee increase of \$92 per lawyer, or seven percent.
- 67. Professional development and competence revenues at \$1.5 million are significantly higher than the same period last year due to the timing of Continuing Legal Education revenues. CLE revenues for the year are not expected to exceed the budget of \$3.5 million.
- 68. Investment income has increased from \$957,000 in the first quarter of 2006 to \$1.1 million for the same period in 2007 because of increased yields and the inclusion of unrealized gains of \$20,000 during the quarter which are included in current income for the first time in compliance with required disclosure on financial instruments.
- 69. Overall, expenses are tracking close to 2006 with a few exceptions.
- 70. The 2007 budget increased regulatory expenses by \$2.2 million over to the 2006 budget. Actual regulatory expenses in 2006 exceeded budget by \$1.2 million and, so far in 2007, regulatory expenses of \$3.8 million are higher than the same period in 2006 by \$914,000. The most significant component of this increase is \$370,000 in outside counsel fees and approximately \$450,000 in salaries and benefits.
- 71. Included in the budget for other expenses is a contingency allowance of \$150,000 (one quarter of the annual amount of \$600,000). To date \$88,000 has been dedicated from the contingency for the McMurtry Gardens of Justice and the taskforce on licensing and accreditation issues.
- 72. Policy and legal services experienced a relatively large percentage increase from 2006 increasing by \$115,000 to \$547,000 with increases spread across most expense categories. This increase in spending was expected because of the larger number of policy initiatives and is reflected in the 2007 budget.
- 73. Capital Allocation Fund expenses have decreased from \$680,000 in 2006 to \$240,000 in 2007. The 2006 expenses included final amounts on the north wing project.
- 74. A separate fund to track activity related to paralegal regulation has been set up. The paralegal start up budget was approved by Convocation, in February 2007.

Statement of Changes in Fund Balances

- 75. The new disclosure requirements relating to financial instruments are being implemented in 2007. This means unrealized gains on investments at the beginning of 2007 of

\$254,000 are separately identified on the Statement of Changes in Fund Balances. Changes in unrealized gains / losses during 2007 will be included in investment income.

FOR INFORMATION

LAWYERS FUND FOR CLIENT COMPENSATION - FINANCIAL STATEMENTS FOR THE THREE MONTHS ENDED MARCH 31, 2007

76. The Committee recommends the financial statements for the Lawyers Fund for Client Compensation for the first quarter of 2007 be received by Convocation for information.

Law Society of Upper Canada
Lawyers Fund for Client Compensation
Financial Statement Highlights
For the three months ended March 31, 2007

77. The first quarter of 2007 has been completed for the Lawyers Fund for Client Compensation ("the Fund") and the Fund's balance of \$21.4 million has increased from \$18.8 million reported in March 2006. The Fund's Statement of Revenues and Expenses and Change in Fund Balance report a surplus of \$746,000 for the three months ended March 31, 2007 compared to a surplus of \$917,000 for the first quarter of 2006.
78. An actuarial valuation of the reserve for unpaid grants was prepared as at March 31, 2007 and the balance has decreased by \$395,000 over its valuation at December 31, 2006.
79. Grants paid of \$428,000 were half the comparable payments in the first quarter of 2006. Net grants expense has not changed significantly from the first quarter of 2006.

Accounting Standards Change – Financial Instruments

80. The Canadian Institute of Chartered Accountants (CICA) introduced a new accounting standard for reporting financial instruments. A financial instrument is defined as any contract that gives rise to a financial asset of one party and a financial liability or equity instrument of another party. Financial instruments include cash, receivables, payables, investments in equity and debt instruments. Under this requirement financial instruments are reported at fair (market) value.
81. Fair value is "the amount for which an asset or liability could be exchanged between knowledgeable, willing parties in an arm's length transaction." The fair value objective should be to reflect the market's view, rather than an entity's or its management's preferences and expectations.
82. As required by this standard, we reviewed the nature and intent of the long-term investments held and classified them as "held for trading". The Audit Sub-Committee approved this classification in December 2006. This classification method most appropriately discloses the results of the Law Society's long-term transaction investments.

83. Selection of the held for trading classification requires that all gains and losses, realized or unrealized, be reported as income of the period. As a transitional step, accumulated unrealized gains of \$1.2 million as at January 1, 2007 are reported in the change in fund balance section of the Statement of Revenues and Expenses and Change in Fund Balance.

First Quarter Balance Sheet

84. In 2007, portfolio investments are shown at market value compared to valuation at cost in 2006. Portfolio investments at March 31, 2007 are shown at market value of \$25.1 million (cost: \$23.9 million). Portfolio investments at March 31, 2006 are shown at a cost of \$22.9 million (market: \$23.6 million). The balance sheet value has therefore increased by \$2.2 million. \$1.0 million of this gain is the reinvestment of income and realized capital gains earned by the portfolio and \$1.2 million is unrealized gains recognized with the change in accounting standards for financial instruments.
85. Deferred revenue of \$4.7 million represents fee revenue billed but not yet recognized as income. The increase over 2006 is a result of growth in the number of lawyers billed. The annual fee for the Fund of \$200 is unchanged from 2006.
86. The reserve for unpaid grants has declined \$1.4 million from the first quarter of 2006 to \$8.8 million.

First Quarter Revenues and Expenses and Change in Fund Balance

87. Fee revenues of \$1.6 million have increased by \$48,000 from the first quarter of 2006. The annual levy of \$200 per lawyer is consistent between the years with slightly more lawyers in the current quarter. Annualized fee revenue for the Fund will approximate \$6.2 million.
88. Investment income has decreased from \$450,000 to \$360,000, primarily because of a decline in realized capital gains of \$137,000. The change in accounting standards for reporting at market value resulted in an unrealized gain of \$29,000 during the first quarter.
89. Grants paid of \$428,000 are half the amount paid in the first quarter of 2006.
90. Recoveries of claims paid has decreased from \$529,000 in the first quarter of 2006 to \$141,000 this year. Recoveries do not follow any pattern and are difficult to predict. The high value of the first quarter's recoveries last year arose after court approval of transfers of \$460,000 from the frozen trust accounts of two disbarred lawyers.
91. As previously mentioned, the most significant change in presentation from 2006 is the reporting of unrealized gains at January 1, 2007. These gains, totaling \$1.2 million, are reported in the change in fund balance section of the statement.
92. All gains and losses, realized or unrealized, arising during 2007 and in years following will be reported as investment income on the Statement of Revenues and Expenses and Change in Fund Balance.

FOR INFORMATION

LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE THREE
MONTHS ENDED MARCH 31, 2007

93. The recommends the first quarter financial statements for LibraryCo Inc. be received by the Convocation for information.

LIBRARYCO INC: REPORT TO THE SHAREHOLDERS

1st QUARTER FINANCIAL REPORT OF 2007
For the 3 months ended MARCH 31, 2007

KEY POINT SUMMARY

Statement of Operating Revenues and Expenses - LibraryCo only

Comparison of Actual to Budget

- The Budget YTD figures presented are based on one quarter of the annual budgeted amount. The exception is for revenues from the Law Foundation of Ontario and expenses for Electronic products and services and Capital and special needs grants. In these instances, information provided is based on the timing of received revenues and expenses paid in this quarter.
- Law Society grant (line 1) is the member-based fee that is transferred to LibraryCo on a monthly basis. This transfer includes an additional amount each quarter related to the quarterly transfers to the 48 Law Libraries.
- The Law Foundation of Ontario grant - Electronic Resources (line 2) is used exclusively for electronic resource purchases. The entire grant had been received by the end of the 1st quarter based on the fact that the corresponding purchases had also been incurred.
- An application was made to the Law Foundation for funding for infrastructure requirements for the Law Libraries. The application for funding totaling \$204,000 was approved in February 2007. Grant payments will commence in April 2007. No amount was budgeted in 2007 for these grants.
- Virtual Reference Service (VRS) / advoCHAT (line 3 and 14) was included in the budgeting process this year. The information provided here is based on the matching of revenues to the associated expenses incurred in this reporting period.
- Salaries & benefits (line 6) for the 1st quarter are higher than the budgeted amounts due to the payout of accumulated vacation pay that occurred upon the departure of the Executive Director.

- Professional fees (line 8) can fluctuate from one period to the next depending on the timing of the use of the services. In the first quarter of this year, legal fees of approximately \$4,000 were incurred related to the departure of the Executive Director.
- Electronic products and services (line 11) expenditures have been fully incurred in the first quarter of the year. Actual costs are slightly higher than amounts originally budgeted due to increases in publishing costs that were not anticipated at the time the budget was prepared.
- Other (line 13) library related expenses include expenses related to staff travel; COLAL and CDLPA Library Committee meetings; bulk purchase publications for the library system including Continuing Legal Education, Licensing Process and Law Society Special Lecture series materials; and services (cataloguing of collections) provided by the Law Society. Many of these expenses are incurred in later months based on the timing of various meetings and billings from the Law Society.
- Law Libraries – grants (line 17) shows an “actual” amount greater than the year-to-date budget as the annual allocation amounts for a few libraries were revised from those originally included in the budget. The most significant change was for the Sudbury library, which saw it’s annual allocation increased by approximately \$25,000 due to the hiring of an Library Technician to replace a retiring Librarian Assistant.
- Special and capital needs grants (line 18) are provided to assist the Libraries with replacing and upgrading of aging furniture and equipment, library renovations and/or library relocations. In this first quarter a substantial amount was provided to various Libraries for the purchase of computers, printers, scanner, photocopies and, in one case, a new phone system.
- The overall excess of expenses over revenues (line 21) for the first quarter is slightly above the amount budgeted. Based on expected revenues and expenses for the remainder of the year, it is believed that this deficit will eventually be eliminated by year-end.

Balance Sheet - LibraryCo only

- Cash and short-term investment balances (line 1) are lower this year due to the fact that all of the Electronic products and services were incurred and paid prior to the end of March 2007. In the prior year, some negotiations took longer and certain of these expenditures (approximately \$500,000 worth) did not occur until later quarters.
- GST receivables (line 2) relate primarily to refunds owing from purchases of electronic products and services. The amount is higher in the current year as all of these purchases were incurred in February and March of this year compared to the prior year when a portion was incurred in later periods.
- Law Foundation of Ontario funding receivable (line 3) balance reflects actual expenditures being incurred in advance of funding being received. In the prior

year, advance funding was received, hence resulting in a Deferred revenue (line 9) balance.

- Due from the Law Society (line 4) balance reflects that actual funding received to date was based on the original budgeted amount, which was subsequently revised by an increase of \$105,000. This increase was included in the final budget approved by Convocation. This funding shortfall will be transferred to LibraryCo in May.

Statement of Changes in Fund Balances – LibraryCo

- The 2007 Budget for LibraryCo forecasts using none of the Reserve to supplement funding from the Law Society and the Law Foundation. In spite of the 1st quarter deficit, it is anticipated that this will still be the case. The prior year's deficit was much less than the current year due to the timing of electronic resource purchases as explained earlier.
- The cash resources generated from the Reserve Fund have been used to provide short-term financing for the deficit in the General Fund during the 1st Quarter.

Schedule of Revenues and Expenses - LibraryCo and County Law Libraries

Comparison of 2007 to 2006 Actuals Year-to-Date

- Law Society grant (line 1) shows an increase over the prior year of approximately 5% due to additional members as well as the reinstatement of \$105,000 in funding for Library "collections" that was removed in 2006.
- Other income (line 4) noted under the Law Libraries columns represents local recoveries. These may include: local members' dues, photocopying, faxing and printing charges, and fees charged for specific research services.
- Salaries and benefits (line 6) at the LibraryCo level are higher than the prior year due to the payout of accumulated vacation pay that occurred upon the departure of the Executive Director. Salaries at the Law Library level reflect annual increases of approximately 3%.
- Professional fees (line 8) can fluctuate from one period to the next depending on the timing of the use of the services. In this first quarter of this year, legal fees of approximately \$4,000 were incurred, at the LibraryCo level, related to the departure of the Executive Director. In 2006 additional fees of approximately \$14,000 were paid in the 1st quarter for the member's survey that was undertaken by LibraryCo's Integration Task Force.
- Other (Head Office) (line 9) expenses reflect costs associated with additional Board of Directors meetings that were held in the 1st quarter of this year compared to the prior year.

- Electronic products and services (line 10) expenditures have been fully incurred in the first quarter of the year. Costs are higher in the 1st quarter compared to the prior year due to the fact that last year negotiations on some of the contracts were not finalized until after the first quarter.
- Collections (line 11) at the Law Library level are typically less in the first quarter than in the subsequent quarters. The increase in expenditures in the 1st quarter of this year compared to the prior year can be attributed to the reinstatement of the approximately \$105,000 of funding that was removed from the Law Libraries grant allocations in 2006.
- The decrease in Insurance and group benefits (line 12) plan costs compared to the 2006 year reflects staffing changes at some of the Law Libraries.
- As is typical at this time of the year, LibraryCo is in a deficit position. The current deficit (line 20) is much higher than the prior year because all Electronic products and services purchases have been incurred in the first quarter of the year (as explained previously).
- As is typical at this time of year, the Law Libraries are in a surplus position. The current year surplus is slightly higher than the prior year due the overall increase in grant allocations and that fact that the Law Libraries typically exercise caution with spending in the early parts of the year.

Other Items of Note

- Although not presented in these statements, total Cash balances at all 48 law libraries amounted to approximately \$ 552,000. This represents an average balance per library of approximately \$ 11,500.
- The total Accounts payable at all 48 law libraries amounted to approximately \$ 436,000. This represents an average balance per library of approximately \$ 9,100.

FOR INFORMATION

STATEMENT OF INVESTMENT COMPLIANCE – SHORT-TERM PORTFOLIO

FOR INFORMATION

STATEMENT OF INVESTMENT COMPLIANCE – LONG-TERM PORTFOLIO

FOR INFORMATION

INVESTMENT COMPLIANCE REPORT – COMPENSATION FUND - FOYSTON, GORDON & PAYNE

FOR INFORMATION

INVESTMENT COMPLIANCE REPORT – GENERAL FUND - FOYSTON, GORDON & PAYNE

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

- (1) Copy of the Preliminary Construction Budget re: Women Bencher's Robing Room.
(Tab C, pages 15 – 18)
- (2) Copy of the annual financial statements of the Law Society Pension Plan and Governance Report.
(Tab D, pages 32 – 88)
- (3) Copy of the financial statements of the General Fund for the first quarter of 2007 and Paralegal Budget
(Tab D, pages 94 – 97)
- (4) Copy of the financial statements for Lawyers Fund for Client Compensation for the first quarter of 2007.
(Tab D, pages 102 – 103)
- (5) Copy of the financial statements for LibraryCo for the first quarter of 2007.
(Tab D, pages 105 and 111 – 114)

Re: Audit Committee and Finance Committee Mandates

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the mandates for the new Audit Committee and Finance Committee set out in the Report.

Carried

Re: Funding for Renovation of Lady Benchers' Locker Room

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve unbudgeted expenditures totalling \$315,000 to provide accommodation and accessibility for women benchers.

Carried

Re: Corporate Resolution on Errors and Omissions Insurance Fund Investment Manager

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the corporate resolution for the Errors and Omissions Insurance Fund set out below:

RESOLVED that any two of following officers of the Lawyers Professional Indemnity Company (LawPRO) (one of whom shall be either the President and CEO or the Vice President, Finance and Treasurer) are authorized, in respect of the Law Society of Upper Canada's Errors and Omissions Insurance Fund investment portfolio with CIBC Global Asset Management Inc. (CGAM), that is administered by LawPRO, to:

1. Execute legal documentation required in connection with the portfolio including the parameters relative to the management of the portfolio.
2. Direct CGAM to raise funds to accommodate cash disbursements or to effect other transactions.
3. Advise CGAM of any appointments or termination of agents.
4. To provide instructions/documents to CGAM in all respects that relate to CGAM management of the accounts of the Law Society's Errors and Omissions Insurance Fund

Authorized signing officers of LawPRO:

20. President and CEO
21. Vice President, Finance and Treasurer
22. Vice President, Claims
23. Vice President, Underwriting and Secretary
24. Vice President, TitlePLUS
25. Vice President and Actuary
26. Controller

Carried

Items For Information

- General Fund, Compensation Fund and LibraryCo Financial Statements for the Three Months Ended March 31, 2007
- Pension Plan Governance Report
- Statement of Investment Compliance

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Ross presented the Report.

Report to Convocation
June 28, 2007

Professional Regulation Committee

Committee Members
Clayton Ruby, Chair
Tom Heintzman, Vice-Chair
Heather Ross, Vice-Chair
Anne Marie Doyle
George Finlayson
Alan Gold
Allan Gotlib
Gary Gottlieb
Paul Henderson
Ross Murray
Sydney Robins
Robert Topp
Roger Yachetti

Purposes of Report: Decision

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

TABLE OF CONTENTS

For Decision

Amendments to By-Law 6 Respecting Payment of the LawPRO Deductible TAB A

Amendments to the *Rules of Professional Conduct* Related to the
Amended *Law Society Act* TAB B

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on June 14, 2007. In attendance were Heather Ross (Vice-chair and Acting Chair), Tom Heintzman (Vice-chair), Anne-Marie Doyle, Gary Gottlieb, Allan Gotlib and Paul Henderson (by telephone). Staff attending were Naomi Bussin, Lesley Cameron, Zeynep Onen, Elliot Spears and Jim Varro.

AMENDMENTS TO BY-LAW 6 RESPECTING PAYMENT OF THE LAWPRO DEDUCTIBLE

2. Motion

That Convocation amend By-Law 6, made by Convocation on May 1, 2007, as follows:

- a. Amend Section 9 of By-Law 6 adding the following:

Interpretation: “related person”

(8) In paragraph 7 of subsection (1), “related person” has the meaning given “related persons” in subsection 251 (2) of the Income Tax Act (Canada).

- b. Amend the By-Law by adding the following:

DEDUCTIBLES

Interpretation: “insurance policy”

11. (1) In this section, “insurance policy” means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society’s insurance plan.

Requirement to pay deductible

(2) A licensee shall pay to the insurer of the Society's insurance plan, or to such other person as the insurer may direct, any amount of a deductible under an insurance policy that the licensee is required by the insurer to pay.

Compliance with requirement

(3) For the purposes of subsection 47.1 (3) of the Act, a licensee complies with the requirement mentioned in subsection (2) when,

- (a) the licensee pays to the insurer of the Society's insurance plan or, if the insurer has directed the licensee to pay to another person, to the person to whom the insurer has directed the licensee to pay, the amount of the deductible that the insurer has required the licensee to pay; or
- (b) the licensee complies with an award made by the arbitrator as a result of an arbitration conducted under the insurance policy with respect to the requirement to pay the deductible.

Introduction and Background

3. On March 29, 2007, Convocation approved the policy for a new by-law requiring lawyer licensees to pay the LAWPRO deductible when required to do so. The Professional Regulation Committee's report to March 2007 Convocation is attached at Appendix 1.¹ At that time, the language of the by-law had not been prepared.
4. Language has now been drafted to implement this policy decision in the by-laws. This takes the form of amendments to By-Law 6, which are described in the motion at paragraph 2. Relevant staff at LAWPRO have reviewed and are satisfied with this language.
5. One other amendment appears in the motion, unrelated to the LAWPRO issue. It is to add a definition of "related person" for the purposes of the exemption from payment of insurance premium levies for a retired or non-practising lawyer acting as an estate trustee, etc. as described in paragraph 7 of s. 9(1).²
6. By-Law 6 appears at Appendix 2, with the amendments highlighted.
7. The Committee requests that Convocation approve these amendments.

¹ The March 2007 report reflects old terminology by use of the word "member". As of May 1, 2007, lawyers in Ontario are referred to as "licensees" of the Law Society.

² Paragraph 7 of By-Law 6 reflects a policy decision made by Convocation in June 2006 to exempt from payment of the Law Society's annual fee lawyer licensees who:

- a. are over 65 years of age and permanently retired from the practice of law in Ontario who have been appointed or act as estate trustees, as trustees for an *inter vivos* trust or who are attorneys for property, or
- b. change from a practising licensee status to a non-practising licensee status who have been appointed or act as estate trustees, as trustees for an *inter vivos* trust or who are attorneys for property.

APPENDIX 1

PROPOSED BY-LAW RESPECTING PAYMENT OF LAWPRO DEDUCTIBLE

Motion

17. That Convocation approve the policy for a new by-law requiring that a member of the Law Society pay the LAWPRO deductible when required to do so.

Introduction

18. One of the obligations of a lawyer under the LAWPRO policy for professional indemnity coverage is payment of the deductible amount under the policy in the event LAWPRO pays a claim on the lawyer's behalf.³
19. The *Rules of Professional Conduct* include an ethical requirement to pay the deductible, which is described as a financial obligation relating to the lawyer's practice. Rule 6.01(2) reads:

A lawyer shall promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy when properly called upon to do so.
20. Some lawyers do not pay the deductible. The following information provided by LAWPRO describes the current situation.
21. At present, and for some period of time, the total amount of unpaid deductibles at LAWPRO in any given month has been in excess of \$1 million. As at February 28, 2007 the amount was \$1,090,031. Subtracting amounts in respect of files in which a payment plan is in place, an arbitration regarding the imposition of the deductible under the Policy is pending, or the deductible is otherwise being held in abeyance, the outstanding amount in any given month is approximately \$850,000 involving 223 files. This amount represents approximately five percent of all deductibles triggered over the last eight years. Of the \$850,000, approximately \$580,000 has been outstanding for over 90 days and in some instances for many months or even years.
22. Concerted and significant efforts by LawPRO have been made in all instances to contact the insured member and collect the outstanding deductible. Collection efforts involve an escalating series of letters and, in many instances, phone calls made by LAWPRO staff to the insured member requesting payment. A significant number of the insured

³ The relevant excerpt from the LAWPRO Policy for 2007 reads:

Part IV - GENERAL CONDITIONS

C. DEDUCTIBLE:

...

- (ii) The INSURER may pay any part or all of the DEDUCTIBLE amount to effect settlement of a CLAIM and, upon notification of the action taken, the INSURED shall reimburse the INSURER for payment of the DEDUCTIBLE, failing which the NAMED INSURED shall promptly place the INSURER in funds sufficient to satisfy the DEDUCTIBLE.

members from whom a deductible remains unpaid are either currently or have recently been in discipline.

23. The typical outstanding deductible ranges from \$2500 to \$25,000 depending on the deductible option selected by the insured member in the applicable policy. Two thousand five hundred dollars and \$5,000 are the most common amounts owing. In many instances, the insured member owes more than one deductible.⁴
24. As the named insured, the Law Society is responsible for outstanding deductibles, and LAWPRO could demand payment from the Law Society, after which the Society would attempt to collect the amounts directly from the members.

Legislative Authority to Address the Issue

25. The recent amendments to the *Law Society Act* include new s. 47.1 which reads:

Summary suspension for failure to comply with indemnity requirements

47.1 (1) A person appointed for the purpose by Convocation may make an order suspending a licensee's licence if the licensee has failed to comply with the requirements of the by-laws with respect to indemnity for professional liability.

Eligibility for appointment

(2) Convocation shall not appoint a person for the purpose of subsection (1) unless the person is,

- (a) a bencher; or
- (b) an employee of the Society holding an office prescribed by the by-laws for the purpose of this section.

Length of suspension

(3) A suspension under this section remains in effect until the licensee complies with the requirements of the by-laws with respect to indemnity for professional liability to the satisfaction of the Society.

26. This section permits the Society to suspend a licensee's license for failure to comply with the by-laws with respect to liability insurance. Currently, By-Laws 16 (Professional Liability Insurance Levies) and 27 (Failure to Complete or File Insurance Documents) deal with this subject. By-Law 16 requires the payment of levies for insurance coverage⁵

⁴ The outstanding deductibles primarily fall into two categories: (1) expense deductibles that are triggered under the policy (a) 50% for the filing of a defence and (b) 50% at the commencement of discoveries or pre-trial, or (2) deductibles triggered upon the making of an indemnity payment (including, by definition, any repair effort) in which the insured member has consented in writing to the settlement and acknowledged the deductible obligation in a signed consent document. These are clearly payable under the contract of insurance when triggered.

⁵ By-Law 16 references s. 46(1) of the Act which states:

46. (1) An elected bencher appointed for the purpose by Convocation may make an order suspending a member's rights and privileges if, for the period prescribed by the by-laws, the member has been in default for failure to pay a fee or levy payable to the Society.

and By-Law 27 deals with the time within which insurance documents must be filed with the Society or the Society's insurer under s. 47(1)(b) of the Act.⁶ Neither by-law includes the obligation to pay the LAWPRO deductible.

The Regulatory Issues

27. Currently, the only enforcement mechanism available to the Society to address the lawyer's failure to honour this obligation is a disciplinary proceeding for failure to fulfill the financial obligation under rule 6.01(2). Even if LAWPRO sued and obtained a judgment, the obligation to pay under the rule remains as long as the judgment is outstanding.
28. To exercise the summary suspension authority in s. 47.1 with respect to payment of the LAWPRO deductible, a by-law would be required that imposes an obligation to pay the deductible.
29. For a number of reasons, discussed below, the Committee believes that suspending a member for failure to pay the deductible is a better tool to deal with the issue than commencing a disciplinary proceeding against a lawyer for breach of rule 6.01(2).
30. Prosecutions, which involve both Law Society and LAWPRO time and resources, are costly, and on these matters would involve the expenditure of several thousand dollars per file from intake to post-hearing enforcement. The Committee was of the view that Law Society members should not effectively be subsidizing defaulting members to this extent when a less expensive and more effective process relative to the results being sought is available.
31. In previous prosecutions of these matters by the Society, in every case but one the member agreed to a payment plan at some point after the conduct application had been issued. The matters were eventually returned to the Proceedings Authorization Committee for withdrawal of the conduct application. The Committee felt that the significant and time-consuming resources devoted to these matters would be better spent addressing more serious regulatory matters.
32. Even if a finding of misconduct is made and a penalty imposed, there is no guarantee that the Society would be able to collect on the debt, in particular without significant effort on the part of the Monitoring & Enforcement Department to enforce the judgment.

⁶ 47. (1) An elected benchers appointed for the purpose by Convocation may make an order suspending a member's rights and privileges if, for the period prescribed by the by-laws,

(a) the member has been in default for failure to complete or file with the Society any certificate, report or other document that the member is required to file under the by-laws; or

(b) the member has been in default for failure to complete or file with the Society, or with an insurer through which indemnity for professional liability is provided under section 61, any certificate, report or other document that the member is required to file under a policy for indemnity for professional liability.

The Committee's Proposal

33. LAWPRO has advised the Committee that it favours a proposal by the Society to address the failure to pay through the suspension authority in s. 47.1.
34. To implement this proposal, a new by-law or amendments to By-Law 16 would be required to create the obligation to pay, a breach of which would trigger the s. 47.1 summary suspension.
35. An internal Society process for this purpose would be structured within the existing processes managed by the Law Society's Client Service Centre in respect of failure of a member's obligation to pay or file, as the case may be. As such, there would be no investigation or prosecution required, and no additional operational costs. In effect, this would likely result in an overall cost saving, when costs for investigation and prosecution are factored in. This means that suspension of the lawyer until he or she pays would be a faster and less costly way to achieve the desired result.
36. If Convocation approves the proposal, a new by-law or by-law amendments will be prepared for Convocation's approval.

APPENDIX 2

BY-LAW 6

May 1, 2007

PROFESSIONAL LIABILITY INSURANCE

PART I

LICENSEES HOLDING A CLASS L1 LICENCE

GENERAL

Interpretation

1. (1) In this Part,

"licensee" means a licensee who holds a Class L1 licence;

"Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for licensees.

Interpretation: engaging in practice of law

- (2) In this Part, a person engages in the practice of law if he or she gives legal advice respecting the laws of Ontario or Canada or provides any professional services of a barrister or solicitor for others.

INSURANCE PREMIUM LEVIES

Requirement to pay insurance premium levies

2. (1) Unless otherwise exempted, every licensee who is eligible for coverage under the Society's insurance plan and who engages in the practice of law during the course of any year shall pay insurance premium levies for that year in accordance with this Part.

Same

(2) A licensee who is required to pay any insurance premium levy shall pay the amount of the levy and any taxes that the Society is required to collect from the licensee in respect of the payment of the insurance premium levy.

Insurance premium levies

3. The insurance premium levies mentioned in section 2 shall consist of a base levy, an innocent party surcharge levy, a claims history surcharge levy and such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan.

Time for payment of insurance premium levies

4. (1) The base levy, the innocent party surcharge levy and the claims history surcharge levy are due and payable on January 1 of the year in which the coverage applies.

Same

(2) Such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan are due and payable on the dates specified by Convocation or the insurer of the Society's insurance plan.

Period of default

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

Payment plan: deemed date of failure to pay

(2) Where the Society or the insurer of the Society's insurance plan arranges or permits a schedule for the payment of an insurance premium levy by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay the levy will be deemed to have occurred on January 1 of the year in which the coverage applies.

Reinstatement of licence

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

Refund of unearned portion of insurance premium levy

6. Where a licensee, who has paid one or more of the base levy, innocent party surcharge levy and claims history surcharge levy, subsequently, during the course of the year for which the levy or levies were payable, dies, retires, ceases to be eligible for coverage or is exempted by the Society from the requirement to pay one or more of the levies, the unearned portion of the levy or levies shall be refunded on a pro rata basis, subject to a two month minimum.

Society's insurance fund

7. (1) The insurance premium levies paid by licensees shall be used for the Society's insurance fund in respect of licensees, or to pay the required insurance premiums to the insurer of the Society's insurance plan, claims, group deductibles, adjusting costs, counsel and legal fees, administration costs and such other expenses reasonably incurred in connection with the Society's insurance plan.

Society's insurance fund not used up at year-end

(2) If at the end of any year the insurance fund is not entirely used up, the surplus remaining shall be carried forward into the next year.

Eligibility for coverage

8. (1) Every licensee is eligible for the standard coverage under the Society's insurance plan provided that his or her licence is not suspended.

Application for coverage

(2) A licensee who is eligible for coverage under the Society's insurance plan but who is not required under this Part to pay insurance premium levies may apply to the Society or to the insurer of the Society's insurance plan for coverage and, if granted coverage, shall pay the required levies in accordance with this Part.

Exemption from payment of insurance premium levies

9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:

1. Any licensee who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario.
2. Any licensee who, during the course of the year for which a levy is payable,
 - i. will be resident in a Canadian jurisdiction other than Ontario,
 - ii. will engage in the practice of law in Ontario on an occasional basis only, and
 - iii. demonstrates proof of coverage for the licensee's practice of law in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be reasonably

comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.

3. Any licensee who, during the course of the year for which a levy is payable,
 - i. will be resident in a reciprocating jurisdiction, and
 - ii. demonstrates proof of coverage for the licensee's practice of law in Ontario under the mandatory professional liability insurance program of the reciprocating jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.
4. Any licensee who, during the course of the year for which a levy is payable,
 - i. will be employed by a single employer,
 - ii. will engage in the practice of law only for and on behalf of the employer as,
 - A. counsel or solicitor to the Government of Canada or the Government of Ontario,
 - B. a Crown Attorney,
 - C. counsel to a corporation other than a law corporation, or
 - D. a city solicitor, and
 - iii. will not engage in the practice of law in Ontario other than for and on behalf of the employer.
5. Any licensee employed as a law teacher who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario other than teaching.
6. Any licensee who, during the course of the year for which a levy is payable,
 - i. will be employed or volunteer in a clinic within the meaning of the *Legal Aid Services Act, 1998*, a student legal aid services society or an Aboriginal legal services corporation, that is funded by Legal Aid Ontario, but will not be directly employed by Legal Aid Ontario,
 - ii. will engage in the practice of law only through the clinic, student legal aid services society or Aboriginal legal services corporation to individuals in communities served by the clinic, student legal aid services society or Aboriginal legal services corporation and will not otherwise engage in the practice of law in Ontario, and

- iii. demonstrates proof of coverage for such practice of law under a professional liability insurance policy issued by a licensed insurer in Canada, such coverage to be at least equivalent to that required under the Society's insurance plan.
- 7. Any licensee who, during the course of the year for which a levy is payable, will act in the capacity of an estate trustee, a trustee for an *inter vivos* trust or an attorney for property in respect of an estate, a trust or a property of a person other than a related person of the licensee of which the licensee was named as estate trustee, trustee or attorney while the licensee was engaged in the practice of law in Ontario and,
 - i. will not otherwise engage in the practice of law in Ontario, or
 - ii. who otherwise qualifies for exemption from payment of insurance premium levies under paragraph 4, 5 or 6 and will not engage in the practice of law in Ontario other than as provided for under this paragraph or paragraph 4, 5 or 6.

Same

(2) A licensee who is exempt from payment of insurance premium levies under paragraph 1, 2, 3, 4, 5, 6 or 7 of subsection (1) continues to be exempt from payment of insurance premium levies even though he or she engages in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies if the following conditions are met:

- 1. The licensee's practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies is restricted to engaging in the practice of law only on a *pro bono* basis and only to or on behalf of non-profit organizations.
- 2. Prior to engaging in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies, the licensee applies to the insurer of the Society's insurance plan, in accordance with procedures established by the insurer, to continue to be exempt from payment of insurance premium levies and the insurer approves the licensee's application.

Interpretation: occasional practice of law

(3) For the purposes of paragraph 2 of subsection (1), in any year, a licensee engages in the practice of law on an occasional basis if, during that year, the licensee,

- (a) engages in the practice of law in respect of not more than ten matters; and
- (b) engages in the practice of law for not more than twenty days in total.

Interpretation: “reciprocating jurisdiction”

- (4) In subsection (1), “reciprocating jurisdiction” means a Canadian jurisdiction other than Ontario,
- (a) which is a signatory to,
- (i) the National Mobility Agreement originally entered into in December 2002 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 Nova Scotia Barristers’ Society and the Law Society of Newfoundland; or
- (ii) until December 31, 2011, the Territorial Mobility Agreement originally entered into in November 2006 by the Society, the Law Society of Yukon, the Law Society of Northwest Territories, the Law Society of Nunavut, 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 Law Society of New Brunswick, the Nova Scotia Barristers’ Society, the Law Society of Prince Edward Island and the Law Society of Newfoundland;
- (b) in which a licensee is authorized to engage in the practice of law; and
- (c) which would exempt the licensee from its mandatory professional liability insurance program if the licensee were resident in Ontario and demonstrated proof of coverage for the licensee’s practice of law in the jurisdiction under the Society’s insurance plan which was reasonably comparable in coverage and limits to the professional liability insurance that would otherwise be required of the licensee by the jurisdiction.

Interpretation: “employer”

- (5) In paragraph 4 of subsection (1), “employer” includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the licensee.

Interpretation: “affiliated”, “controlled” and “subsidiary”

- (6) In subsection (5), “affiliated”, “controlled” and “subsidiary” have the same meanings given them in the *Securities Act*.

Interpretation: “resident”

- (7) In subsection (1), “resident” has the same meaning given it for the purposes of the *Income Tax Act* (Canada).

Interpretation: “related person”

- (8) In paragraph 7 of subsection (1), “related person” has the meaning given “related persons” in subsection 251 (2) of the *Income Tax Act* (Canada).

FILING INSURANCE DOCUMENTS

Interpretation: “insurance policy”

10. (1) In this section, “insurance policy” means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society’s insurance plan.

Period of default

(2) For the purpose of clause 47 (1) (b) of the Act, the period of default for failure to complete or file with the Society, or with the insurer of the Society’s insurance plan, any certificate, report or other document that a licensee is required to file under an insurance policy is 120 days after the day that the certificate, report or other document is required to be filed under the insurance policy.

DEDUCTIBLES

Interpretation: “insurance policy”

11. (1) In this section, “insurance policy” means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society’s insurance plan.

Requirement to pay deductible

(2) A licensee shall pay to the insurer of the Society’s insurance plan, or to such other person as the insurer may direct, any amount of a deductible under an insurance policy that the licensee is required by the insurer to pay.

Compliance with requirement

(3) For the purposes of subsection 47.1 (3) of the Act, a licensee complies with the requirement mentioned in subsection (2) when,

(a) the licensee pays to the insurer of the Society’s insurance plan or, if the insurer has directed the licensee to pay to another person, to the person to whom the insurer has directed the licensee to pay, the amount of the deductible that the insurer has required the licensee to pay; or

(b) the licensee complies with an award made by the arbitrator as a result of an arbitration conducted under the insurance policy with respect to the requirement to pay the deductible.

AMENDMENTS TO THE RULES OF
PROFESSIONAL CONDUCT RELATED TO THE
AMENDED LAW SOCIETY ACT

Motion

8. That Convocation approve the amendments to the *Rules of Professional Conduct* as set out in the Rules at Appendix 3 to this report.

Introduction

9. As a result of the amendments to the *Law Society Act* (“the Act”) effective May 1, 2007, amendments to the *Rules of Professional Conduct* are required to replace some “old” terminology with current language, update some definitions and references in the Rules, and include where appropriate reference to paralegals. It is anticipated that in the near future, some substantive changes will be required to the Rules. At this stage, amendments which are primarily of a housekeeping nature are being reported to Convocation for approval.
10. The following are the main housekeeping changes that are proposed:
 - a. amending the definition of “lawyer” and adding definitions for “licensee” and “paralegal”;
 - b. changing “member” to “lawyer” where it appears (currently, the word “lawyer” is the term most commonly used in the Rules); and
 - c. adding “paralegal” and “provision of legal services” where appropriate in some rules.
11. The proposed amendments occur in various places throughout the Rules. For ease of reference, in addition to Appendix 3, which is all the Rules showing the amendments redlined⁷, Appendix 4 includes only those pages on which amendments appear, redlined.
12. The proposed amendments have been reviewed by the Society’s Rules drafter, Don Revell.

Comments on the Proposed Amendments

13. To assist Convocation in its review, the following explains the nature of some of the amendments to the Rules:
 - a. The definitions of “lawyer” and “paralegal” borrow language from the definition of “licensee” in s. 1(1) of the Act⁸;

⁷ Appendix 3 also includes the Table of Contents and Index for the Rules, which will be updated once the amendments have been made.

⁸ “licensee” means,

(a) a person licensed to practise law in Ontario as a barrister and solicitor, or

- b. The words “candidate enrolled in the Society’s Licensing Process for lawyers” in the definition of “lawyer” replace the words that reference law students in the Society’s former Bar Admission Course;
- c. The language used in the last paragraph of the commentary following rule 2.01(1) reflects the language in s. 41 of the Act that addresses standards of professional competence⁹ ;
- d. Some Rules address the conduct of or relate to legal representatives before a court or tribunal, or the relationship between those governed by the Society who serve the legal needs of the public. In these Rules, where appropriate, the word “licensee” is used to refer to both lawyers and paralegals.
- e. The proposed amendment to rule 6.01(3) (Duty to Report Misconduct) will require reports about licensee (i.e. lawyer and paralegal) misconduct, consistent with the Paralegal Rules of Conduct.¹⁰ ;
- f. The proposed amendment to rule 6.07 (Preventing Unauthorized Practice) will include in the prohibition described in rule 6.07(2) paralegals whose licenses have been revoked, suspended, etc. The language is also expanded to reflect the suspension, revocation and restoration of licenses pursuant to the amended Act.

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

-
- (b) a person licensed to provide legal services in Ontario;

⁹ 41. A licensee fails to meet standards of professional competence for the purposes of this Act if,

- (a) there are deficiencies in,
 - (i) the licensee’s knowledge, skill or judgment,
 - (ii) the licensee’s attention to the interests of clients,
 - (iii) the records, systems or procedures of the licensee’s professional business,
 or
 - (iv) other aspects of the licensee’s professional business; and
- (b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected. 2006, c. 21, Sched. C, s. 37.

¹⁰ Duty to Report Misconduct

(2) A paralegal shall report to the Law Society, unless to do so would be unlawful or would involve a breach of confidentiality between the paralegal and his or her client,

- (a) the misappropriation or misapplication of trust monies by a licensee;
 - (b) the abandonment of a law practice by a lawyer or a legal services practice by a paralegal;
 - (c) participation in serious criminal activity related to a licensee’s practice;
 - (d) the mental instability of a licensee of such a serious nature that the licensee’s clients are likely to be seriously prejudiced; and
 - (e) any other situation where a licensee’s clients are likely to be severely prejudiced.
- (Rule 6.01 (3))

- (1) Copy of the Amendments to the *Rules of Professional Conduct*.
(Tab B, Appendix 3, pages 23 – 157)
- (2) Copy of the Rules redlined.
(Tab B, Appendix 4, pages 158 – 201)

Re: Amendments to By-Law 6 Respecting Payment of the LAWPRO Deductible

It was moved by Ms. Ross, seconded by Mr. Sandler, that Convocation amend By-Law 6, made by Convocation on May 1, 2007, as follows:

- a. Amend Section 9 of By-Law 6 adding the following:

Interpretation: “related person”

(8) In paragraph 7 of subsection (1), “related person” has the meaning given “related persons” in subsection 251 (2) of the *Income Tax Act* (Canada).

- b. Amend the By-Law by adding the following:

DEDUCTIBLES

Interpretation: “insurance policy”

11. (1) In this section, “insurance policy” means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society’s insurance plan.

Requirement to pay deductible

(2) A licensee shall pay to the insurer of the Society’s insurance plan, or to such other person as the insurer may direct, any amount of a deductible under an insurance policy that the licensee is required by the insurer to pay.
Compliance with requirement

(3) For the purposes of subsection 47.1 (3) of the Act, a licensee complies with the requirement mentioned in subsection (2) when,

(a) the licensee pays to the insurer of the Society’s insurance plan or, if the insurer has directed the licensee to pay to another person, to the person to whom the insurer has directed the licensee to pay, the amount of the deductible that the insurer has required the licensee to pay; or

(b) the licensee complies with an award made by the arbitrator as a result of an arbitration conducted under the insurance policy with respect to the requirement to pay the deductible.

Carried

Re: Amendments to the *Rules of Professional Conduct* Related to the Amended *Law Society Act*

The Chair made the following amendments to the *Rules of Professional Conduct* set out in the Report:

- page 64, Rule 2.05 – add an “s” after “lawyer” in the second last line of the second paragraph of the commentary
- page 135, Rule 6.03(6) – substitute “licensees” for “lawyers” in the second line, to be consistent with 6.03(5) and (7)

It was moved by Ms. Ross, seconded by Mr. Sandler, that Convocation approve the amendments to the *Rules of Professional Conduct* as set out in the Rules at Appendix 3 to the Report.

Carried

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

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Report To Convocation
June 28, 2007

Tribunals Committee

Committee Members
Larry Banack, Chair
Mark Sandler, Vice Chair
Carole Curtis
Sy Eber

Derry Millar
Janet Minor
Bonnie Warkentin

Purposes of Report: Decision
Information

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

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COMMITTEE PROCESS

1. The Committee met on June 14, 2007. Committee members Larry Banack (Chair), Mark Sandler (Vice Chair), Carole Curtis, Sy Eber, Derry Millar, Janet Minor and Bonnie Warkentin attended. Staff members Katherine Corrick, A.K. Dionne, Grace Knakowski, Zeynep Onen and Sophia Sperdakos also attended.

FOR DECISION

PROTECTION OF IDENTIFYING INFORMATION IN
LAW SOCIETY PROCEEDINGS: AMENDMENT TO
SECTION 3.06(1) OF THE
RULES OF PRACTICE AND PROCEDURE

MOTION

2. That Convocation approve an amendment to section 3.06(1) of the Rules of Practice and Procedure to remove the words “or otherwise made public” so that the section, which currently reads, in part:

A tribunal may order that information disclosed in the course of a proceeding open to the public is *not to be published or otherwise made public* by any person...

will read

A tribunal may order that information disclosed in the course of a proceeding open to the public is *not to be published* by any person...

Introduction and Background

3. There is a presumption that Law Society hearings are held in public. This is to promote the transparency and accountability of regulatory processes, in the public interest. This principle has recently been extended to include not only conduct proceedings, but competence and capacity proceedings as well.
4. There are limited circumstances in which Hearing and Appeal panels will make a determination that information disclosed in a proceeding that is otherwise open to the public should not be made public.
5. In putting those orders into effect it is necessary to balance,
 - a. the interests of those whose identities are to be protected;
 - b. the public's right to have access to information on regulatory proceedings;
 - c. the need to maintain the neutral role of the Tribunals Office; and
 - d. the need to develop a system that does not unnecessarily tax Law Society resources.
6. The current Rules of Practice and Procedure provide,

3.06(1) A tribunal may order that information disclosed in the course of a proceeding open to the public is *not to be published or otherwise made public* by any person...

7. Such orders in the past have typically provided, for example, that “the name of J.B. a witness not be published or otherwise made public.” The documents in which the information is located can only be published or otherwise made public, subject to the terms of the order.
8. The obligation to ensure compliance with orders of this kind currently resides with the Tribunals Office. At an operational level, when such an order has been made, it has been interpreted to mean that before any exhibit or other document within the Law Society’s control can be shown to the public, steps must be taken to comply with the order by removing the identifying information. This involves a process known as “redacting”, namely reviewing all the documents relevant to the proceeding and blacking out all information necessary to conform to the order. This includes exhibits, decisions, orders, endorsements, reasons for decision and agreed statements of fact.
9. This process currently raises policy concerns, as follows:
 - a. Requiring the Tribunals Office to take on a redacting function changes the nature of its role because staff must make substantive decisions about what should and should not be redacted and accordingly what should or should not be made public. This engages the Office in the matter in a way that exceeds its proper role as an administrative body only.
 - b. An order that requires that certain persons “not be identified” relates to much more than just the individuals’ names. It often requires redacting information about spouses, children, business associates and geographic locations, to name just a few identifiers. It may require familiarity with the file and documents that is beyond that of the Tribunals Office staff person performing the task. In more complex matters it may require research to determine whether a particular geographic or institutional name is so unique as to be an identifier. Through no fault of the staff person this complexity may lead to identifiers being missed. This compromises the Tribunals Office by putting it in a position of potentially breaching a panel order.
 - c. It is beyond the control of the Law Society to redact some documents. The most significant of these are transcripts, which are the property of the court reporting service. Typically, the court reporting services will not perform redacting tasks. In addition, where documents have been public before the order, there is no ability to protect the identity of those to whom the order may apply. Both these realities raise questions about the ability to comply fully with orders under Rule 3.06(1).¹
 - d. Most often, requests for information come from the media to “see everything that is public” in the file. Where redacting is necessary, publication of the panel’s decision may be delayed so that the file is “public ready” at that time. This has potential implications for transparency.
10. This process also raises a number of operational concerns, as follows:

¹ For example, in a recent case in which the identities of certain witnesses were to be protected, the Reporting Services invoice for producing the transcripts of examination included the full names of the witnesses whose identities had been protected.

- a. In cases where the proceeding has been complex and lengthy and has produced multiple documents, redacting is a time consuming and onerous task that taxes the Tribunals Office's limited resources. There is currently no budget to dedicate staff to this task and accordingly staff is taken from other duties or departments to perform this function. Examples of the kinds of matters that have involved redaction include,
 - i. a matter that included 9 bankers' boxes of documents and took approximately 25 hours of staff time;
 - ii. a matter that took approximately 20 hours of staff time on 1500 pages of documents (with the decision on finding under reserve);
 - iii. a matter that has involved 2200 pages of documents on the hearing alone, with redacting on appeal documents not yet done.
 - b. It is unclear to whom staff may go if there are questions about whether certain information comes within the meaning of the order. The panel may be *functus*.
 - c. Since redacting is done on a copy of the relevant documents, it is unclear what the status of the original documents is. Are the originals to be labeled and segregated in some fashion, so that no one can see them? What if they are needed for an appeal?
11. An alternative to redacting exists that is generally used in court proceedings. This approach, which the Committee recommends, is discussed below.

Requirement not to reveal protected information

12. In this approach Rule 3.06(1) of the Rules of Practice and Procedure would be amended to delete the words "or otherwise made public" so that it would read,

A tribunal may order that information disclosed in the course of a proceeding open to the public is *not to be published* by any person...

Panel orders would indicate that the affected persons' names and identifying information "shall not be published or broadcast." This would permit the public or media to examine the file documents, but prohibit them from "publishing" or communicating the information to anyone else. A clear warning would be placed on the file to alert those reviewing the documents of the prohibition.

Use Of This Approach by Other Courts, Tribunals and Processes

13. The prohibition against publication is used in a number of other courts, tribunals and processes. Typically, in such circumstances a warning is affixed to the relevant file or documents setting out the nature of the order and the consequences for failure to comply with the order. Set out below are examples of orders made pursuant to the *Criminal Code*:

Information contained herein is prohibited from publication pursuant to s. 486(3) C.C.C., the Order of Mr. Justice *** dated September 8, 2004.

and

By the authority of Justice ***, pursuant to s. 486(3) of the Criminal Code of Canada, an Order has been made directing that the identity of the complainant or of a witness and any information that could disclose the identity of a complainant or witness shall not be published in any document or broadcast in any way.

14. In the case of orders of Law Society Hearing or Appeal Panels the remedy for breach would be found in either section 13(1)(c) of the *Statutory Powers Procedure Act*, which states:

Where any person without lawful excuse,

(c) does any other thing that would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

the tribunal may, of its own motion or on the motion of a party to the proceeding, state a case to the Divisional Court setting out the facts and that court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court.

or in section 19(1) of the *Statutory Powers Procedure Act*, which states:

A certified copy of a tribunal's decision or order in a proceeding may be filed in the Superior Court of Justice by the tribunal or by a party and on filing shall be deemed to be an order of that court and is enforceable as such.

15. It is not the usual policy of court reporting services to redact their transcripts. Typically, in criminal cases where a non-publication order is made, the court reporter will simply place a warning on the cover of the transcript indicating that there is a publication ban and including the relevant sections of the *Criminal Code*. This could be adapted for Law Society proceedings.
16. In child protection cases pursuant to the *Child and Family Services Act* and young offender cases pursuant to the *Youth Criminal Justice Act* court reporting services and court staff have advised that in some circumstances the transcript is only made available to parties and their counsel. No one has access to the court file except the parties' counsel, who must show identification. On occasion an order is made to use only initials in the transcript.
17. According to one of the provincial court supervisors, however, the Ministry of the Attorney General's *Transcription Procedures Manual* states that transcripts must be verbatim. A warning is to be placed on the cover page and the first page of each volume of the transcript reading "information contained herein is prohibited from publication under section "x" of the *Criminal Code* or section "y" of the *Provincial Offences Act* or by order of the court."

18. In a recent Law Society panel decision an order was made to delete all references to the member's clients' names. The order specifically stated that this was to include "both documentary evidence and the transcript of the hearing." This type of order raises difficulty because the transcript is not within the Law Society's control and because arguably the order interferes with what should be a *verbatim* transcript. The difficulty would be avoided if the order were for non-publication, rather than anonymization.
19. This proposed procedure is simple and consistent. The substantive or interpretive involvement of the Tribunals Office and the effect on staff resources is minimized, requiring only the placement of the warning on the relevant material. There is no need to create additional copies of documents for the purposes of redaction. If there is a possible disadvantage it is that where there is no termination point on the order, there may be a higher possibility of breaches.
20. Overall, however, this approach reflects that observed by the courts. The media, which is the largest source of requests for information, is familiar with the process and understands the consequences of breach. The warning provided to anyone who is granted permission to examine protected documents would set out the terms on which the access is provided.

CRITERIA FOR APPOINTING NON-BENCHER ADJUDICATORS

MOTION

21. That Convocation approve the following as the eligibility criteria for non-bencher lawyers seeking appointment to the Hearing Panel:
 - i. adjudicative expertise and/or area of law expertise;
 - ii. reflective of regional and/or other diversity;
 - iii. understanding the role of an adjudicator;
 - iv. familiar with administrative tribunals;
 - v. judicial temperament, including an open mind, empathy and the ability to consider persuasive argument;
 - vi. ability to render timely and reasoned decisions;
 - vii. good writing skills;
 - viii. openness to learn and be trained as an adjudicator, including attending mandatory training sessions;
 - ix. time to devote to the role of adjudicator;
 - x. willingness to conform to tribunal standards of procedure, consistency, quality and performance;
 - xi. minimum 10 years called to the bar, not suspended; and
 - xii. no disciplinary record in any jurisdiction.
22. That Convocation approve the following as the eligibility criteria for non-bencher, non-lawyers seeking appointment to the Hearing Panel:
 - i. breadth and diversity of professional and life experience and mature understanding, insight and seasoned judgment that can all be brought to bear on the deliberations of the Hearing Panel;
 - ii. commitment to the public interest;

- iii. reflective of regional and/or other diversity;
 - iv. understanding the role of an adjudicator;
 - v. familiar with administrative tribunals;
 - vi. judicial temperament, including an open mind, empathy and the ability to consider persuasive argument;
 - vii. ability to render timely and reasoned decisions;
 - viii. good writing skills;
 - ix. openness to learn and be trained as an adjudicator, including attending mandatory training sessions;
 - x. time to devote to the role, including becoming knowledgeable about the legal profession and the role of the Law Society as a self-regulating body;
 - xi. willingness to conform to tribunal standards of procedure, consistency, quality and performance; and
 - xii. if a member of another regulated profession, no disciplinary record in any jurisdiction.
23. That the process for recruiting non-bencher lawyers for appointment to the Hearing Panel will be through placing an advertisement in the *Ontario Reports* and also advising Ontario legal organizations of the advertisement so that they can advise their members.
24. That the process for recruiting non-bencher non-lawyers for appointment to the Hearing Panel will be by,
- a. advising all former Law Society lay benchers of the appointment process and criteria for appointment; and
 - b. by seeking recommendations from other regulatory bodies who have lay appointees.

Background and Information

25. On April 26, 2007, Convocation approved the eligibility of four non-bencher lawyers and four non-bencher non-lawyers to be members of the Law Society's Hearing Panel.
26. The next steps in the process are to,
- a. determine eligibility criteria for the non-bencher lawyer and non-bencher non-lawyer appointments; and
 - b. develop an appropriate recruitment process.

Eligibility Criteria

27. Although it was not within the Tribunals Composition Task Force's mandate to make specific recommendations respecting the appointment process, its report did isolate certain criteria that should be taken into account in developing a selection process for the non-bencher lawyer members of the Hearing Panel. APPENDIX 1 contains an excerpt from the Task Force report with the relevant discussion set out in bold typeface.
28. The Committee has reviewed the Task Force's comments and considered the appropriate criteria that should be developed for appointing the non-bencher lawyers to

the Hearing Panel. The Committee recommends the criteria set out in the motion above at paragraph 21.

29. The selection criteria for non-bencher non-lawyers would be somewhat different. Pursuant to section 49.21(3) of the *Law Society Act* a person is not eligible to be appointed to the Hearing Panel unless he or she is a bencher, a licensee, or *a person approved by the Attorney General for Ontario*. Accordingly, the non-bencher non-lawyer applicants will be selected by the Law Society and must then be approved by the Attorney General.
30. Policy Counsel made inquiries of a number of other regulators respecting their appointment process for lay members, in particular asking if they use lay people other than those appointed by the government. A memorandum is set out at APPENDIX 2.
31. The Committee is satisfied that many of the criteria listed in paragraph 21 above should apply to non-bencher, non-lawyer applicants and recommends the criteria set out in the motion above at paragraph 22.

Recruitment Process

32. Typically, the Law Society uses one of two approaches or a combination of them to recruit or choose non-bencher lawyer appointees to various Boards or Committees. The first approach entails placing an advertisement in the *Ontario Reports* describing the relevant position and criteria and providing a contact person and application deadline.
33. The advantage of using the *Ontario Reports*, and typically reprinting the content on the Law Society's website, is that the selection process is as transparent as possible and comes to the attention of the widest possible audience.
34. The other way in which the Law Society recruits is to provide the information to legal organizations and request that they,
 - a. advise their members of the advertisement; or
 - b. provide recommended names to the Law Society.
35. This approach is more typically undertaken for local issues, such as contacting the County and District Law Presidents' Association where there is a need for representatives from outside of Toronto to sit on a board or other organization.
36. The disadvantage of this approach for the recruitment of non-bencher lawyers of the Hearing Panel is that by focusing the process narrowly, possibly qualified candidates might be omitted. In addition, there might be a perception that the process is a closed one, limited only to certain categories of candidates.
37. A process that combines the two approaches allows for both the breadth of scope and more specific targeting based on known competencies.
38. The Committee recommends the approach set out in the motion above at paragraph 23.
39. Recruiting non-bencher non-lawyers for the Hearing Panel is a somewhat more complicated process. There is no single publication, such as the *Ontario Reports*, that

can easily be used to approach all potential lay candidates. The potential pool in an untargeted approach is so large as to be unmanageable.

40. In the Committee's view a targeted approach is the most appropriate one for the non-bencher, non-lawyer appointments. This type of approach is in keeping with the approach the Institute of Chartered Accountants uses, as set out in the memorandum at APPENDIX 2.
41. The Committee recommends the approach set out in the motion above at paragraph 24.

APPENDIX 1

EXCERPT FROM TRIBUNALS COMPOSITION TASK FORCE REPORT – April 26, 2007

21. While the Task Force's conclusions on independence contributed significantly to the formation of this principle, the Task Force did not automatically dismiss the merits of a Law Society tribunal model that would exclude bencher adjudicators or even a model where the tribunal is completely independent of the Law Society.
22. A model structured to consist of exclusively non-bencher adjudicators would preserve peer assessment of conduct, capacity and competence matters, which is important to the continued viability of self-regulation. The concept of this model is an institutionalized "in-house" tribunal – that is, structurally within the Law Society. Its members would be recruited in a structured selection process so that people who have the temperament and skills for adjudication may be chosen. Tribunal members would make *tribunal* – that is, Law Society – decisions, and conform to tribunal standards of procedure, consistency, quality and performance. Tribunal members would be accountable to the Tribunal Chair for complying with these standards. The tribunal would promote strategies for quality adjudication and collegiality among the adjudicators, and would provide supports and training for the adjudicators and other tools they need to do their job. A culture where the decision-making function becomes that of the institution, and not the individual adjudicators who make up each panel, would ensure the accountability of the organization under which the institution operates.
23. The majority of the Task Force ultimately rejected the exclusively non-bencher adjudicator model and determined that retaining bencher adjudicators is a necessary component of the Society's tribunal model.
- ...
34. The majority of Task Force members agree that non-bencher lawyers should be added as members of the Hearing Panel.² Having an expanded pool of adjudicators available for hearings should alleviate difficulties in finding benchers available to sit on hearings. Expanding the Hearing Panel is necessary to have a pool of adjudicators ready and able to sit and to meet the need for increased adjudicative or area of law expertise. There will be cases where specific expertise would be of great value to the hearing process. In the Task Force's view, the risk of inconsistency in the quality of adjudicators and the need to

² One Task Force member did not agree that non-bencher lawyers (excluding those appointed to sit on French hearings as permitted by the *Law Society Act*) should be added as adjudicators.

select adjudicators who are capable of handling certain cases must be addressed. Otherwise, the pool of appropriate adjudicators for some matters is narrowed considerably, and scheduling and timeliness issues arise.

....

35. An expanded pool of adjudicators would include non-bencher lawyers who not only have particular practice area expertise, but who represent regional and other diversity interests. This may broaden the profession's understanding of the regulatory issues that the Law Society must address and enhance members' understanding of the adjudicative process and its consequences to them. This in turn may have a salutary effect among members of the profession, the benefit of which would accrue to the public, the profession and the Society.

....

37. In choosing the adjudicators, attention would be paid to availability and to the attributes of a good adjudicator. These attributes include the following:

- a. Understanding the role of the adjudicator in the Society's process;
- b. Familiarity with the process and the procedural rules of the tribunal;
- c. A judicial temperament, including an open mind, empathy and the ability to consider persuasive argument;
- d. Ability to render timely and reasoned decisions;
- e. Good writing skills; and
- f. Openness to learn and be trained as an adjudicator.

...

42. Ultimately, the purpose of expanding the Hearing Panel to include non-bencher lawyers would be to establish a pool of adjudicators best suited to the task. The selection process for non-bencher lawyer members of the Hearing Panel would be merit-based, according to specific criteria drawn from the attributes described in paragraph 37 above. The non-bencher lawyer members of the tribunal would be recruited in a structured selection process designed to find lawyers who have the temperament and skills for adjudication.

FOR INFORMATION PRACTICE DIRECTION: PROTECTION OF IDENTIFYING INFORMATION IN LAW SOCIETY PROCEEDINGS

Use Of Personal Information In Reasons For Decision

42. From time to time the Chairs of the Hearing and Appeal Panels publish Practice Directions for clarity and consistency of process. In the coming months the Chairs will publish a practice direction on the use of personal information in reasons for decisions along the lines described below.
43. As a matter of course, panels should not provide more personal information on any person than is necessary for clarity and cohesion in reasons for decision. Personal privacy can and should be respected to the degree possible within the nature of the proceedings before a panel. In addition, there is a risk that the inclusion of too much personal and financial information could expose individuals to identity theft or other risks, such as mortgage fraud.

44. Whether persons are named in a decision or there is a non-publication order the following information should never be included in decisions, orders or reasons unless specifically relevant to the decision:
- a. Date and month of birth.
 - b. Social insurance information.
 - c. Credit card numbers.
 - d. Financial account numbers.³
 - e. Home and business addresses.
 - f. Family members or acquaintance information.⁴
45. The Canadian Judicial Council has produced an instructive document entitled "Use of Personal Information in Judgments: a Recommended Protocol" that is attached at APPENDIX 3 and has provided guidance for the list set out above.
46. Where it is appropriate to protect the identity of persons beyond the general limiting of the use of personal information described above Panels should follow the approach the Tribunals Task Force recommended and Convocation, approved in May 2005 as follows:
- a. Panels must order non-publication of persons' names where,
 - i. non-publication requirements are mandated by statute or pre-existing court or other tribunal order. (e.g. identities of young offenders pursuant to the *Youth Criminal Justice Act* and children in need of protection pursuant to the *Child and Family Services Act* may not be published. This includes non-publication of any information that tends to identify these persons.)
 - ii. publication of one person's name will likely reveal the identity of a person protected above.
 - b. Panels should consider an order for non-publication where the potential harm to the person, whether emotional, physical, and economic or otherwise is such that non-publication is appropriate and it is not contrary to the public interest. (e.g. the complainant is a victim of sexual assault by the member).
 - c. An order for non-publication should not be made respecting the name of the member who is the subject of the proceeding.
 - d. Non-publication orders should not generally be made respecting the names of certain categories of persons, namely,
 - i. Law Society staff witnesses;
 - ii. Expert witnesses;
 - iii. Institutional witnesses; and
 - iv. lawyer witnesses.

³ An example of where it might be relevant to include financial information is the inclusion of a lawyer's general and trust account numbers where germane to the proceeding.

⁴ Friends, extended family, employees, etc. unless germane to the decision.

- e. Where it is concluded that there should be non-publication, the identity of persons whose identification might reasonably reveal the identity of another person whose identity is protected should also be protected – for example, parents, guardians, siblings, spouses, and other relatives or friends.
- f. Facts that tend to identify a person whose identity is not to be published, should be avoided in the decision. For example, references to the person's occupation, particular dates, particular locations or other particular circumstances of the case that would reasonably lead to the identification of a victim, complainant, witness or other protected person.
- g. Where the panel feels that in addition to the non-publication order persons' identity should be anonymized, they should not be identified by the initials of their names. This might tend to identify them to some persons. They should be identified by a generic identifier such as "the victim"; "the complainant"; "the witness"; "the Law Society's witness"; "the member" or by their role in the transaction – "lender"; "buyer", "insurer". If there is more than one person in any category numbers may be added, such as "victim 1," "victim 2," "witness 1," "witness 2" etc. Initials should not be used.
- h. In writing their decisions panels should draft reasons that adhere to their specific non-publication order and consider the guidelines set out above.

ASSISTANCE WITH WRITING REASONS FOR DECISION

- 47. Convocation referred an issue to the Tribunals Committee for its consideration respecting whether law clerks could be made available to adjudicators to assist them with preparing their reasons for decision.
- 48. In its April 26, 2007 Report to Convocation the Tribunals Composition Task Force raised a related issue, namely the addition of the position "Counsel to the Tribunal." APPENDIX 4 is an extract from the relevant portion for the Task Force's Report. Convocation invited the Tribunals Committee to consider the merits of establishing the office of Counsel to the Hearing Panel.
- 49. The Committee will be considering the issue of Counsel to the Tribunal at a later date, but wishes to advise Convocation of its deliberations on the issue of law clerks assisting with the writing of reasons.
- 50. In the Committee's view it is not appropriate for non-panel members to assist with the writing of reasons. The *Law Society Act* specifies who is eligible for appointment to the Hearing and Appeal Panels. It is a principle of natural justice that the persons who hear a proceeding must decide the matter and in the Committee's view this extends to the writing of the reasons for decision.
- 51. For this reason the Committee does not believe that it is appropriate for law clerks to assist panels with preparing their reasons.

52. Having decided this, the Committee wishes to emphasize, however, that there are a number of tools already in place to support adjudicators in writing their reasons as follows:
- a. Adjudicators have received a number of guidelines and templates to assist them including,
 - i. template for written reasons for decision (will be redistributed as this was given out some time ago);
 - ii. two templates for oral reasons (included in the adjudicator education binder);
 - iii. guidelines for adjudicators respecting oral/written reasons for decisions (approved by Convocation September 2006 – included in the adjudicator education binder). These guidelines articulate when written reasons are required;
 - iv. guidelines for endorsements (included in the adjudicator education binder);
 - v. guidelines for possible wording for oral/written reasons respecting specific topics (included in the adjudicator education binder);
 - b. Publications Counsel reviews all reasons before they are released and published for factual errors, spelling and grammar errors and consistent use of terms;
 - c. Adjudicators have access to Law Society jurisprudence and will receive copies each month of all decisions sent to Canlii and Quicklaw;
 - d. Electronic versions of many of the documents in a proceeding, such as the Notice of Application, the Agreed Statement of Facts and, in the case of an appeal, the facts are available for the use of adjudicators when writing their reasons so that they do not have to re-type the information; and
 - e. The Chairs of the Hearing and Appeal Panels are available to respond to adjudicators' questions on process issues.
53. The question was raised whether it was permissible for adjudicators to seek the assistance of their staff to type their reasons. The Committee is of the view that members of an adjudicator's staff are subject to the same requirements of confidentiality as the adjudicator and as such there is no prohibition on seeking such assistance.

SCHEDULING

54. To accommodate adjudicator requests for longer lead-time respecting possible hearing dates, adjudicators will receive the schedule for tentative hearing dates for the period running July 2007 to June 2008.

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

- (1) Copy of an excerpt from the Tribunals Composition Task Force Report, April 26, 2007.
(Tab B, Appendix 1, pages 15 – 17)
- (2) Copy of a memorandum from Allyson O'Shea, Office of the Director of Policy & Tribunals to Sophia Sperdakos dated May 31, 2007 re: Lay representatives on hearing panels – a survey.
(Tab B, Appendix 2, pages 18 – 22)
- (3) Copy of the Canadian Judicial Council's document entitled "Use of Personal Information in Judgments: a Recommended Protocol" dated March 2005.
(Tab C, Appendix 3, pages 26 – 42)
- (4) Copy of an excerpt from the Report of the Tribunals Composition Task Force – April 26, 2007.
(Tab C, Appendix 4, pages 45 – 46)

Re: Protection of Identifying Information in Law Society Proceedings: Amendment to Rule 3.06(1) of the Rules of Practice and Procedure

It was moved by Mr. Sandler, seconded by Ms. Curtis that Convocation approve an amendment to section 3.06(1) of the Rules of Practice and Procedure to remove the words "or otherwise made public" so that the section, which currently reads, in part:

A tribunal may order that information disclosed in the course of a proceeding open to the public is *not to be published or otherwise made public* by any person...

will read

A tribunal may order that information disclosed in the course of a proceeding open to the public is *not to be published* by any person...

Carried

Re: Criteria for Appointing Non-Bencher Adjudicators

It was moved by Mr. Sandler, seconded by Ms. Curtis, that Convocation approve the following as the eligibility criteria for non-bencher lawyers seeking appointment to the Hearing Panel:

- i. adjudicative expertise and/or area of law expertise;
- ii. reflective of regional and/or other diversity;
- iii. understanding the role of an adjudicator;
- iv. familiar with administrative tribunals;
- v. judicial temperament, including an open mind, empathy and the ability to consider persuasive argument;
- vi. ability to render timely and reasoned decisions;
- vii. good writing skills;

- viii. openness to learn and be trained as an adjudicator, including attending mandatory training sessions;
- ix. time to devote to the role of adjudicator;
- x. willingness to conform to tribunal standards of procedure, consistency, quality and performance;
- xi. minimum 10 years called to the bar, not suspended; and
- xii. no disciplinary record in any jurisdiction.

That Convocation approve the following as the eligibility criteria for non-bencher, non-lawyers seeking appointment to the Hearing Panel:

- i. breadth and diversity of professional and life experience and mature understanding, insight and seasoned judgment that can all be brought to bear on the deliberations of the Hearing Panel;
- ii. commitment to the public interest;
- iii. reflective of regional and/or other diversity;
- iv. understanding the role of an adjudicator;
- v. familiar with administrative tribunals;
- vi. judicial temperament, including an open mind, empathy and the ability to consider persuasive argument;
- vii. ability to render timely and reasoned decisions;
- viii. good writing skills;
- ix. openness to learn and be trained as an adjudicator, including attending mandatory training sessions;
- x. time to devote to the role, including becoming knowledgeable about the legal profession and the role of the Law Society as a self-regulating body;
- xi. willingness to conform to tribunal standards of procedure, consistency, quality and performance; and
- xii. if a member of another regulated profession, no disciplinary record in any jurisdiction.

That the process for recruiting non-bencher lawyers for appointment to the Hearing Panel will be through placing an advertisement in the *Ontario Reports* and also advising Ontario legal organizations of the advertisement so that they can advise their members.

That the process for recruiting non-bencher non-lawyers for appointment to the Hearing Panel will be by,

- b. advising all former Law Society lay benchers of the appointment process and criteria for appointment; and
- c. by seeking recommendations from other regulatory bodies who have lay appointees.

Carried

Items for Information

- Practice Direction: Protection of Identifying Information in Law Society Proceedings

- Assistance with Writing Reasons for Decision
- Scheduling

MOTION – BY-LAWS – FRENCH VERSION

It was moved by Mr. Millar, seconded by Ms. Ross, that the French version of the amendments to By-Laws 1 through 15 (excluding By-Law 4, which was approved at Convocation on May 25, 2007) be approved.

Carried

REPORTS NOT REACHED

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

CONVOCATION ROSE AT 1:15 P.M.

Confirmed in Convocation this 20th day of September, 2007.

Treasurer