MINUTES OF CONVOCATION

Wednesday, 29th September, 2010
9:00 a.m.

PRESENT:

The Treasurer (Laurie H. Pawlitza), Aaron, Backhouse, Banack, Boyd (by telephone), Caskey, Chilcott, Conway, Crowe, Dickson, Dray, Elliott, Epstein, Eustace, Falconer, Fleck, Furlong, Go, Gottlieb, Haigh, Hainey, Hare, Hartman, Heintzman, Henderson, Krishna, Lewis, MacKenzie, McGrath, Marmur, Minor, Murray, Potter, Pustina, Rabinovitch, Robins, Ross, Rothstein, Schabas, Silverstein (by telephone), Simpson, C. Strosberg, H. Strosberg, Swaye, Symes, Tough and Wright (by telephone).

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Acting Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer extended condolences to the family of Patricia Outerbridge, wife of the late former bencher Ian Outerbridge, who passed away on August 9, 2010, and to the family of Mary Constance McLean, a member of the Law Society for seventy-six years, who passed away on September 7, 2010.

The Treasurer also extended condolences to the family of Angela Longo who passed away on September 3, 2010. Ms. Longo, among other positions, served as President and CEO of Legal Aid Ontario.

Best wishes were extended to Reginae Tait, one of the first four lay benchers appointed to the Law Society of Upper Canada in 1974, who celebrated her 100th birthday on July 9, 2010.

Congratulations were extended to Bonnie Tough who will receive the OBA's Award for Excellence in Civil Litigation on September 29, 2010.

The Treasurer thanked Malcolm Heins, Sheena Weir, Sophie Galipeau and Elliot Spears for their work on the matter of the *Not-for-Profit Corporations Act* (Bill 65) which resulted in an amendment to the Act to exempt the Law Society except as may be prescribed by regulation.

DRAFT MINUTES OF CONVOCATION

The draft minutes of June 9, 2010 were amended by adding Patrick Furlong to the attendance. The draft minutes of August 25, 2010 were also amended to include the appointment of James Varro as Acting Secretary to Convocation. The draft minutes of June 9, 15, 16, 21, 29 and August 25, 2010 were then confirmed.

REVISED MOTION – COMMITTEE APPOINTMENTS

It was moved by Paul Schabas, seconded by Avvy Go, that the following committee appointments distributed under separate cover be approved:

THAT Carl Fleck be removed from the Paralegal Standing Committee at his own request.

THAT Glenn Hainey be appointed to the Paralegal Standing Committee.

THAT Heather Ross be appointed to the Professional Development and Competence Committee.

THAT Jennifer Halajian be removed from the Ontario Lawyers Gazette Advisory Board at her own request.

THAT Paul Henderson be removed from the LAWPRO Board of Directors at his own request.

THAT Carol Hartman be removed from the LibraryCo Board of Directors at her own request.

THAT Susan McGrath be appointed to the LibraryCo Board of Directors to replace Carol Hartman who has resigned.

THAT Vern Krishna be appointed to the LAWPRO Board of Directors.

THAT Bradley Wright be removed as a member of the Law Society Foundation at his own request.

THAT Mary Louise Dickson be appointed as a member of the Law Society Foundation.

THAT Paul Dray be appointed to the Finance Committee.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Wednesday, September 29th, 2010.

ALL OF WHICH is respectfully submitted

DATED this 29th day of September, 2010

CANDIDATES FOR CALL TO THE BAR

September 29, 2010

Gurinder Kaur Bains
Emily Suzanne Beaton
Robert Joseph Pierre Bissonnette
Jasminder Singh Brar
Perry Cheung
John Charles Cole
Rajdeep Dhaliwal
Shawn Faguy
Anne Elizabeth Fitzpatrick
Laure Charles Marie Goubau
Cynthia Joy Hellsten
Marie-Ève Jean
Hilary Catherine Aileen Kennan
Edwin Grant Kroft
Ethan Alastair Mc Monagle
David Richard MacKenzie
Martin Lachlan MacLachlan
Olegas Maksimovicius
John Paul Tiley Marner
Roderic Charles McLaughlan
Michel Patrick O'Hara

Stephen Andrew John Osborne
Ioannis Papagiannis
Donald Luther Johnathan Rusnak
Katherine Diane Florence Sangster
Elsa Gregório Sardinha
Jacob Henry Stephens Tummon
Danielle Theresa Mary Westgeest
Sarah Elizabeth Wolson
Janice Hau-Yen Yau

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

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Hainey presented the Report.

Report to Convocation
September 29, 2010

Professional Regulation Committee

Committee Members
Glenn Hainey (Chair)
Carl Fleck (Vice-Chair)
Julian Falconer
Patrick Furlong
Avvy Go
Michelle Haigh
Gavin MacKenzie
Ross Murray
Julian Porter
Judith Potter
Sydney Robins
Baljit Sikand
William Simpson
Roger Yachetti

Purpose of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on September 15, 2010. In attendance were Glenn Hainey (Chair), Carl Fleck (Vice Chair), Patrick Furlong, Michelle Haigh, Ross Murray, Judith Potter, Baljit Sikand and William Simpson. Staff attending were Naomi Bussin, Sophie Galipeau, Terry Knott, Zeynep Onen, Jim Varro and Jane Withey. The Committee also met jointly with the Paralegal Standing Committee and the Professional Development and Competence Committee for part of the meeting.

AMENDMENTS TO BY-LAW 4 RESPECTING THE LICENSING APPLICATION PROCESS

Motion

2. That Convocation approve the amendments to By-Law 4 (Licensing) set out at Appendix 1.

Introduction and Background

3. As a result of

   a. operational experience during the paralegal 'grandparent' application process in 2007,

   b. Convocation's June 2010 approval of the Integration Project that will, for a 12 month time-limited period, permit individuals otherwise exempt from paralegal licensing to apply for a licence, and

c. Convocation's June 2010 approval changes to section 15(2.1) of By-Law 4 providing that an applicant for a P1 licence is not entitled to take the licensing examination until after any good character investigation is completed,

the Committee, jointly with the Paralegal Standing Committee and the Professional Development and Competence Committee, recommends amendments to the application process in By-law 4 for lawyers and paralegals.

4. These amendments are necessary to provide more guidance on the issue of false or misleading representations in licensing applications and to address the need for timely completion of the application process.

5. Because this issue is relevant to both lawyers and paralegals, the Paralegal Standing Committee, the Professional Regulation Committee, and the Professional Development & Competence Committee met together to consider the issues and jointly recommend the amendments to Convocation. A redline version of the relevant amendments to By-Law 4 appears at Appendix 2. The official bilingual motion for these amendments will be distributed at Convocation.

The Issues

<u>False or Misleading *Material* Representation</u>

6. Under section 27 of the *Law Society Act* ("the Act"), to be licensed as a lawyer or paralegal, an applicant must be of good character. The applicant provides information relating to good character in his or her application for a licence.

7. If the information raises an issue about to the applicant's good character, the issue is assessed, and investigated if necessary. If, after assessment and/or investigation, the applicant's good character is not an issue, the good character file is closed and, if all other requirements are met, the licence may be issued. Otherwise, a licensing hearing must be authorized by the Proceedings Authorization Committee and a hearing into the applicant's good character is held. Staff can approve, but not deny an application. If the Proceedings Authorization Committee authorizes a licensing hearing, a hearing on the issues must take place before the Hearing Panel.

8. Currently, subsection 8(2) of By-law 4 provides,

> An applicant who makes any false or misleading representation or declaration on or in connection with an application for a licence, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

9. In order to provide better guidance on the type of representation that would deem an applicant not to have met the requirements, the Committees were of the view that the "false or misleading representation" that should be included in this category is that which is "material" in nature. Given this interpretation, the Committees believe that it is appropriate to include the word "material" in subsection 8(2) before the word "representation."

10. The current process permits an applicant to have the determination that the requirements are not met under subsection 8(2) adjudicated, as subsection 27(4) of the Law Society Act provides that an "application for a licence may be refused only by the Hearing Panel after holding a hearing." With the amendment to subsection 8(2), the Hearing Panel, in addition to determining what is "false or misleading," will also determine whether the representation is "material."

11. Similar provisions in By-law 4 respecting representations in connection with the licensing examinations and with respect to the registration process are set out at subsections 14(2) and 18(2) respectively. To ensure a consistent approach to the issue, the word "material" should be added to these provisions.

Documents and Information Respecting Good Character

12. Applicants for a licence are required to supply documents and information in support of their applications. The Law Society requires the information to ensure that applicants meet the requirements for a licence.

13. The Law Society has had experience with a number of uncooperative applicants. Applicants who later abandoned their applications did not provide the required information with their application (e.g. documents relating to convictions or bankruptcies) and failed or refused to provide this information after requests by Law Society staff.

14. Given Convocation's decision in June 2010 that paralegal applicants cannot take the licensing examination until after the good character investigation is completed and given the limited 12-month window of opportunity for applicants under the Integration Project, it is essential that applicants comply with the requirements to provide documents and information in a timely manner. If there is no requirement for timely completion and no consequence for failure to provide documents and information, the Law Society will have difficulty completing the application in the timely manner Convocation has directed.

15. The Committees are of the view that section 8 of By-law 4 should be amended to add a requirement as follows:

> (3) An applicant shall provide to the Society,
>
> (a) at the time she or he submits her or his completed application, all documents and information specified by the Society on the application form relating to the requirement that the applicant be of good character; and
>
> (b) by the time specified by the Society, all additional documents and information specified by the Society relating to the requirement that the applicant be of good character.

16. The Committees are also of the view that an applicant's application for a licence should be "deemed to have been abandoned" if the applicant fails to do anything required to be done under the proposed new provision respecting documents and information. Subsection 8(4) is proposed, as follows:

(4) An applicant's application for a licence is deemed to have been abandoned by the applicant if the applicant fails to do anything required to be done under subsection (3), under paragraph 2 of subsection 13 (1), under subclause 13 (2) (b) (iii), subclause 13 (2) (c) (iii) or subclause 13 (2) (d) (iii) or under subsection 15 (2.2) within the time specified for the thing to be done.

17. The 'deemed abandonment' provision would cancel the applicant's registration with the Law Society, pursuant to a new section 19.1 of Bylaw 4. For both lawyer and paralegal applicants, the effect of the cancellation of their registration with the Law Society would be that they would have to reapply in future and the application process would start anew. It would not be a bar to a new application.

18. To ensure applicants are aware of these changes, additional Law Society administrative processes would be created. These processes would ensure that a clear explanation is provided to applicant about the consequences of failing to comply with subsection 8(3) and the other provisions in subsection 8(4) and that adequate time is provided for the receipt of required and requested information. For example, an applicant would need to be given notice that a lack of cooperation could result in his or her application being deemed abandoned. This would require changes to the application form and to the Law Society website. If the Law Society writes to an applicant asking for information within a specified time, the applicant must be advised of the consequences of non-cooperation.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 4
[LICENSING]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 29, 2010

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009 and June 29, 2010, be further amended as follows:

1. Subsection 8 (2) of the English version of the By-Law is revoked and the following substituted:

Misrepresentations

(2) If an applicant makes a false or misleading material representation or declaration on or in connection with an application for a licence, by commission or omission, the applicant is deemed not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

2. Section 8 of the English version of the By-Law is amended by adding the following subsections:

Documents and information re good character requirement

(3) An applicant shall provide to the Society,

(a) at the time she or he submits her or his completed application, all documents and information specified by the Society on the application form relating to the requirement that the applicant be of good character; and

(b) by the time specified by the Society, all additional documents and information specified by the Society relating to the requirement that the applicant be of good character.

Failure to do something: abandonment of application

(4) An applicant's application for a licence is deemed to have been abandoned by the applicant if the applicant fails to do anything required to be done under subsection (3), under paragraph 2 of subsection 13 (1), under subclause 13 (2) (b) (iii), subclause 13 (2) (c) (iii) or subclause 13 (2) (d) (iii) or under subsection 15 (2.2) within the time specified for the thing to be done.

3. Subsection 14 (2) of the English version of the By-Law is revoked and the following substituted:

Misrepresentations

(2) If a person makes a false or misleading material representation or declaration on or in connection with an examination application, by commission or omission, the person is deemed not to meet, and not to have met, the requirements for taking a licensing examination and, subject to subsection (3), the successful completion of any licensing examination taken by the person is deemed to be void.

4. Subsection 18 (2) of the English version of the By-Law is revoked and the following substituted:

Misrepresentations

(2) If a person makes a false or misleading material representation or declaration on or in connection with registration, by commission or omission, the person is deemed not to meet, and not to have met, the requirements for registration, the person's registration is deemed to be void, the successful completion of any licensing examination taken by the person is deemed to be void, the successful completion of any course conducted by the Society taken by the person is deemed to be void and any service under articles of clerkship is deemed to be void.

5. The English version of the By-Law is amended by adding the following section:

Cancellation of registration

19.1 A person's registration with the Society is cancelled if the person's application for a licence is deemed to have been abandoned by the person under subsection 8 (4).

APPENDIX 2

BY-LAW 4

Made: May 1, 2007
Amended: May 25, 2007
June 28, 2007
September 20, 2007
October 25, 2007 (editorial changes)
January 24, 2008
April 24, 2008
May 22, 2008
June 26, 2008
December 19, 2008 (editorial changes)
January 29, 2009
January 29, 2009 (editorial changes)
June 25, 2009
June 25, 2009 (editorial changes)
June 29, 2010
July 8, 2010 (editorial changes)

LICENSING

. . . .

PART II

ISSUANCE OF LICENCE

INTERPRETATION

Interpretation

7. In this Part,

"accredited law school" means a law school in Canada that is accredited by the Society;

"accredited program" means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

"licensing cycle" means,

(a) for a person registering with the Society to be eligible to take a licensing examination or to enter into articles of clerkship that is a requirement for a Class L1 licence, a period running from May 1 in a year to April 30 in the following year; and

(b) for a person registering with the Society to be eligible to take a licensing examination that is a requirement for a Class P1 licence, a period running from June 1 in a year to May 31 in the following year.

GENERAL REQUIREMENTS

Requirements for issuance of any licence

8. (1) The following are the requirements for the issuance of any licence under the Act:

1. The applicant must submit to the Society a completed application, for the class of licence for which application is made, in a form provided by the Society.

2. The applicant must pay the applicable fees, including the applicable application fee.

3. The applicant must be of good character.

4. The applicant must take the applicable oath.

5. The applicant must provide to the Society all documents and information, as may be required by the Society, relating to any licensing requirement.

Misrepresentations

(2) ~~An~~ If an applicant ~~who~~ makes ~~any~~ false or misleading material representation or declaration on or in connection with an application for a licence, by commission or omission, the applicant is deemed ~~thereafter~~ not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

Documents and information re good character requirement

(3) An applicant shall provide to the Society,

(a) at the time she or he submits her or his completed application, all documents and information specified by the Society on the application form relating to the requirement that the applicant be of good character; and

(b) by the time specified by the Society, all additional documents and information specified by the Society relating to the requirement that the applicant be of good character.

Failure to do something: abandonment of application

(4) An applicant's application for a licence is deemed to have been abandoned by the applicant if the applicant fails to do anything required to be done under subsection (3), under paragraph 2 of subsection 13 (1), under subclause 13 (2) (b) (iii), subclause 13 (2) (c) (iii) or subclause 13 (2) (d) (iii) or under subsection 15 (2.2) within the time specified for the thing to be done.

***

LICENCE TO PRACTISE LAW

Requirements for issuance of Class L1 licence

9. (1) The following are the requirements for the issuance of a Class L1 licence:

1. The applicant must have one of the following:

i. A bachelor of laws or juris doctor degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school.

ii. A certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Law Deans.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

3. The applicant other than the applicant described in paragraph 4 must have,

i. successfully completed service under articles of clerkship for a period of time, not to exceed ten months, as determined by the Society,

ii. successfully completed all other requirements, as determined by the Society, that must be completed during the time of service under articles of clerkship, and

iii. if service under articles of clerkship was completed more than three years prior to the application for licensing, successfully completed the additional education and obtained the additional experience that the Society determines is necessary to ensure that the applicant is familiar with current law and practice.

4. An applicant who is exempt from the requirements mentioned in paragraph 3 because of clause (3)(e) must have successfully completed a professional conduct course conducted by the Society.

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

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

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

(a) for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis; or

(b) the applicant is mentioned in subsection (4) and,

(i) has provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has provided written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant meets the requirement mentioned in subclause (i), and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered;

(c) the applicant is a member in good standing of the Human Resources Professionals Association of Ontario, the Ontario Professional Planners Institute, the Board of Canadian Registered Safety Professionals or the Appraisal Institute of Canada and,

(i) has been a member in good standing of the organization for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has carried on the profession or occupation represented by the organization, including engaging in activities related to the provision of legal services that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence, and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered;

(d) the applicant is registered and in good standing as a collector under the Collection Agencies Act and,

(i) has been registered and in good standing as a collector under the Collection Agencies Act for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has acted as a collector, including engaging in activities related to the provision of legal services that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence, and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered; or

(e) the applicant was previously licensed to provide legal services in Ontario and applied for that licence prior to July 1, 2010.

Interpretation: “full-time basis”

(2.1) For the purposes of subsection (2), engaging in an activity or acting in a particular capacity on a full-time basis means engaging in an activity or acting in a particular capacity, on the average, 30 hours per week.

***

LICENSING EXAMINATIONS
General requirements

14. (1) A person who meets the following requirements is entitled to take a licensing examination set by the Society:

1. The person must register with the Society, prior to the day of the examination, by the time specified by the Society.

2. The person must submit to the Society a completed examination application, for the examination that the person wishes to take, in a form provided by the Society, prior to the day of the examination, by the time specified by the Society.

3. The person must pay the applicable examination fee, prior to the day of the examination, by the time specified by the Society.

4. The person must provide to the Society all documents and information, as may be required by the Society, relating to any requirement for taking an examination.

5. The person must not be ineligible to take the examination under this By-Law.

Misrepresentations

(2) ~~A~~ If a person ~~who~~ makes ~~any~~ a false or misleading material representation or declaration on or in connection with an examination application, by commission or omission, the person is deemed ~~thereafter~~ not to meet, and not to have met, the requirements for taking a licensing examination and, subject to subsection (3), the successful completion of any licensing examination taken by the person is deemed ~~thereafter~~ to be void.

Deferred voiding of examination result

(3) Where the false or misleading representation mentioned in subsection (2) relates to meeting the requirement of paragraph 1 of subsection 9 (1) or paragraph 1 of subsection 13 (1) and was made by the person in good faith, the person is deemed not to meet, and not to have met, the requirements for taking a licensing examination, and the successful completion of any licensing examination taken by the person is deemed to be void, if the person does not meet the requirement of paragraph 1 of subsection 9 (1) or paragraph 1 of subsection 13 (1), as the case may be, by the end of the licensing cycle in which the person registered with the Society to be eligible to take the applicable licensing examination.

Licensing examination for Class L1 licence

15. (1) A person who meets the requirement of paragraph 1 of subsection 9 (1) is entitled to take a licensing examination that is a requirement for the issuance of a Class L1 licence.

Licensing examination for Class P1 licence

(2) A person is entitled to take a licensing examination that is a requirement for a Class P1 licence if, ***

(c) in the case of an applicant who applies for a Class P1 licence after June 30, 2010,

(i) the person meets the requirement of paragraph 1 of subsection 13 (1), or

(ii) the person is exempt from the requirement of paragraph 1 of subsection 13 (1) under clause 13 (2) (b), 13 (2) (c) or 13 (2) (d).

Licensing examination for Class P1 licence: permission to take examination

(2.1) Despite subclause (2) (c) (ii), an applicant mentioned in that subclause is not entitled to take a licensing examination that is a requirement for a Class P1 licence until after she or he has provided to the Society all documents and information, as may be required by the Society, relating to the requirement that an applicant for a Class P1 licence be of good character and the Society has notified the applicant that she or he is permitted to take the licensing examination.

Time requirement for successfully completing licensing examination

(2.2) Despite paragraph 2 of subsection 13 (1), an applicant who is permitted under subsection (2.1) to take a licensing examination that is a requirement for a Class P1 licence shall successfully complete the licensing examination by not later than the later of,

(a) two years after the end of the licensing cycle into which the applicant was registered; and

(b) 12 months after the date on which the Society notifies the applicant that she or he is permitted to take the licensing examination.

Failing licensing examination

(3) A person who qualified to take a licensing examination that is a requirement for a Class P1 licence by meeting the requirement of subparagraph i or ii of paragraph 1 of subsection 11 (1) and failed the examination on three occasions may no longer qualify to take the examination by meeting the requirement of subparagraph i or ii of paragraph 1 of subsection 11 (1).

REGISTRATION

General requirements

18. (1) A person who meets the following requirements is entitled to be registered with the Society:

1. The person must submit to the Society a completed registration form, as provided by the Society.

2. The person must pay the applicable registration fee.

3. The person must provide to the Society all documents and information, as may be required by the Society, relating to any registration requirement.

Misrepresentations

(2)~~A~~ If a person ~~who~~ makes ~~any~~ a false or misleading material representation or declaration on or in connection with registration, by commission or omission, the person is deemed ~~thereafter~~ not to meet, and not to have met, the requirements for registration, the person's registration is deemed ~~thereafter~~ to be void, the successful completion of any licensing examination taken by the person is deemed ~~thereafter~~ to be void, the successful completion of any ~~professional conduct~~ course conducted by the Society taken by the person is deemed ~~thereafter~~ to be void and any service under articles of clerkship is deemed ~~thereafter~~ to be void.

Registration into licensing cycle

19. (1) A person who registers with the Society shall be registered into a specific licensing cycle.

***

Cancellation of registration

19.1 A person's registration with the Society is cancelled if the person's application for a licence is deemed to have been abandoned by the person under subsection 8 (4).

UNBUNDLING OF LEGAL SERVICES AND LIMITED LEGAL REPRESENTATION

Motion

19. That Convocation approve a call for input on proposed amendments to the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and Paralegal Guidelines on the subject of limited legal representation.

Introduction

20. As reported to Convocation in June 2010, the Committee, through its working group[1] that also includes members of the Paralegal Standing Committee and the Access to Justice Committee[2] , has been considering issues related to the "unbundling" of legal

[1] Working group members are Glenn Hainey (chair), Robert Burd, Paul Dray, Carl Fleck, Michelle Haigh and Susan McGrath. Linda Rothstein also served as the working group's first chair.

[2] The Committee recognized that the Access to Justice Committee would be familiar with the concept of unbundling. That Committee was a participant in the Ontario Civil Legal Needs Project, in partnership with Pro Bono Law Ontario and Legal Aid Ontario. The Project's recently released report, "Listening to Ontarians", specifically mentions unbundling as an idea for making legal services more economically accessible for some litigants.

services. Unbundling refers to the provision of limited legal services or limited legal representation, in which a lawyer or paralegal provides legal services for part, but not all, of a client's legal matter by agreement with the client. Otherwise, the client is self-represented.

21. While Ontario lawyers and paralegals are currently providing some legal services on what can be characterized as a limited scope basis, nothing in the current *Rules of Professional Conduct* or the *Paralegal Rules of Conduct* expressly addresses limited retainers or unbundling of services. Procedurally, there are no specific rules for the situations in which such services may be provided in a litigation setting.

22. As indications are that limited legal retainers will continue and may increase in frequency in certain areas of law, the working group's initial focus was on what might be done by way of ethical guidance. The key issues that have prompted the discussion about additional guidance for lawyers and paralegals are how to define the scope of representation in the agreement between the lawyer or paralegal and client, clarifying communications between counsel for another party and the client receiving unbundled services and disclosure of the assistance of counsel.

Proposed Amendments and Call for Input

23. The working group considered the work already done through the Committee earlier this year on the *Rules of Professional Conduct*. That review included an overview of recent developments in Canada and elsewhere related to unbundling. The Committee also received information on procedural rules that may have relevance to limited scope retainers and reviewed relevant *Rules of Professional Conduct*. It considered information from LawPRO on some of the insurance and risk management issues that should be considered when lawyers and paralegals perform limited scope services.

24. The working group agreed with the approach taken by the Committee, and completed its review of the Rules and Guidelines. Based on the working group's report to the three Committees, the Committee on their behalf is proposing a series of amendments to the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and the Paralegal Guidelines. In the Committees' view, the working group's proposals provide helpful and necessary guidance in the context of limited legal services.

25. In examining the ethical and professional conduct issues that may arise in providing limited legal services, the Committees agreed that the guiding principle must be that any amendments for guidance on limited legal representation should not create a lesser standard of professional conduct than is otherwise expected of a lawyer or paralegal. In keeping with this principle, the proposed amendments do not create new standards but confirm existing standards with awareness around how they apply in the limited retainer context.

26. The Committees agreed that prior to Convocation's consideration of the proposed amendments, a call for input should be published to obtain comments on the merits of the amendments from lawyers, paralegals and relevant legal organizations and institutions.

27. The Committees propose that a notice be posted on the Law Society's website and published in the *Ontario Reports* and that letters to be sent to relevant legal organizations[3] , requesting comments on the proposed amendments by November 30, 2010.

28. The Committees have prepared the notices and letters and have also prepared a document for use by those interested in commenting on the proposals, attached at Appendix 3. The document, in addition to the proposed amendments, contains some background information on the Law Society's study. The document will be available through a link on the Law Society's website and in the digital Ontario Reports. It will also be sent with the letters described above.

29. Convocation is asked to approve the Committees' request for a call for input on these proposed amendments.

APPENDIX 3

draft

"Unbundling" of Legal Services

Background Information and Proposed Amendments to Professional Conduct Rules

Prepared by the Policy Secretariat
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"UNBUNDLING" OF LEGAL SERVICES

Introduction

Unbundling of legal services refers to the provision of limited legal services or limited legal representation. This means that a lawyer or paralegal provides legal services for part, but not all, of a client's legal matter by agreement between the lawyer or paralegal and the client, and that the client is otherwise self-represented. Some common services involve lawyers or paralegals

[3] The organizations include but are not limited to: Advocates Society, Ontario Bar Association (various sections) Criminal Lawyers Association, Ontario Trial Lawyers Association, Family Lawyers Association, Paralegal Society of Ontario, Paralegal Society of Canada, Licensed Paralegals Association (Ontario), CDLPA, Association of Law Officers of the Crown, Society of Ontario Adjudicators and Regulators (SOAR), Association of Legal Clinics of Ontario.

1. providing confidential drafting assistance,
2. making limited appearances in court as part of the limited scope retainer,
3. providing legal information and advice under a limited scope retainer, and
4. providing legal services at a court-annexed program, or at a non-profit legal service program.[4]

The Law Society acknowledges that unbundling in the litigation context is occurring in Ontario. The issue for the Law Society is the lack of on-point guidance in rules of conduct. The Law Society's Professional Regulation Committee formed a working group that includes representatives from the Paralegal Standing Committee and the Access to Justice Committee to determine what might be done by way of ethical guidance for lawyers and paralegals when they provide limited legal representation.

As a result of the working group's review, this document includes proposals for amendments to the lawyers' and paralegals' professional conduct rules, with explanatory text and some background information on the development of ethical guidance elsewhere on unbundled legal services. For reference, Appendices 1 and 2 include the text only of the proposed rule/commentary/guideline amendments for lawyers and paralegals, respectively (changes are underlined).

The Law Society also notes that, procedurally, there are no specific rules for the situations in which unbundled services may be provided in a litigation setting. This is the subject of a separate review by the working group and is not part of this call for input.

Some Background on Developments in Other Jurisdictions

United States

The thinking around and use of unbundling and limited retainers is far more developed in the United States than in Canada. This is no doubt in response to the huge growth in the numbers of self-represented litigants in US courts.[5]

Much has been published in the US, and the American Bar Association has devoted several web pages to an extensive list of reports, rules, opinions and cases from many states related to provision of short term or limited legal services. Some states have rules of conduct that address limited retainers.

Early on, the US literature isolated some key issues around the unbundling of legal services, in the litigation setting. A report[6] from 2000 summed up the issues as follows:

[4] The Law Society's examination of this issue has led to amendments to the conflicts rules applicable to lawyers participating in PBLO programs for brief services in the Small Claims and Superior Courts.

[5] One US paper, noted later in this report, says that *pro se* representation in family law courts "is no longer a matter of growth, but rather a status at a saturated level."

[6] "Unbundled Legal Services", Forrest Mosten and Lee Borden (as presented at the Academy of Family Mediators 2000). This report was also found on the Law Society of Alberta's website.

> The primary criticisms of unbundling fall into three broad classifications – concern that courts and judges might be misled, concern that clients might be misled, and concern that clients might make mistakes.

A recent publication (November 2009) provides a comprehensive overview of what has occurred in the US on the rule-making front since 2000. The paper, *An Analysis Of Rules That Enable Lawyers To Serve Pro Se Litigants A White Paper*, by the ABA Standing Committee on the Delivery of Legal Services discusses the developments in a number of states where rules have been adopted for this purpose. Some have made amendments to both conduct and procedural (court) rules to co-ordinate and harmonize the ethical and procedural responsibilities on the part of counsel, and to provide clearer advice on how these services are to be offered.

Canadian Bar Association

Several years ago, the Canadian Bar Association (CBA) looked at the issue of unbundling and devoted a chapter to it in its August 2000 report, "The Future of the Legal Profession: The Challenge of Change." The CBA suggests that unbundling was already, at that time, beginning to appear in the area of family law. The report identifies some of the practical and ethical concerns related to unbundling.

The major concern identified by the CBA is that lawyers will be acting for clients based on inadequate information, which may lead to worse results for the client and complaints or negligence claims against the lawyer. Ultimately, the CBA concluded that the basis for a lawyer's liability or failure in any ethical duty in these circumstances is unclear, and that "most ethical duties which talk about a lawyer's obligation to advise clients presuppose that the lawyer has been retained to handle the whole matter."

The report also commented on rules in the CBA's *Code of Professional Conduct*, which includes rules similar to those of the Law Society on the subject of competence.[7] The CBA said that such rules could be interpreted to mean that the lawyer is obligated to offer well-informed advice, but could also be interpreted to mean that the lawyer and client can agree that the lawyer's role is limited and the advice based on incomplete information.

The report concludes by saying that if the concerns can be adequately addressed, unbundling could become a useful approach in the future.

Law Society of British Columbia

More recently, the Law Society of British Columbia undertook a study of this issue and in 2008 published a comprehensive report [8] with a series of recommendations on various aspects of the delivery of unbundled services. The study considered the following issues:

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[7] "The lawyer should clearly indicate the facts, circumstances and assumptions upon which the lawyer's opinion is based, particularly where the circumstances do not justify an exhaustive investigation with resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than merely make comments with many qualifications."

[8] Report Of The Unbundling Of Legal Services Task Force - Limited Retainers: Professionalism And Practice, April 4, 2008

1. the impact on the solicitor-client relationship;
2. the duties of a lawyer in these circumstances;
3. the form of disclosure a lawyer makes to a client, to the courts and to the party or lawyer on the other side;
4. the idea of a written retainer agreement;
5. the duties of the client;
6. the impact on liability and insurance; and
7. possible rule revisions.

The report's executive summary says that the development is linked to rise of greater self-representation by litigants:

> For some litigants self-representation is a conscious choice. For many, it is a necessity. There are a number of factors that contribute to the rise in the number of self-represented litigants, and the range of causes for the rise in self-representation suggest that there is not a simple solution to the phenomenon.
>
> For those who choose to self-represent, they might be able to afford a lawyer for full service representation, or they might only be able to afford one at a cost that is beyond what they are willing to pay in pursuing or defending a claim. For these individuals, limited scope legal services present a mid-way option between full service representation and no representation…..
>
> …[P]art of the rise in self-representation reflects a cultural shift that is taking place in the information age. The Internet and related technologies are transforming the way information is collected, disseminated, and used. Legal information is now easily available to those with access to the Internet. …Many of these litigants will not see the value in hiring a lawyer to collect and process information they might easily collect themselves. Some will feel they need little or no help from a lawyer when it comes time to advance their case in court. Limited scope legal services provide an opportunity for lawyers to assist this growing demographic in synthesizing information and refining legal arguments. In short, the regulation of limited scope legal services demonstrates the adaptation of the legal profession to an evolving marketplace.

The report also recognized the reality that lawyers performing solicitor's work have been providing limited scope services for years. While much of the literature on unbundling focuses on litigation services, the report opines that a review of this subject need not be narrowly focused, and that proposals for changes should apply to all applicable areas of practice.

The report's recommendations were extensive, and included the following:

1. Rules that govern professional conduct and procedure before the courts should be amended as required to facilitate the proper, ethical provision of limited scope legal services.

2. Amendments to the ethical rules for guidance for limited scope legal services should not create a lesser standard of professional responsibility than is otherwise expected of a lawyer.

3. If the lawyer does not feel the professional services contemplated by the limited retainer can be performed in a competent and ethical manner, the lawyer should decline the retainer.

4. The lawyer should ensure the client understands the limited scope of the retainer, the limits and risks associated with such services, and should confirm this understanding, where reasonably possible, in writing.
   a. Example: counsel may enter into an agreement with an accused person to act at trial only, and not to act for the accused in any procedural matters leading up to the trial. Counsel would have an obligation to explain to the client any risks that a limited retainer of this nature might carry for the client.

5. A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in the proceeding, if failure to disclose would mislead the court or that other person.

6. Unless otherwise required by law or a court, the discretion to divulge the identity of the lawyer who provided drafting assistance should lie with the client.

7. A lawyer may communicate directly with a client who has retained another lawyer to provide limited scope legal services, except if all three of the following factors exist:

   a. The lawyer has been notified of the limited scope lawyer's involvement;

   b. The communication concerns an issue within the scope of the limited scope lawyer's involvement; and

   c. The limited scope lawyer or his or her client has asked the lawyer to communicate with the limited scope lawyer about the issue in question.

8. Save as described in the rules for court-annexed and non-profit legal clinic programs (the equivalent of our Law Society's new conflicts rules for PBLO brief services retainers), the regular rules governing conflicts of interest and duty of loyalty should apply to limited scope legal service retainers.

Canadian Law Societies' Rules of Conduct on Unbundling

The Law Societies of Alberta and British Columbia (prior to its 2008 report) and the Nova Scotia Barristers' Society have addressed unbundling of legal services either indirectly or expressly in their codes of professional conduct.

British Columbia

British Columbia's Rule 10 in Chapter 10 (Withdrawal) of its Professional Conduct Handbook reads:

> Limited retainer
>
> 10. A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in the proceeding, if failure to disclose would mislead the court or that other person.

After the 2008 report was adopted, the underlined text was added to the Rules:

Annotations

Rule 10 - Limited retainer

There is no necessary conflict between Rule 10 and the Criminal CaseFlow Management Rules, which seem to require the presence of counsel at certain procedural stages of criminal proceedings. It is proper for counsel to enter into an agreement with an accused person to act at trial only, and not to act for the accused in any procedural matters leading up to the trial. Of course, counsel would have an obligation to explain to the client any risks that a limited retainer of this nature might carry for the client.
EC November 30, 2000 item 9

It is not inconsistent with Rule 10 for a lawyer to provide anonymous drafting assistance to a client.
Recommendation 8 of Report of Unbundling of Legal Services Task Force p. 22; approved by Benchers April 2008

Failing to provide information to an unrepresented party about the limitations of the retainer does not amount to professional misconduct.
DCD 00-16

Alberta

In Chapter 9 of Alberta's Code of Professional Conduct, dealing with the lawyer as advisor, Rule 2 states that

> Except where the client directs otherwise, a lawyer must ascertain all of the facts and law relevant to the lawyer's advice.

Commentary under this rule discusses a lawyer's obligation to be economical and to balance this obligation with the obligation to ascertain all of the facts and law necessary to provide meaningful advice. It suggests a lawyer should consult with the client regarding the scope of investigations and provide an estimate of costs. The Commentary also states:

> Occasionally, a client will specifically request that a lawyer provide an opinion or advice based only on limited facts or assumptions or without the benefit of legal research. While it may be proper in some cases to agree, the lawyer must ensure that the client understands the limitations of such advice. Not infrequently, a legal opinion based on limited facts or assumptions will be so restricted and qualified as to be practically worthless. Similarly, advice given without research in an area in which a lawyer lacks knowledge or experience is likely to be unreliable.

Nova Scotia

The Nova Scotia Barristers' Society's Code of Professional Conduct provides commentary that deals expressly with this concept. The Nova Scotia commentary (in the numbered "Application of the Rule" and "Notes") under Rule 3 (Quality of Service) addresses "Limited Retainers". Application 3.12 states as follows:

> A lawyer may accept a limited retainer, but in doing so, the lawyer must be honest and candid with the client about the nature, extent, and scope of the work which the lawyer can provide within the means provided by the client. In such circumstances where a lawyer can only provide limited service, the lawyer should ensure that the client fully understands the limitations of the service to be provided and the risks of the retainer. Discussions with the client concerning limited service should be confirmed in writing. Where a lawyer is providing limited service, the lawyer should be careful to avoid placing him or herself in a position where it appears that the lawyer is providing full service to the client.

The relevant Notes refer to and quote from the CBA report and the Alberta Rules, and say:

> A lawyer must therefore carefully assess in each case in which a client desires abbreviated or partial services whether, under the circumstances, it is possible to render those services in a competent manner.....As long as the client is genuinely fully informed about the nature of the arrangement and understands clearly what is given up, it should be possible to provide such services effectively and ethically...

Proposed Amendments to the Law Society of Upper Canada's Rules to Address Unbundling

The issues that require attention and, consequently, enhancements to the rules generally relate to the following:

1. Defining the scope of representation: There is a need for an understanding between the lawyer/paralegal and client about what the lawyer will do by way of providing limited legal services;

2. Clarifying communications between counsel and parties: The issue is how the rules around communications with represented parties should be applied, given that the lawyer/paralegal providing limited legal services will not be counsel of record or may not consider himself or herself retained for the purposes of the rule;

3. The lawyer's or paralegal's role in document preparation, including disclosure of such assistance: This relates to notice to the court of "ghostwriting" of pleadings, or whether the court must be advised that the client has counsel for a particular part of the case.

In examining these issues, the guiding principle must be that any amendments to the ethical rules for guidance on unbundled legal services should not create a lesser standard of professional conduct than is otherwise expected of a lawyer or paralegal. As such, any amendments would not create new standards but confirm existing standards with awareness around how they apply in the unbundled context.

The following are proposals for amendments to the lawyers' and paralegals' rules upon which comment is requested. The reference is provided for the lawyers' rules (L) and the paralegals' rules (P). As the Paralegal Rules do not include commentary, where commentary is amended or added to the lawyers' rules, similar language is added to the Paralegal Guidelines that accompany the paralegals' rules.

Some of the proposals relate to procedural matters before a tribunal. These proposals are included for comment but would not be considered for adoption at present. They may be considered at a future date in the event that amendments to procedural rules on the provision of limited legal services are considered appropriate.

Rule 1.03(L)/1.02(P) - Interpretation
A definition of "limited legal services" or "limited legal representation" should be added to the rules, which would be used in applicable rules that follow. The definition would read:

> "limited legal services" or "limited legal representation" means the provision of legal services by a lawyer/paralegal for part, but not all, of a client's legal matter by agreement between the lawyer/paralegal and the client;

The paralegals' rules also require a new definition, found in the lawyers' rules, for "legal practitioner," as this term is used in some of the rules discussed later in this paper. It would read as follows:

> "legal practitioner" means a person
> (a) who is a licensee; or
> (b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction; or
> (c) who is not a licensee but is permitted by the Law Society to provide legal services in Ontario.

A housekeeping amendment is needed to this definition in the lawyers' rules to include paragraph (c) above.

Rule 2.01 - Competence

While the competence rule itself would not appear to require amendment, additional commentary should be added to address competence in the delivery of limited legal services.

The following is a proposed addition:

A lawyer may accept a retainer for limited legal services, but must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. Although an agreement for such services does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 2.02(X) *[possible new rule on quality of service in limited legal services retainers]*

Rule 2.02(L) – Quality of Service/Rule 3.02(P) – Advising Clients

It would appear appropriate to add a new rule and commentary to set out the lawyer's or paralegal's obligation to provide candid advice about the limited retainer and to commit to writing the agreement between the lawyer/paralegal and client for the limited legal services. This would assist clients in understanding the nature of a limited retainer, and remind them of the limits on the service to which they agreed. The following is the proposal:

Limited Legal Services

2.02/3.02(X) Before providing limited legal services to a client, the lawyer/paralegal shall

(a) advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer/paralegal can provide, including, where appropriate, within the means provided by the client, and

(b) confirm in writing and provide the client with a copy of the agreement between the lawyer and the client for the provision of the services.

Commentary

Reducing to writing the discussions and agreement with the client about limited legal services assist the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

A lawyer who is providing limited legal services should be careful to avoid acting such that it appears that the lawyer is providing full services to the client.

A lawyer who is providing limited legal services should consider how communications from opposing counsel in a matter should be managed. See rule 6.03(X) *[possible new rule on communicating with represented party in the context of a limited retainer]*

It also appears appropriate to add to the commentary under rule 2.02(6) – Client Under a Disability a statement to the following effect:

> A lawyer who is asked to provide limited legal services to a client under a disability should carefully consider and assess in each case whether, under the circumstances, it is possible to render those services in a competent manner.

Rule 2.09(L)/Rule 3.08(P) – Withdrawal from Representation

The proposed amendment to rule 2.09 provides that the lawyer or paralegal is deemed to have withdrawn once the services provided within the limited retainer are complete.[9] The amendment would read as follows:

> Limited Legal Representation
>
> 2.09/3.08(X) A lawyer/paralegal providing limited legal representation for a client is deemed to have withdrawn from representation when the lawyer has completed the matter that was the subject of the representation.

It would also be appropriate to add commentary to reflect procedural aspects associated with withdrawal. The language may depend on what standard is adopted in any future amendments that may be made to the civil rules. The proposal is as follows:

> Upon completion of the matter, the lawyer should confirm in writing to the client that the representation is complete. Appropriate notice of this fact should also be provided to the court and, where necessary, to opposing counsel.

Rule 4.01(L) – The Lawyer as Advocate/Rule 4.01(P) – The Paralegal as Advocate

The proposed amendment to rule 4.01 addresses required disclosure when a lawyer or paralegal appears as advocate for a client in a limited retainer. The proposed rule reads:

> Limited Legal Representation
>
> 4.01(X) A lawyer/paralegal acting for a client in a retainer for limited legal representation shall disclose to the tribunal and opposing counsel the scope of the representation for the client.

Rule 6.03 (L) – Responsibility to Lawyers and Others/Rule 4.02(P) – Interviewing Witnesses

A key issue in the unbundled context relates to communications with opposing counsel when a party is only represented for part of a legal matter. The general rule requires the consent of the party's lawyer or paralegal for direct communication by an opposing counsel with that party. In a limited retainer, it would appear appropriate to vary that standard, depending on the nature and stage of the communication.

[9] If developments lead to amendments to civil rules of procedure, this rule and a new rule of procedure on withdrawal could be harmonized.

The current rule is written for instruction to the lawyer or paralegal who wishes to communicate with the party who is represented. In a limited retainer situation, it may be that the rule should be directed to the lawyer or paralegal providing the limited services. As such, two options are provided for comment.

The first option permits an opposing counsel to communicate with the party unless written notice of the party's representation by a lawyer or paralegal is provided to the counsel. At that point, communications must be made through the party's lawyer or paralegal or to the party with his or her lawyer's or paralegal's consent. The following is the proposal:

> 6.03/4.02(X) Subject to subrule (8)[10] , if a person is receiving limited legal representation from a legal practitioner on a particular matter, a lawyer/paralegal may, without the consent of the legal practitioner,
>
> (a) approach or communicate or deal with the person on the matter, or
>
> (b) attempt to negotiate or compromise the matter directly with the person,
>
> unless the lawyer/paralegal receives written notice of the limited legal representation.

Commentary
Where notice as described in subrule (X) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is providing the person with the limited legal representation, but only to the extent of the limited representation as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited legal representation.

The second option is to direct the rule to the lawyer or paralegal providing the limited services. The proposal is as follows:

> 6.03/4.02(X) Subject to subrule (8), a lawyer/paralegal acting in a matter for a person in a retainer for limited legal representation shall, based on instructions from the person, notify in writing as soon as reasonably practical the opposing legal practitioner in the matter that he or she is to communicate, negotiate or otherwise deal with the lawyer/paralegal on the matter to the extent of the representation as disclosed in the notice.

The legal practitioner may communicate with the person on matters outside of the limited legal representation.

[10] This subrule deals with second opinions.

APPENDIX 1

RULES OF PROFESSIONAL CONDUCT

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,
…

"legal practitioner" means a person
(a) who is a licensee; or
(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction; or
(c) who is not a licensee but is permitted by the Law Society to provide legal services in Ontario.

"limited legal services" or "limited legal representation" means the provision of legal services by a lawyer for part, but not all, of a client's legal matter by agreement between the lawyer and the client;

…
2.01 COMPETENCE

Definitions

2.01 (1) In this rule
"competent lawyer" means a lawyer who has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client including

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

[Amended – June 2007]

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

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

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

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

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

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

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

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

(i) managing one's practice effectively,

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

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

Commentary

As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with legal matters to be undertaken on the client's behalf.

A lawyer who is incompetent does the client a disservice, brings discredit to the profession, and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

A lawyer should not undertake a matter without honestly feeling competent to handle it or being able to become competent without undue delay, risk, or expense to the client. This is an ethical consideration and is to be distinguished from the standard of care that a tribunal would invoke for purposes of determining negligence.

A lawyer must be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task. If consulted in such circumstances, the lawyer should either decline to act or obtain the client's instructions to retain, consult, or collaborate with a lawyer who is competent for that task. The lawyer may also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non legal fields, and, in such a situation, the lawyer should not hesitate to seek the client's instructions to consult experts.

A lawyer should clearly specify the facts, circumstances, and assumptions upon which an opinion is based. Unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the lawyer should so state in the opinion.

A lawyer may accept a retainer for limited legal services, but must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. Although an agreement for such services does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also subrule 2.02(X) *[possible new rule on quality of service in limited legal services retainers]*

A lawyer should be wary of bold and confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

In addition to opinions on legal questions, the lawyer may be asked for or may be expected to give advice on non legal matters such as the business, policy, or social implications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, where and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

In a multi-discipline practice, a lawyer must be particularly alert to ensure that the client understands that he or she is receiving legal advice from a lawyer supplemented by the services of a non-licensee. If other advice or service is sought from non-licensee members of the firm, it must be sought and provided independently of and outside the scope of the retainer for the provision of legal services and will be subject to the constraints outlined in the relevant by-laws and regulations governing multi-discipline practices. In particular, the lawyer should ensure that such advice or service of non-licensees is provided from a location separate from the premises of the multi-discipline practice.

Whenever it becomes apparent that the client has misunderstood or misconceived the position or what is really involved, the lawyer should explain, as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.

The requirement of conscientious, diligent, and efficient service means that a lawyer should make every effort to provide service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[Amended - June 2009]

2.02 QUALITY OF SERVICE

…

Limited Legal Services

2.02(X) Before providing limited legal services to a client, the lawyer shall

(a) advise the client honestly and candidly about the nature, extent and scope of such services that the lawyer can provide, including, if applicable, within the means provided by the client, and

(b) confirm in writing and provide the client with a copy of the agreement between the lawyer and the client for provision of the services.

> Commentary
>
> Reducing to writing the discussions and agreement with the client about limited legal services assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer. A lawyer who is providing limited legal services should be careful to avoid acting such that it appears that the lawyer is providing full service to the client.
>
> A lawyer who is providing limited legal services should consider how communications from opposing counsel in a matter should be managed. See subrule 6.03(X) *[possible new rule on communicating with a represented party in the context of a limited retainer]*

…

Client Under a Disability

(6) When a client's ability to make decisions is impaired because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal lawyer and client relationship.

> Commentary
>
> A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions, however, depends on such factors as his or her age, intelligence, experience, and mental and physical health, and on the advice, guidance, and support of others. Further, a client's ability to make decisions may change, for better or worse, over time. When a client is or comes to be under a disability that impairs his or her ability to make decisions, the impairment may be minor or it might prevent the client from having the legal capacity to give instructions or to enter into binding legal relationships. Recognizing these factors, the purpose of this rule is to direct a lawyer with a client under a disability to maintain, as far as reasonably possible, a normal lawyer and client relationship.

A lawyer with a client under a disability should appreciate that if the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, the lawyer may need to take steps to have a lawfully authorized representative appointed, for example, a litigation guardian, or to obtain the assistance of the Office of the Public Guardian and Trustee or the Office of the Children's Lawyer to protect the interests of the client. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned.

A lawyer who is asked to provide limited legal services to a client under a disability should carefully consider and assess in each case whether, under the circumstances, it is possible to render those services in a competent manner.

…

2.09 WITHDRAWAL FROM REPRESENTATION

Withdrawal from Representation

2.09 (1) A lawyer shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances.

…

Limited Legal Representation

(X) A lawyer providing limited legal representation for a client is deemed to have withdrawn from representation when the lawyer has completed the matter that was the subject of the representation.

Commentary

Upon completion of the matter, the lawyer should confirm in writing to the client that the representation is complete. Appropriate notice of this fact should also be provided to the court and, where necessary, to opposing counsel.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]

…

4.01 THE LAWYER AS ADVOCATE

Advocacy

4.01 (1) When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

…

Limited Legal Representation

(X) A lawyer acting for a client in a retainer for limited legal representation shall disclose to the tribunal and opposing counsel the scope of the representation for the client.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]

…

6.03 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

6.03 (1) A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.
…

2 options

Option 1:

Communications with a represented person

(7) Subject to subrules (X) and (8), if a person is represented by a legal practitioner in respect of a matter, a lawyer shall not, except through or with the consent of the legal practitioner,

(a) approach or communicate or deal with the person on the matter, or
(b) attempt to negotiate or compromise the matter directly with the person.

[Amended – June 2009]

Limited Legal Representation

(X) Subject to subrule (8), if a person is receiving limited legal representation from a legal practitioner on a particular matter, a lawyer may, without the consent of the legal practitioner,

(c) approach, communicate or deal with the person on the matter, or

(d) attempt to negotiate or compromise the matter directly with the person,

unless the lawyer receives written notice of the limited legal representation.

Second Opinions

(8) A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a legal practitioner with respect to that matter.

[Amended - June 2009]

Commentary

Subrule (7) applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by a legal practitioner concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This subrule does not prevent parties to a matter from communicating directly with each other.

The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other legal practitioner by closing his or her eyes to the obvious.

Where notice as described in subrule (X) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is providing the person with the limited legal representation, but only to the extent of the limited representation as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited legal representation.

Subrule (8) deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first legal practitioner involved. The lawyer should advise the client accordingly, and if necessary consult the first legal practitioner unless the client instructs otherwise.

[Amended - June 2009]

Option 2:

Communications with a represented person

(7) Subject to subrules (X) and (8), if a person is represented by a legal practitioner in respect of a matter, a lawyer shall not, except through or with the consent of the legal practitioner,

(a) approach or communicate or deal with the person on the matter, or
(b) attempt to negotiate or compromise the matter directly with the person.

[Amended – June 2009]

Limited Legal Representation

(X) Subject to subrule (8), a lawyer acting in a matter for a person in a retainer for limited legal representation shall, based on instructions from the person, notify in writing as soon as reasonably practicable the opposing legal practitioner in the matter that he or she is to communicate, negotiate or otherwise deal with the lawyer on the matter to the extent of the representation as disclosed in the notice.

Commentary The legal practitioner may communicate with the person on matters outside of the limited legal representation.

APPENDIX 2

PARALEGAL RULES OF CONDUCT
AND PARALEGAL GUIDELINES

'LIMITED' LEGAL SERVICES
AMENDMENTS TO *PARALEGAL RULES OF CONDUCT*
Amendments are shown underlined
Other provisions are shown for purposes of context

Rule 1 – Citation and Interpretation

1.02 Interpretation

Definitions

"legal practitioner" means a person
(a) who is a licensee;
(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction; or
(c) who is not a licensee but who is permitted by the Law Society to provide legal services in Ontario.

"limited legal services" or "limited legal representation" means the provision of legal services by a paralegal for part, but not all, of a client's legal matter by agreement between the paralegal and the client;

3.02 Advising Clients

General

3.02 (1) A paralegal shall be honest and candid when advising clients.

(2) A paralegal shall not undertake or provide advice with respect to a matter that is outside his or her permissible scope of practice.

Limited Legal Services

(16) Before providing limited legal services to a client, the paralegal shall

(a) advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide, including, where appropriate, within the means provided by the client, and

(b) confirm in writing and provide the client with a copy of the agreement between the paralegal and the client for the provision of the services.

3.08 Withdrawal from Representation

Withdrawal from Representation

3.08 (1) A paralegal shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances.
...

Limited Legal Representation

(13) A paralegal providing limited legal representation for a client is deemed to have withdrawn from representation when the paralegal has completed the matter that was the subject of the representation.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]

4.01 The Paralegal as Advocate

Duty to Clients, Tribunals and Others

4.01 (1) When acting as an advocate, the paralegal shall represent the client resolutely and honourably within the limits of the law while, at the same time, treating the tribunal and other licensees with candour, fairness, courtesy and respect.

(x) A paralegal acting for a client in a retainer for limited legal representation shall disclose to the tribunal and the opposing legal practitioner the scope of his or her representation of the client.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]

4.02 Interviewing Witnesses

Interviewing Witnesses

4.02 (1) Subject to subrules (2) and (3), a paralegal may seek information from any potential witness, whether under subpoena or not, but shall disclose the paralegal's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

(2) A paralegal shall not approach or deal with a person who is represented by another licensee, except through or with the consent of that licensee.

7.01 Courtesy and Good Faith

---

(6) A paralegal shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by another licensee, except with the consent of that licensee.

(7) If a person is receiving limited legal representation from a lawyer or paralegal on a particular matter, a paralegal may, without the consent of the lawyer or paralegal,

(a) approach or communicate or deal with the person on the matter, or

(b) attempt to negotiate or compromise the matter directly with the person,

unless the paralegal receives written notice of the limited legal representation

OR

(7) A paralegal acting in a matter for a person in a retainer for limited legal representation shall, based on instructions from the person, notify in writing as soon as reasonably practical the opposing legal practitioner in the matter that he or she is to communicate, negotiate or otherwise deal with the paralegal on the matter to the extent of the representation as disclosed in the notice.

'LIMITED' LEGAL SERVICES
AMENDMENTS TO *PARALEGAL GUIDELINES*
Amendments are shown underlined
Other provisions are shown for purposes of context

GUIDELINE 6: COMPETENCE

General

1. A licensed paralegal is held out to be knowledgeable, skilled and capable in his or her permissible area of practice. A client hires a legal service provider because the client does not have the knowledge and skill to deal with the legal system on his or her own. When a client hires a paralegal, the client expects that the paralegal is competent and has the ability to properly deal with the client's case.

Limited Legal Services

1.1 A paralegal may accept a retainer for limited legal services, but must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. Although an agreement for such services does not exempt a paralegal from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The paralegal should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services.

Cross reference Rule 3.02x – new rule

The Required Standard of Competence
Rule Reference: Rule 3.01(1),,Rule 3.01(4)

Knowledge
Rule Reference: Rule 3.01(4), (a) & (b)

2. The competent paralegal will ensure that only after all necessary information has been gathered, reviewed and considered does he or she advise the client as to the course(s) of action that will most likely meet the client's goals, taking care to ensure that the client is made aware of all foreseeable risks and/or costs associated with the course(s) of action.

2.1 Unless the client instructs otherwise, the paralegal should investigate the matter in sufficient detail to be able to express an opinion, even where the paralegal has been retained to provide limited legal services. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the paralegal should so state in the opinion.

Client Service and Communication
Rule Reference: Rule 3.01(4)(d), (e), (f) & (g)

3. Client service is an important part of competence. Most of the complaints received by the Law Society relate to client service, such as not communicating with a client, delay, not following client instructions and not doing what the paralegal or lawyer was retained to do.

4. Rule 3.01(4) contains important requirements for paralegal-client communication and service. In addition to those requirements, a paralegal can provide more effective client service by
   - keeping the client informed regarding his or her matter, through all stages of the matter and concerning all aspects of the matter,
   - managing client expectations by clearly establishing with the client what the paralegal will do or accomplish and at what cost, and
   - being clear about what the client expects, both at the beginning of the retainer and throughout the retainer.

4.1 Where a paralegal is retained to limited legal services to a client, it is very important to clearly identify the scope of the retainer, such as identifying the services that the paralegal will and will not be providing to the client. It is advisable that the limits of the paralegal's retainer are clearly stated in a written retainer agreement.

GUIDELINE 7: ADVISING CLIENTS

General
Rule Reference: 3.02(1) & (2)

1. A paralegal must honestly and candidly advise the client regarding the law and the client's options, possible outcomes and risks of his or her matter, so that the client is able to make informed decisions and give the paralegal appropriate instructions regarding the case. Fulfillment of this professional responsibility may require a difficult but necessary conversation with a client and/or delivery of bad news. It can be helpful for advice that is not well-received by the client to be given or confirmed by the paralegal in writing.

   When advising a client, a paralegal
   - o should explain to and obtain agreement from the client about what legal services the paralegal will provide and at what cost. Subject to any specific instructions or agreement, the client does not direct every step taken in a matter. Many decisions made in carrying out the delivery of legal services are the responsibility of the paralegal, not the client, as they require the exercise of professional judgment. However, the paralegal and the client should agree on the specific client goals to be met as a result of the retainer. This conversation is particularly important in the circumstances of a retainer to provide limited legal services.
   - o should explain to the client under what circumstances he or she may not be able to follow the client's instructions (for example, where the instructions would cause the paralegal to violate the *Rules*).
   - o should ensure that clients understand that the paralegal is not a lawyer and should take steps to correct any misapprehension on the part of a client, or prospective client.

Client Under a Disability
Rule Reference: Rule 3.02(7), (8), Rule 2.03

8. A paralegal must be particularly sensitive to the individual needs of a client under a disability. The paralegal should maintain a good professional relationship with the client, even if the client's ability to make decisions is impaired because of minority, mental disability or some other reason. The paralegal should also be aware of his or her duty to accommodate a client with a disability.

8.1 A paralegal who is asked to provide limited legal services to a client under a disability should carefully consider and assess in each case whether under the circumstances, it is possible to render those services in a competent manner

GUIDELINE 11: WITHDRAWAL FROM REPRESENTATION
General
Rule Reference: Rule 3.08
…
Written Confirmation

16. If a paralegal's services are terminated while the client's matter is ongoing and the client requests that the matter be transferred to a new paralegal or lawyer, the paralegal should confirm, in writing, the termination of the retainer. The paralegal should also obtain a *direction*, signed by the client, for release of the client's file to a successor paralegal or lawyer. A *direction* is a written document instructing the paralegal to release the file to the successor paralegal or lawyer. If the file will be collected by the client personally, the paralegal should obtain a written acknowledgement signed by the client, confirming that the client has received the file.

Limited Legal Representation

17. Upon completion of a limited retainer, the paralegal should confirm in writing to the client that the representation is complete. Appropriate notice of this fact should also be provided to the court and, where necessary, to the opposing legal practitioner.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]

GUIDELINE 14: RETAINERS

General

1. In the context of providing legal services, the word *retainer* may mean any or all of the following:

    - the client's act of hiring the paralegal to provide legal services (i.e., a *retainer*),
    - the contract that outlines the legal services the paralegal will provide to the client and the fees and disbursements and HST to be paid by the client (i.e., a *retainer agreement*), or
    - monies paid by the client to the paralegal in advance to secure his or her services in the near future and against which future fees will be charged (i.e., a *money retainer*).

The Retainer Agreement
Rule Reference: Rule 5.01(1)

2. Once the paralegal has been hired by a client for a particular matter, it is advisable that the paralegal discuss with the client two essential terms of the paralegal's retainer by the client: the scope of the legal services to be provided and the anticipated cost of those services. The paralegal should ensure that the client clearly understands what legal services the paralegal is undertaking to provide. It is helpful for both the paralegal and client to confirm this understanding in writing by

- o a written retainer agreement signed by the client,
- o an engagement letter from the paralegal, or
- o a confirming memo to the client (sent by mail, e-mail or fax).

2.1 A written retainer agreement is particularly helpful in the circumstances of a retainer to provide limited legal services.

3. This written confirmation should set out the scope of legal services to be provided and describe how fees, disbursements and HST will be charged (see Guideline 13: Fees).

GUIDELINE 17: DUTY TO PARALEGALS, LAWYERS AND OTHERS

General
Rule Reference: Rule 2.01(3) Rule 7.01

1. Discourteous and uncivil behaviour between paralegals or between a paralegal and a lawyer will lessen the public's respect for the administration of justice and may harm the clients' interests. Any ill feeling that may exist between parties, particularly during adversarial proceedings, should never be allowed to influence paralegals or lawyers in their conduct and demeanour toward each other or the parties. Hostility or conflict between representatives may impair their ability to focus on their respective clients' interests and to have matters resolved without undue delay or cost.

Prohibited Conduct
Rule Reference: Rule 7.01

2. The presence of personal animosity between paralegals or between a paralegal and a lawyer involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. To that end, Rule 7.01 outlines various types of conduct that are specifically prohibited.

3. One of the prohibitions in Rule 7.01(1) refers to sharp practice. Sharp practice occurs when a paralegal obtains, or tries to obtain, an advantage for the paralegal or client(s), by using dishonourable means. This would include, for example, lying to another paralegal or a lawyer, trying to trick another paralegal or a lawyer into doing something or making an oral promise to another paralegal or lawyer with the intention of reneging on the promise later. As another example, if an opposing paralegal were under a mistaken belief about the date of an upcoming trial, a paralegal would be obligated to tell the opposing representative about the error, rather than ignoring the matter in the hope the opposing representative would not appear at the trial.

Limited Legal Services

3.1 Where notice as described in subrule (7) has been provided to a lawyer for an opposing party, the paralegal is required to communicate with the legal practitioner who is providing the person with the limited legal representation, but only to the extent of the limited representation as identified by the legal practitioner. The paralegal may communicate with the person on matters outside of the limited legal representation.

OR

The legal practitioner may communicate with the person on matters outside of the limited legal representation.

AMENDMENTS TO BY-LAW 8 RESPECTING ELECTRONIC FILING OF ANNUAL REPORTS

Motion

30. That Convocation approve the amendments to By-Law 8 (Reporting and Filing Requirements), as set out at Appendix 4, to implement Convocation's decision in May 2010 that licensees be required to file the annual report electronically.

31. On May 27, 2010, Convocation agreed that lawyers and paralegals should be required to file their annual reports with the Law Society by electronic means, rather than by paper. Only in exceptional circumstances would paper filing be accepted.

32. Amendments to By-Law 8 are required to implement this decision. The amendments to the By-Law, approved by the Committee and endorsed by the Paralegal Standing Committee, appear in the motion at Appendix 4. The official bilingual motion will be distributed at Convocation.

APPENDIX 4

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 8
[REPORTING AND FILING REQUIREMENTS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 29, 2010

MOVED BY

SECONDED BY

THAT By-Law 8 [Reporting and Filing Requirements], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, April 24, 2008, June 26, 2008, October 30, 2008 and April 30, 2009, be further amended as follows:

1. Subsection 5 (1) of the English version of the By-Law is amended by,

(a) striking out “submit” and substituting “file” in the marginal note; and

(b) striking out “submit a report to” and substituting “file a report with” in the portion immediately preceding clause (a).

2. Subsection 5 (2) of the English version of the By-Law is revoked and the following substituted:

Form, format and manner of filing

(2) The report required under subsection (1) shall be in a form provided, and in an electronic format specified, by the Society and shall be filed electronically as permitted by the Society.

Same

(2.1) Despite subsection (2), on application by a licensee, in any year, the Society may, for that year, permit the licensee to file the report required under subsection (1) in a format other than the specified electronic format and in a manner other than electronically as permitted and a licensee who files the report required under subsection (1) in the format and manner as permitted by the Society under this subsection shall be deemed to have complied with the format and manner of filing requirements set out in subsection (2).

3. Subsection 5 (3) of the English version of the By-Law is amended by striking out “submit” and substituting “file” wherever it occurs.

4. Subsection 5 (8) of the English version of the By-Law is amended by striking out “submit” and substituting “file”.

5. Subsection 6 (2) of the English version of the By-Law is revoked.

6. Section 6 of the English version of the By-Law is amended by striking out “submitted” and substituting “filed”.

7. Subsection 7 (1) of the English version of the By-Law is amended by,

(a) striking out “submit” and substituting “file” wherever it occurs; and

(b) striking out “to” and substituting “with” at the end.

8. Subsection 7 (2) of the English version of the By-Law is amended by striking out “submitted to” and substituting “filed with”.

9. Subsection 8 (1) of the English version of the By-Law is amended by striking out “submitted” and substituting “filed”.

10. Subsection 9 (1) of the English version of the By-Law is amended by striking out “submit” and substituting “file”.

AMENDMENT TO RULE 1.02 OF THE *RULES OF PROFESSIONAL CONDUCT*

Motion

33. That Convocation approve an amendment to the definition of "associate" in the *Rules of Professional Conduct*, as described in this report.

34. The definition of associate in rule 1.02 of the *Rules of Professional Conduct* reads:

> "associate" includes:
>
> (a) a lawyer who is an employee of the law firm in which the lawyer practices law; and
>
> (b) a non-lawyer employee of a multi-discipline practice providing services that support or supplement the practice of law in which the non-lawyer provides his or her services.
>
> *[Amended – October 2006]*

35. The Committee's recommendation is to amend the definition by substituting "lawyer" with "licensee" where it appears in (a) and (b) and adding to (a) the words "or provides legal services" after the second "licensee" as amended, as follows:

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

36. The amendments serve two purposes:

> a. they make it clear that paralegals may be associates in law firms, and
>
> b. they make it clear that lawyers and paralegals as licensees may form multi-discipline practices and that as a licensee, a paralegal would not be the "non-lawyer" employee (or partner) of a lawyer in such a practice.

VACATING DISCIPLINE RECORDS

37. At the May 27, 2010 Convocation, during discussion of the enhanced licensee directory on the Law Society's website, benchers Bradley Wright and Gary Gottlieb raised the issue of whether a discipline record of a lawyer or paralegal should exist forever, or whether, after some time, a pardon, for example, could be issued upon application by the licensee. Mr. Gottlieb asked whether the Committee could consider this issue. The Chair agreed, and the matter was referred back to the Committee.

38. In considering this issue, the Committee reviewed a report on this subject prepared by the Committee for May 25, 2007 Convocation. This report is at Appendix 5 (without appendices)[11] , and refers to an earlier report of a working group of the Committee from 2002 and a report prior to that report to Convocation in 1999.

39. The Committee realized that this issue has a lengthy history and was the subject of thorough debate at the May 2007 Convocation. The May 2007 report also discusses the issue of pardons.

40. The Committee's recommendation adopted by Convocation in 2007 was that that there are no circumstances in which a discipline or conduct record should be vacated after some period of time. The motion carried by a vote of 33 to 9.

41. On September 15, 2010, the Committee concluded that the issues raised in the May 2007 report supporting Convocation's 2007 decision continue to support that decision, and that nothing in the professional regulation landscape has changed that would require this issue to be revisited. Moreover, as noted in the 2007 report, the *Law Society Act* now requires the Law Society to maintain a register[12] available for public inspection that contains a variety of regulatory information about a licensee. The Committee acknowledged that the trend among professional regulators is to make disciplinary decisions available through a public register as a matter of increased transparency[13] .

42. The Committee could see no reason to change Convocation's 2007 decision and determined that no further examination of this issue is required.

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[11] The complete report is available on the Law Society's website at http://www.lsuc.on.ca/media/convmay07_prc.pdf

[12] **27.1** (1) The Society shall establish and maintain a register of persons who have been issued licences. 2006, c. 21, Sched. C, s. 24.

Contents of register

(2) Subject to any by-law respecting the removal of information from the register, the register shall contain the following information:

1. The name of each licensee.
2. The class of licence issued to each licensee.
3. For each licensee, all terms, conditions, limitations and restrictions that are imposed on the licensee under this Act, other than terms, conditions, limitations and restrictions that are imposed by the by-laws on all licences of that class.
4. An indication of every suspension, revocation, abeyance or surrender of a licence.
5. Any other information required by the by-laws. 2006, c. 21, Sched. C, s. 24.

Availability to public

(3) The Society shall make the register available for public inspection in accordance with the by-laws. 2006, c. 21, Sched. C, s. 24.

[13] According to Richard Steinecke's *Grey Areas* newsletter (March 2008), for example, by June 2009, all 21 health regulators in Ontario were required to put their entire register on their websites.

APPENDIX 5

Report to Convocation
May 25, 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 and Information

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

* Includes items deferred from April 26, 2007 Convocation

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COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on April 12, 2007 and May 10, 2007.

In attendance on April 12 were Heather Ross (Vice-chair and Acting Chair), Tom Heintzman (Vice-chair), Alan Gold, Gary Gottlieb, Allan Gotlib, Paul Henderson (by telephone) and Ross Murray. Staff attending were Naomi Bussin, Zeynep Onen, Jim Varro and Sheena Weir.

In attendance on May 10 were Clay Ruby (Chair), Tom Heintzman and Heather Ross (Vice-chairs), George Finlayson, Alan Gold, Gary Gottlieb and Ross Murray. Raj Anand and Douglas Lewis also attended. Staff attending were Bruce Arnott, Naomi Bussin, Lesley Cameron, Hershel Gross, Terry Knott, Zeynep Onen, Lisa Osak and Jim Varro.

VACATING DISCIPLINE AND CONDUCT RECORDS

Motion

2. That Convocation decide that there are no circumstances in which a discipline or conduct record should be vacated after some period of time.

Introduction and Background

3. On June 25, 1999, Convocation reviewed a report from the Committee which addressed the policy issue of whether discipline or conduct records of members of the Law Society should be vacated. The June 1999 report appears at Appendix 1.

4. After its review and based on the information in the report, Convocation made a policy decision on June 25, 1999 by answering "yes" to the following question:

> Are there are any circumstances in which a discipline or conduct record should be vacated after some period of time?

5. The matter was then sent back to the Committee to determine the circumstances in which and the process by which discipline or conduct records should be vacated, and to consider the effect of vacating information from a conduct or discipline record. A working group of the Committee was created to focus on these issues and report back to the Committee.[14]

6. In considering the range of options for vacating a record in a process that would involve a hearing before the Society's Hearing Panel, the working group considered four models:

   a. a blended system with three options - expunging records, sealing records, and pardons;
   b. a blended system with two options - sealing records and pardons;
   c. one option - a pardon; and
   d. one option – expunging records.

[14] Gavin MacKenzie (chair), Andrew Coffey, Todd Ducharme and Heather Ross, assisted by Lesley Cameron and Jim Varro.

7. The working group prepared a draft report for the Committee, which the working group's chair received for review in January 2002. The working group's report was only recently considered by the Committee, when Bencher Larry Banack requested that it consider the matter. In January 2007, the Committee's chair agreed to have the Committee review the matter, including the reports referred to above, and prepare a report for Convocation. The Committee considered this matter at its February, March and April 2007 meetings.

8. After considering the June 1999 report and the working group's draft report, the overall consensus of the Committee was that Convocation's decision in June 1999 should be reversed, and that a process to vacate discipline or conduct records should not be pursued.

The Committee's Review of the Working Group's January 2002 Proposal

9. The Committee reviewed the working group's draft report from January 2002 and considered the merits of its proposals. The report in draft form, which the Committee has prepared for Convocation's review, appears at Appendix 2.

10. In the draft report, the working group was preparing to put the following proposal to the Committee:

    a. that if the issue of vacating conduct or discipline records in some circumstances is to be pursued, a pardon, rather than expungement or sealing, be the method for dealing with conduct or discipline records for any misconduct[15] ;

    b. that five years must elapse after the conduct or discipline order has issued, or after fulfillment of the terms of the order, before a member may apply for a pardon;

    c. that a detailed written application be provided by a member in every case;

    d. that a public hearing be held before the Hearing Panel to determine the question of whether a pardon should be granted, with discretion to consider the seriousness of the misconduct in assessing the matter;

    e. that an application fee be paid by a member applying for a pardon;

    f. that a by-law be drafted describing the process for a pardon.

[15] The working group described a pardon as follows: "If a pardon were granted, the public would still be informed of the matters between the member and the Society, in aid of the obligation to assure the public that the Society's regulatory mandate is being responsibly fulfilled, including the fact that the member has been "forgiven" for the conduct." The full discussion is in the working group report at Appendix 2.

The Committee's Reasons for its Recommendations – The Significance of Developments Since 1999

11. In the nearly eight years that have elapsed since Convocation made its policy decision, there have been a number of important developments internal and external to the Law Society that, in the Committee's view, impact on a policy for vacating discipline records.

12. As a general observation, the Committee notes that since 1999, to borrow a phrase, times have changed. Within the sphere of self-regulation, regulators facing pressures from governments, interest groups and the general public have been forced to examine their roles, to justify their existence and respond to the scrutiny that they experience from time to time as a result of increased expectations for transparency, effectiveness and accountability.

13. For the Law Society, this has increased sensitivity to the manner in which the regulation of the profession and regulatory processes are structured. A number of initiatives over the past few years have addressed this subject, including the Tribunals Task Force and the Investigations Task Force. The report from the Investigations Task Force, adopted by Convocation in May 2006, said:

> Timely investigations are critical to the effectiveness of the Law Society's regulatory process. The timely completion of an investigation is necessary to maintain the public's and the profession's confidence in the Law Society's regulation of lawyers. The regulatory process should be:
> a. Expeditious and meaningful in responding to complaints,
> b. Transparent and accessible,
> c. Principled and reasoned in its outcomes,
> d. Flexible in providing for alternative resolution options where appropriate, and
> e. Able to undertake necessary action to prevent harm in the public interest.

14. Against this background, the following are the specific developments and issues that informed the Committee's decision to recommend that a process to vacate records should not be pursued.

15. This decision was also informed by the issues discussed at paragraph 54 of the June 1999 report to Convocation at Appendix 1, and the views of the working group about the procedural intricacies attached to the issue at paragraphs 7 through 9 of its draft report at Appendix 2[16] .

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[16] The working group said:

> …[I]mplementing a policy to vacate discipline or conduct records would involve a time-consuming and possibly expensive operational process and potentially significant bencher time.
>
> The working group raises this issue only because it believes that Convocation, in approving the general policy question, could not have envisaged the complexity of the issue without the benefit of the same type of in-depth review. Given the intricacies of the issue, a key question is whether a decision to devise methods to vacate records can be practically implemented.

The *Finney* Decision

16. In the decision of the Supreme Court of Canada in *Finney v. Barreau de Quebec*, [2004] 2 S.C.R. 17, the Court, after an examination of the Barreau's investigation of a member's conduct, enunciated some key principles about lawyer regulation.[17] These included the following:

a. Timeliness:
All stages of the complaint process should be completed with diligence and in a timely manner. These steps would include, as appropriate, investigation/inspection, analysis and prosecution. In Finney, the Court found a number of instances where the Barreau could have acted much sooner. For example, the Barreau had determined at a preliminary stage that the member's competency was in question, and yet it took a year to obtain a "provisional disbarment".

b. Effective response to risk:
A law society must utilize the tools at its disposal to investigate and prosecute a member's conduct. Of the many issues raised by the lawyer in this case, some were based on complaints while others arose out of an assessment of his competence. The Barreau seemed to get caught up in a web of process that did not advance the public protection or complaints response mandates.

c. Effective communications with complainants:
Complainants must be kept up-to-date on the progress of their complaint;

d. Integration of information in the complaints and discipline history of a member: A member's entire disciplinary history is relevant, *inter alia*, to assess the risks that a lawyer poses to the public;[18]

---

[17] The *Finney* case was a suit in damages, in which the Barreau du Quebec was found liable to the client of the lawyer under investigation for the Barreau's failure to adequately address the issues of professional conduct. The Court found that the Barreau, because of its failure, could not claim the protection of the immunity clause in its governing legislation, where acts done in good faith in the performance of the Barreau's duties could not be prosecuted. The Barreau was found to be negligent, indifferent and careless to the point where its actions amounted to bad faith. Mrs. Finney was awarded $25,000 and costs on a solicitor and client basis.

[18] Lebel J. noted the following:

> At the point when fresh complaints were made by the respondent, the Barreau had to have been aware of Belhassen's problematic professional history. In the language of criminal law, he had a record. He had committed disciplinary offences and had been found guilty of them. Furthermore, the Professional Inspection Committee had conducted a lengthy investigation into his professional practices and competence, and had stated its concerns in that respect in the clearest terms possible. …The Barreau and its Syndic had to have been aware of this situation and must have taken it into account in considering the complaint and making a decision on it. In spite of the necessary administrative separation between discipline and professional inspection, the Barreau had knowledge of everything that Belhassen had done and of his record of professional misconduct.

e. Appropriate response to risks presented by a member:
A law society can and must use its discretion in deciding whether or not to pursue a complaint, but it is unacceptable for a law society to do nothing;

f. Transparency:

A law society's decision to either discontinue or proceed with a complaint investigation must be communicated, with reasons, to the complainant. The complainant should be given the opportunity to have this decision reviewed or challenged. The Court found that the Barreau essentially did not respond to complaints, even when they were repeated, for long periods of time.

g. Fair process:

Diligence and timeliness must be measured against the self-imposed procedural requirements. However, the rights of a lawyer who is the subject of a complaint should not be sacrificed in favour of a quick outcome.

17. Paragraph d. above is particularly relevant to the question of access to a member's discipline record, and its importance to a transparent and effective regulatory process. Limitations on access to discipline records will become an issue if the Law Society implements any of the models for vacating records.

<u>The Law Society's Publications Policy</u>

18. The most recent enhancements to the Society's policy for publication of discipline decisions were the result of the report of the Tribunals Task Force in April, 2005. Convocation adopted a number of recommendations, including those relating to publication issues. On this subject, the Task Force said:

> In analyzing publication issues it is important to consider the role that publication of tribunal matters plays in the Law Society's self-governance. The Law Society regulates the profession in the public interest. Today's public demands more openness and accountability from self-regulating professions.
>
> One of the Law Society's most important public interest functions is ensuring that lawyers who commit acts of professional misconduct are held accountable for their actions. While it is essential to ensure that the tribunals process is fair, transparent and consistent, *it is also important that information about matters before panels and their decisions are easily accessible by the public, whenever there is a public interest in having that information.*

…The nature of the complaints and the lawyer's professional record in fact made it plain that this was an urgent case that had to be dealt with very diligently to ensure that the Barreau carried out its mission of protecting the public in general and a clearly identified victim in particular.

> In response to lawyer misconduct, the Law Society must not only act, but must be seen to act. Otherwise, the public confidence in self-regulation is called into question. *To the extent that the Law Society deviates from a policy of transparency and public information, there must be good cause for doing so.*
>
> (Emphasis added)

19. Convocation adopted the following recommendation on publication:

> It is appropriate for the Law Society to post its tribunals decisions on its web site. The policy question raised by the issue is whether there is a public interest in making that information available without time limit. The Task Force weighed whether the actual tribunal reasons should remain on the website indefinitely or whether it would be sufficient, after a period of time, to provide only information on the finding and penalty against the member.
>
> Currently, what is on the Law Society web site is the case digests that are printed in the Ontario Lawyers' Gazette (the Gazette). These remain on line indefinitely because the Gazette issues remain in the Archives section of the web site. Law Society decisions are also available on CanLII and QuickLaw, and as with all jurisprudence, are available indefinitely. Given the increasing demand for regulator accountability, transparency and information, it is appropriate that the actual decisions be available on the website. To do otherwise is to open the Society to the argument and perception that it is delaying, hiding or otherwise impeding the public's "right to know". However, the Task Force is of the view that after a period of time, it is not necessary for the Law Society web site to include the actual decision, which is available elsewhere, provide the finding and penalty against the member remain posted.
>
> The Task Force recommends that,
>
> a. the Law Society post tribunal decisions on its web site for a period of three years; and
>
> b. after three years the finding and penalty against the member remain on the website, with a link to the CANLII or QuickLaw sites where the decision may be found. The decision itself would no longer be available on the Law Society web site.

20. This means that currently, findings and penalties against members are maintained on an ongoing basis on the Society's website, and decisions are published on the CanLII and QuickLaw websites, for the reasons of access and transparency discussed earlier.

21. Publication through CanLII and Quicklaw creates an historical database. For anyone accessing information on lawyer discipline, there could be a "disconnect" between what appears through these sources and information the Law Society would provide if it vacated a discipline or conduct record. This may create a negative perception about the integrity of the manner in which information from the Law Society is available to the public about members.

Operational Resources and Budget Issues

22. The working group's 2002 proposal considered by the Committee involved a hearing process for granting a pardon. If this type of process were to be recommended and adopted, the impact on operational resources could be considerable.

23. At this stage, it is impossible to project how many members may take advantage of a process for granting a pardon. Statistics for the last 10 years, however, will put the issue in some perspective, if the assumption is made that the opportunity to seek a pardon would generally be attractive to members. Since 1996[19] , 798 disciplinary orders were issued for penalties other than those that terminate membership in the Society (i.e. disbarment and permission to resign[20]). Several hundred orders would also have been made in the decades before 1996.

24. The cost of such a process cannot be estimated at this stage, although it is a fact that a hearing process will involve resources from both the Professional Regulation Division and the Tribunals Office. The majority of the work (preparation for the hearings) would fall to the Professional Regulation Division.

25. The allocation of time and resources to work required in advance of the hearing process to vacate records will become a concern, and will have additional budgetary implications, if such allocation is at the expense of resources needed for investigative work.

26. The Professional Regulation Budget has already been increased for 2007 by almost $2 million. The Division's 2007 budget for 2007 is approximately $14.6 million (of a Law Society operating budget in excess of $51 million), up from $12.7 million in 2006. The Finance and Audit Committee Report to October 2006 Convocation reflected that the increase is attributable to a number of factors including:

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

Bencher Resources

27. If a hearing type of process were to be recommended, the impact on bencher adjudication resources must be considered.

28. It is a fact that the hearing calendar for the upcoming year is solidly booked and that this trend is expected to continue. The workload of the Hearing Panel has increased considerably since June 2003. A hearing process for the purposes of a pardon, or another type of order respecting a discipline record, will increase the pressure on the Hearing Panel and generally will affect timely decision-making.

[19] Source: Law Society Annual Reports, 1996-2006. See **Appendix 3** for the actual statistics.

[20] The working group recommended that any process to vacate records should not at present be available to former members whose membership was terminated by a disciplinary order.

29. A panel of benchers will have adjudicated a matter that resulted in a disciplinary order. This raises a second issue, namely, whether those benchers should consider the related pardon application. If the answer is no, timely scheduling and availability of Hearing Panel members will likely become more of an issue.

By-Law 4 and Inter-Provincial Mobility

30. By-Law 4 (Licensing), Part VII (Inter-Provincial Practice of Law) implements the regulatory scheme for the inter-provincial mobility of Canadian lawyers in Ontario pursuant to the Federation of Law Societies' National Mobility Agreement.

31. The By-Law addresses the occasional practice of law (100 days) and the practice of law for 20 days on 10 matters in 12 months. The By-Law provides that a non-Ontario lawyer may practice in Ontario without prior permission of the Law Society if, inter alia, he or she "is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member" and additionally for the 100 days, "is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each jurisdictions of which the person is a member suspending or limiting the rights and privileges of the person."

32. Other law societies who are signatories to and observe the Agreement have similar regulations for lawyers coming into their jurisdictions, including Ontario lawyers.

33. If a change is made to the manner in which the Law Society maintains discipline records, the impact on the regulation of lawyer mobility must be considered. The specific question is whether this would affect other law societies' rules as applied to Ontario lawyers who wish to practice without prior permission in another province.

Amendments to the *Law Society Act* to Create the Register

34. The amended *Law Society Act* now includes authority for the Society to maintain a register of licensees. The Act also includes by-law-making authority with respect to the nature of the register, including what information may be removed from the register. The relevant sections are:

> 27.1 (1) The Society shall establish and maintain a register of persons who have been issued licences.
>
> Contents of register
> (2) Subject to any by-law respecting the removal of information from the register, the register shall contain the following information:
> 1. The name of each licensee.
> 2. The class of licence issued to each licensee.
> 3. For each licensee, all terms, conditions, limitations and restrictions that are imposed on the licensee under this Act, other than terms, conditions, limitations and restrictions that are imposed by the by-laws on all licences of that class.
> 4. An indication of every suspension, revocation, abeyance or surrender of a licence.

5. Any other information required by the by-laws.

Availability to public
(3) The Society shall make the register available for public inspection in accordance with the by-laws.

62. (0.1) Convocation may make by-laws,
...
49. governing the register that the Society is required to establish and maintain under section 27.1, including prescribing information that the register must contain in addition to the information required under section 27.1, governing the removal of information from the register and governing the Society's duty under section 27.1 to make the register available for public inspection;

35. This statutory requirement imposes on the Law Society an obligation to maintain this information and make it available to the public. As indicated above, some of the information relates to matters that may arise from disciplinary orders.

36. In the Committee's view, the fact that the register is now a statutory requirement means that increased importance is attached to information about members and how that information may be accessed by the public. The Committee's sees this as part of the Society's role to regulate in the public interest. Vacating records would not appear to be consistent with this obligation.

37. As a final matter, the Committee noted that transparency is also an issue with other regulators. The article from the May 5, 2007 *Toronto Star*, at Appendix 4, on the developments in this respect in the regulated health professions illustrates the point.

Summary of the Committee's Views

38. At a time when there are increased expectations that professional regulation will be effective, transparent, and accountable, the Committee views a policy by which discipline or conduct records may be vacated as untenable. As the Supreme Court of Canada noted in *Finney*, a lawyer's discipline history is a relevant factor in assessing risks to the public.

39. On those occasions when the Law Society is scrutinized for its effectiveness as a regulator, it should be prepared to justify its policies in light of its public interest mandate. In the Committee's view, the Society will not be criticized in the public realm for maintaining a record of those members who have breached professional conduct, but may well be criticized for qualifying the fact of the breach or removing it entirely from its public records.

40. Membership in the Law Society is a privilege, not a right. With that privilege comes responsibilities collectively and individually to accept regulation and the consequences that follow when breaches occur. Maintaining disciplinary records without qualification or amendment, as is currently the practice, is the responsible way for the Law Society to deal with this information. A transparent approach to regulation, including a complete and accessible record of members' discipline, will help to support effective self-regulation of the legal profession.

2010 LAWYER ANNUAL REPORT

43. The Lawyer Annual Report for the filing year 2010 appears at Appendix 6 for the information of Convocation. The Lawyer Annual Report is the form provided by the Law Society under authority of By-Law 8, as follows:

PART II

FILING REQUIREMENTS

ANNUAL REPORT

Requirement to submit annual report

5. (1) Every licensee shall submit a report to the Society, by March 31 of each year, in respect of,

(a) the licensee's professional business during the preceding year; and

(b) the licensee's other activities during the preceding year related to the licensee's practice of law or provision of legal services.

Annual Report

(2) The report required under subsection (1) shall be in a form provided by the Society.[21]

44. The following table shows changes to the form for the filing year 2010. Most of the changes are to clarify existing questions.

[21] This is the current language, which is the subject of proposed amendments to the By-Law for e-filing, discussed earlier in this report.

QUESTION/ISSUE	CHANGES FOR 2010
Section A, Question 1 a) and 1 b) Client ID question clarification	Question reworded to assist lawyers in answering question
Section A, Succession Planning	[excerpt from the Guide:] "A new question has been added to obtain information for the purpose of Law Society instruction and guidance on succession planning for lawyers and paralegals who are engaged in the private practice of law or provide legal services. Competent representation of clients includes protecting their interests in the event of the lawyer's or paralegal's death or incapacity. Information obtained through this question will assist in Law Society initiatives to ensure that plans for these events are made."
Section A, Question 5 (now Q 6) - Languages contained Serbo-Croatian	Languages split to list Croatian & Serbian separately
Section A, Question 5 (now Q 6) - Additional language added	Added ASL or LSQ (sign language)
Section G, Title & Question 1 - reference to "general" accounts	Changed reference from general accounts to general (non-trust) in accordance with By-Laws

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

45. The Professional Regulation Division's Quarterly Report (second quarter 2010), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period April to June March 2010.

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

(1) Copy of the 2010 Lawyer Annual Report.

(Appendix 6, pages 75 – 86)

(2) Copy of the Professional Regulation Division's Quarterly Report.

(pages 88 – 120)

Amendments to By-Law 4 Respecting the Licensing Application Process

Mr. Hainey advised that paragraphs 1, 2, 5, 6, 7 and 8 of the motion distributed under separate cover to amend By-Law 4 were being deferred.

It was moved by Mr. Hainey, seconded by Mr. Fleck, that the amendments to By-Law 4 (Licensing) set out in paragraphs 3, 4, 9 and 10 of the motion distributed under separate cover be approved.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 4
[LICENSING]

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009 and June 29, 2010, be further amended as follows:

1. Subsection 8 (2) of the English version of the By-Law is revoked and the following substituted:

Misrepresentations

(2) If an applicant makes a false or misleading material representation or declaration on or in connection with an application for a licence, by commission or omission, the applicant is deemed not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

2. Subsection 8 (2) of the French version of the By-Law is revoked and the following substituted:

Assertions inexactes

(2) Le requérant ou la requérante qui, soit par commission, soit par omission, fait une assertion ou déclaration pertinente inexacte ou trompeuse relativement à une demande de permis est réputé ne pas satisfaire et ne pas avoir satisfait aux exigences propres à la délivrance d'un permis en vertu de la Loi.

3. Section 8 of the English version of the By-Law is amended by adding the following subsections:

Documents and information re good character requirement

(3) An applicant shall provide to the Society,

(a) at the time she or he submits her or his completed application, all documents and information specified by the Society on the application form relating to the requirement that the applicant be of good character; and

(b) by the time specified by the Society, all additional documents and information specified by the Society relating to the requirement that the applicant be of good character.

Failure to do something: abandonment of application

(4) An applicant's application for a licence is deemed to have been abandoned by the applicant if the applicant fails to do anything required to be done under subsection (3), under paragraph 2 of subsection 13 (1), under subclause 13 (2) (b) (iii), subclause 13 (2) (c) (iii) or subclause 13 (2) (d) (iii) or under subsection 15 (2.2) within the time specified for the thing to be done.

4. Section 8 of the French version of the By-Law is amended by adding the following subsections:

Documents et renseignements portant sur les bonnes mœurs

(3) Le requérant ou la requérante fournit au Barreau :

a) au moment de la présentation de sa demande remplie en bonne et due forme, tous les documents et renseignements que le Barreau précise sur le formulaire de demande en ce qui concerne l'exigence voulant que le requérant ou la requérante soit de bonnes mœurs;

b) au moment précisé par le Barreau, tous les autres documents et renseignements qu'il précise en ce qui concerne l'exigence voulant que le requérant ou la requérante soit de bonnes mœurs.

Omission de prendre une mesure : renonciation à la demande

(4) Est réputé avoir renoncé à sa demande le requérant ou la requérante qui ne prend pas une mesure exigée au paragraphe (3), à la disposition 2 du paragraphe 13 (1), au sous-alinéa 13 (2) b) (iii), au sous-alinéa 13 (2) c) (iii) ou au sous-alinéa 13 (2) (d) (iii) ou au paragraphe 15 (2.2) dans le délai imparti.

5. Subsection 14 (2) of the English version of the By-Law is revoked and the following substituted:

Misrepresentations

(2) If a person makes a false or misleading material representation or declaration on or in connection with an examination application, by commission or omission, the person is deemed not to meet, and not to have met, the requirements for taking a licensing examination and, subject to subsection (3), the successful completion of any licensing examination taken by the person is deemed to be void.

6. Subsection 14 (2) of the French version of the By-Law is revoked and the following substituted:

Assertions inexactes

(2) Quiconque fait, soit par commission, soit par omission, une assertion ou une déclaration pertinente inexacte ou trompeuse relativement à une demande d'examen, est réputé ne pas satisfaire, et ne pas avoir satisfait, aux exigences donnant droit à passer un examen d'admission et, sous réserve du paragraphe (3), son examen d'admission n'est pas pris en compte même s'il le réussit.

7. Subsection 18 (2) of the English version of the By-Law is revoked and the following substituted:

Misrepresentations

(2) If a person makes a false or misleading material representation or declaration on or in connection with registration, by commission or omission, the person is deemed not to meet, and not to have met, the requirements for registration, the person's registration is deemed to be void, the successful completion of any licensing examination taken by the person is deemed to be void, the successful completion of any course conducted by the Society taken by the person is deemed to be void and any service under articles of clerkship is deemed to be void.

8. Subsection 18 (2) of the French version of the By-Law is revoked and the following substituted:

Assertions inexactes

(2) Quiconque fait, soit par commission, soit par omission, une assertion ou déclaration pertinente inexacte ou trompeuse relativement à une demande d'inscription, est réputé ne pas satisfaire, et ne pas avoir satisfait, aux exigences d'inscription, et son inscription est réputée sans effet; la réussite de tout examen d'admission passé par la personne est réputée sans effet; la réussite de tout cours offert par le Barreau suivi par la personne est réputée sans effet, et tout service en vertu de la convention de stage est réputé sans effet.

9. The English version of the By-Law is amended by adding the following section:

Cancellation of registration

19.1 A person's registration with the Society is cancelled if the person's application for a licence is deemed to have been abandoned by the person under subsection 8 (4).

10. The French version of the By-Law is amended by adding the following section:

Annulation de l'inscription

19.1 L'inscription d'une personne auprès du Barreau est annulée si elle est réputée avoir renoncé à sa demande de permis en application du paragraphe 8 (4).

Re: Unbundling of Legal Services and Limited Legal Representation

It was moved by Mr. Hainey, seconded by Mr. Fleck, that Convocation approve a call for input on proposed amendments to the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and Paralegal Guidelines on the subject of limited legal representation.

Carried

Re: Amendments to By-Law 8 Respecting Electronic Filing of the Lawyer's Annual Report

It was moved by Mr. Hainey, seconded by Mr. Fleck, that the amendments to By-Law 8 (Reporting and Filing Requirements) distributed under separate cover be approved.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 8
[REPORTING AND FILING REQUIREMENTS]

THAT By-Law 8 [Reporting and Filing Requirements], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, April 24, 2008, June 26, 2008, October 30, 2008 and April 30, 2009, be further amended as follows:

1. Subsection 5 (1) of the English version of the By-Law is amended by,

(a) striking out "submit" and substituting "file" in the marginal note; and

(b) striking out "submit a report to" and substituting "file a report with" in the portion immediately preceding clause (a).

2. Subsection 5 (2) of the English version of the By-Law is revoked and the following substituted:
Form, format and manner of filing

(2) The report required under subsection (1) shall be in a form provided, and in an electronic format specified, by the Society and shall be filed electronically as permitted by the Society.

Same

(2.1) Despite subsection (2), on application by a licensee, in any year, the Society may, for that year, permit the licensee to file the report required under subsection (1) in a format other than the specified electronic format and in a manner other than electronically as permitted and a licensee who files the report required under subsection (1) in the format and manner as permitted by the Society under this subsection shall be deemed to have complied with the format and manner of filing requirements set out in subsection (2).

3. Subsection 5 (2) of the French version of the By-Law is revoked and the following substituted:

Formulaire, support et mode de dépôt

(2) La déclaration exigée au paragraphe (1) doit être rédigée selon le formulaire fourni par le Barreau et sur le support électronique qu'il précise; elle doit également être déposée par voie électronique de la manière permise par le Barreau.

Idem

(2.1) Malgré le paragraphe (2), à la demande d'un titulaire de permis, le Barreau peut, pour l'année de la demande, lui permettre de déposer la déclaration exigée au paragraphe (1) sur un support autre que le support électronique précisé et autrement que par voie électronique de la manière permise; le titulaire de permis qui dépose sa déclaration exigée au paragraphe (1) sur le support et selon le mode que le Barreau permet conformément au présent paragraphe est réputé s'être conformé aux exigences en matière de support et de mode de dépôt énoncées au paragraphe (2).

4. Subsection 5 (3) of the English version of the By-Law is amended by striking out "submit" and substituting "file" wherever it occurs.

5. Subsection 5 (8) of the English version of the By-Law is amended by striking out "submit" and substituting "file".

6. Subsection 5 (8) of the French version of the By-Law is amended by striking out "soumettre" and substituting "déposer".

7. Subsection 6 (2) of the By-Law is revoked.

8. Section 6 of the English version of the By-Law is amended by striking out "submitted" and substituting "filed".

9. Section 6 of the French version of the By-Law is amended by striking out "présenté" and substituting "déposé".

10. Subsection 7 (1) of the English version of the By-Law is amended by,

(a) striking out "submit" and substituting "file" wherever it occurs; and

(b) striking out "to" and substituting "with" at the end.

11. Subsection 7 (1) of the French version of the By-Law is amended by striking out "présenter" and substituting "déposer" wherever it occurs.

12. Subsection 7 (2) of the English version of the By-Law is amended by striking out "submitted to" and substituting "filed with".

13. Subsection 7 (2) of the French version of the By-Law is amended by striking out "lui être présenté" and substituting "être déposé".

14. Subsection 8 (1) of the English version of the By-Law is amended by striking out "submitted" and substituting "filed".

15. Subsection 8 (1) of the French version of the By-Law is amended by,

(a) striking out "présenter" and substituting "déposer"; and

(b) striking out "présenté" and substituting "déposé".

16. Subsection 9 (1) of the English version of the By-Law is amended by striking out "submit" and substituting "file".

17. Subsection 9 (1) of the French version of the By-Law is amended by striking out "présente" and substituting "dépose".

Re: Amendment to Rule 1.02 of the *Rules of Professional Conduct*

It was moved by Mr. Hainey, seconded by Mr. Fleck, that the amendment to the definition of "associate" in the *Rules of Professional Conduct*, as described in the Report, be approved.

Carried

Mr. Hainey spoke to the information items in the Report.

Items for Information
- Vacating Discipline Records
- 2010 Lawyer Annual Report
- Professional Regulation Division Quarterly Report

PARALEGAL STANDING COMMITTEE REPORT

Ms. Corsetti presented the Report.

Report to Convocation
September 29, 2010

Paralegal Standing Committee

Committee Members
Cathy Corsetti, Chair
William Simpson, Vice-Chair
Marion Boyd
Robert Burd
James R. Caskey
Paul Dray
Seymour Epstein
Carl Fleck
Michelle Haigh
Paul Henderson
Douglas Lewis
Kenneth Mitchell
Baljit Sikand

Purpose of Report: Decision
Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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COMMITTEE PROCESS

1. The Committee met twice on September 15th, 2010. The first meeting was a joint meeting with the Professional Regulation and Professional Development & Competence Committees, to discuss the proposed amendments to the licensing application process in By-law 4. Committee members present were Cathy Corsetti (Chair), William Simpson, Vice-Chair, Marion Boyd, Robert Burd, James R. Caskey, Paul Dray, Seymour Epstein, Carl Fleck, Michelle Haigh, Paul Henderson, Douglas Lewis, Kenneth Mitchell and Baljit Sikand. Staff members in attendance were Malcolm Heins, Zeynep Onen, Diana Miles, Terry Knott, Elliot Spears, Sheena Weir, Roy Thomas, Sophie Galipeau and Julia Bass.

2. The second meeting was the regularly scheduled meeting of the Committee. Committee members present were Cathy Corsetti (Chair), William Simpson, Vice-Chair, Marion Boyd, Robert Burd, James R. Caskey, Paul Dray, Seymour Epstein, Michelle Haigh, Paul Henderson, Douglas Lewis, and Kenneth Mitchell. Staff members in attendance were Diana Miles, Terry Knott, Elliot Spears, Jim Varro, Sheena Weir, Sophie Galipeau and Julia Bass.

FOR DECISION

AMENDMENT TO BY-LAW 4 RESPECTING THE OPPI

Motion

3. That By-law 4 be amended to remove the exemption for the Ontario Professional Planners Institute ('OPPI'), as shown at Appendix 1.

Background

4. In June 2010, Convocation approved the Committee's proposed by-law amendments arising from the two-year review of paralegal exemptions. The Committee recommended that one of the proposed changes be deferred to September, namely the removal of the specific exemption for the Ontario Professional Planners Institute (OPPI) – By-law 4 section 30 (1) 7 iv B. This deferral permitted the Committee to give further consideration to the issue.

5. The current wording of the relevant excerpt from the By-law is as follows:

Providing Class P1 legal services without a licence

30. (1) Subject to subsection (2), the following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

***

Other profession or occupation
7. 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

6. The amendments approved in June included the removal of proceedings at municipal committees of adjustment from the ambit of the "provision of legal services." This followed submissions from municipalities indicating that some committees of adjustments function informally and would be inconvenienced if professionals such as planners and architects were unable to participate. Section 28 of the By-law now reads, in part:

Not practising law or providing legal services

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

Committee of adjustment
3. A person whose profession or occupation is not the provision of legal services or the practice of law, who, on behalf of another person, participates in hearings before a committee of adjustment constituted under section 44 of the Planning Act.

The Committee's Deliberations

7. The Committee noted that the OPPI *Professional Code of Practice* already forbids planners from acting as advocates. Further, the Committee was of the view that the principal concerns of the OPPI had been addressed by the June amendment concerning committees of adjustment. The Law Society has always agreed with the OPPI that there is no limitation on professional planners appearing in proceedings as expert witnesses.

8. The Committee is of the view that the ending of this exemption conforms to the policy previously adopted by Convocation of reducing the number of exemptions, and is in the public interest.

Appendix 1

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 4
[LICENSING]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 29, 2010

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009 and June 29, 2010, be further amended as follows:

1. Sub-subparagraph B of subparagraph iv of paragraph 7 of subsection 30 (1) of the By-Law is revoked.

FOR INFORMATION

AMENDMENTS TO BY-LAW 4 RESPECTING THE LICENSING APPLICATION PROCESS

9. The Committee approved the changes to the licensing application process in By-law 4 being proposed by the Professional Regulation Committee.

UNBUNDLED LEGAL SERVICES

10. The Committee approved the proposal to request comments on the proposed changes to the rules for lawyers and paralegals to address the provision of limited legal services. This item will be presented to Convocation by the Professional Regulation Committee.

ELECTRONIC FILING OF ANNUAL REPORTS

11. Since the creation of the Paralegal Annual Report ('PAR'), paralegal members have been directed to file their reports electronically. It is now proposed to make this a requirement in By-law 8, applying equally to lawyers and paralegals. Although this will not represent a change for paralegals, it will for lawyers. The necessary policy change for lawyers was approved by Convocation in May; the Paralegal Standing Committee approved the necessary change to By-law 8 being recommended to Convocation by the Professional Regulation Committee.

2010 PARALEGAL ANNUAL REPORT

12. For Convocation's information, a copy of the 2010 PAR is attached at Appendix 2, together with a list of the changes from last year's version.

UPDATE ON PARALEGAL COLLEGE ACCREDITATION

13. The Director of Professional Development & Competence provided the Committee with a briefing on the accreditation of paralegal college programmes. Some background materials are attached at Appendix 3. To date, there are 21 accredited paralegal programmes at 18 colleges.

Appendix 3

Paralegal Standing Committee

Professional Development and Competence Department
Report on Paralegal College Program Accreditation

FOR INFORMATION ONLY

Diana C. Miles, Director
Professional Development and Competence
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Nancy Reason, Manager
Michelle Ryan, Counsel

September 2010

Transition Period and Accreditation Requirements - Background

The Paralegal Licensing process completed an important transition period on June 30, 2010. Prior to that date, candidates for licensing who graduated from a non-accredited legal services education program within the previous three years were permitted to apply for Paralegal licensing. The college that offered the program also had to be approved by the Ministry of Training, Colleges and Universities.

After June 30, any individual applying for Paralegal licensing is required to have graduated from a Paralegal education program that has been accredited by the Law Society. Accreditation may be granted by the Society upon successful completion of an application process, during which PD&C audit review team members review all aspects of the program. A Paralegal program will only be accredited by the Society if it provides, at a minimum, certain fundamental competencies that cover the essential elements of procedural and substantive practice, as well as ethical and responsible practice management components.

Specifically, accredited programs must offer a minimum of 830 program hours of instruction, comprised of the following:

- 590 instructional hours in compulsory legal courses within a paralegal's permitted scope of practice,
- 120 hours of field placement/practicum work experience, and
- 120 instructional hours in additional (non-legal) courses that support a well-rounded college graduate.[1]

In addition to ensuring that the curriculum is satisfactory, Professional Development and Competence (PD&C) reviewers assess the qualifications of faculty, including whether or not they are current members of the Law Society (if they are teaching substantive law courses), the rigour of assessment practices and examinations, and the suitability of the program's Field Placement process.

Accreditation Experience to Date

Paralegal education programs at private career and community colleges began submitting their applications for accreditation in spring 2008 when accreditation became available. There has been significant growth in this area, especially prior to the transition date of June 30, 2010, with the PD&C team members reviewing higher than expected numbers of accreditation applications from institutions across the province. From spring 2008 until now, the PD&C team has reviewed more than 55 accreditation applications from private and community colleges including applications from multi-campus institutions. In addition, we have requested and reviewed numerous clarification documents relating to applications in order to complete our reviews.

Currently, there are 21 accredited programs offered in Ontario (with some programs being offered at multiple campus locations), representing 18 community colleges and private career academies. This group also includes accreditation of the first French language Paralegal education program which will be offered starting in the fall of 2010. The accredited institutions are located in the Greater Toronto Area, Barrie, Sudbury, Windsor, Ottawa, Belleville, Peterborough, Haileybury, Kitchener and London. At this time, there are another three program applications being assessed for accreditation. Interest in accreditation remains high from at least four other schools; they are planning to reapply after a previously unsuccessful attempt.

The Law Society continues to liaise regularly with the Ministry of Training, Colleges and Universities (MTCU) on the issues of accreditation and audit of paralegal education programs. The MTCU is copied on accreditation approvals or denials of all college programs, with reasons. This relationship has been extremely beneficial in ensuring that the new system of training and regulation for Paralegals supports the achievement of validated competencies in the public interest.

[1] These are usually "general education" courses, however, some institutions have chosen to offer either additional legal courses or additional hours in core legal courses, which is acceptable, as long as the additional courses/hours are within a paralegal's scope of practice.

Paralegal College Program Audits

Commencing November 2009, the Law Society began to audit accredited paralegal education programs to ensure that their curricula, infrastructure and systems continue to support the required training expectations set out in the competencies. Audits – including site visits and submission of updated documentation – are an integral part of the accreditation process in order to reinforce quality in all aspects of program delivery.

Within the audit process, PD&C auditors review the current status of the Paralegal program, including faculty qualifications, field placement standards, and whether competencies continue to be met. Each accredited program will be audited at least once within three years from the date of its accreditation and then at least once every five years thereafter.

At the date of this Report, PD&C has completed five audits, and is finalizing a sixth audit. Audits were undertaken at four community colleges in the GTA and Ottawa (Seneca, Algonquin, Durham, Sheridan) and a private career college in London (Westervelt). Algonquin Careers Academy's audit, a private career college with operations in Ottawa and Mississauga, is currently being completed.

The Audit Policy and Framework document[2] sets out the parameters of the audit process. Basically, each audit is comprised of the following:

- Documentation Review of selected materials (e.g. up-to-date course descriptions, completed assessments, faculty lists and Field Placement reports) to ensure that current documentation meets or exceeds minimum quality standards and competencies as measured against the program's approved accreditation application, and
- A two-day Site Visit to each campus that delivers the accredited Paralegal program, during which the PD&C auditors interview the program's Administrators, faculty, students, Field Placement Coordinator and observe Paralegal classes in operation.

Each audit is visited by two auditors from the same PD&C team that reviews accreditation applications. Subsequent to completion of the Site Visits, a draft Audit Report is written to reflect the current status of the Paralegal program. Each Report contains Recommendations and commentary regarding the program's elements and is sent to the audited institution for review and clarification prior to the issuance of a final Audit Report. The Audit Team has experienced positive compliance from each of the audited institutions regarding the Recommendations made in the reports.

Audit Issues and Results

To date, most of the concerns raised in the Audit Reports address issues regarding faculty qualifications, the need to teach material within a paralegal's scope of practice and a lack of satisfactory infrastructure to properly support Field Placements. The issue with regard to faculty qualifications is one that has required particular attention.

[2] **Appendix 1** to this memo, this document is also available to all institutions on the Law Society website.

In the original Accreditation Application package, there were no specific criteria for minimum qualifications required to teach a mandatory substantive law course (i.e., one of the 18 courses required by the Law Society). Subsequent to receiving numerous accreditation applications where non-licensees were proposed as appropriate instructors for these substantive law courses, the PD&C team refined the accreditation specifications to state that instructors in substantive law courses must be licensees in good standing (e.g. not suspended, not the subject of a current disciplinary action and not restricted in his/her practice due to disciplinary reasons). This requirement has been communicated to Administrators and Program Coordinators at each of the completed audits and to all accredited institutions. Each institution is given sufficient time to comply (if it is not in compliance) and this requirement will be set out in the accreditation application restatement which the PD&C team is currently developing.

When an area for improvement is identified, the audited institution is given clear direction on the items that must be rectified and is provided with appropriate timeframes to address the issues. Once the items in question are addressed, a final opinion on the Audit is provided by the auditors. While there are still only early results from the audits completed to date, the three issues raised above – faculty qualifications, maintaining the teaching focus within a paralegal's scope of practice and appropriate Field Placement procedures – are the common areas where accredited schools must place more emphasis.

Conclusion

The PD&C Audit team has scheduled three more audits of accredited Paralegal education programs for fall 2010, and will continue this process for all programs into 2011 and beyond, until each accredited education program is audited. The Law Society is committed to ensuring that all audit activities are conducted in a standardized, fair and transparent manner. Both the accreditation and audit processes will continue to operate and develop over time and in response to policy directives and senior management direction, and the PD&C team will continue to keep the Paralegal Standing Committee informed of its progress.

The Law Society's relationship with the Community and Private Colleges is extremely positive, as evidenced by numerous requests to have Law Society representatives attend their organization and association meetings to assist them to implement the competencies and operational requirements and expectations of a qualified paralegal studies program.
For the Paralegal Standing Committee's information, the complete list of accredited, denied and 'in-process' college programs is attached at Appendix 2, and the list of audit activities is attached at Appendix 3.

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

Copy of the 2010 Paralegal Annual Report.

(Appendix 2, pages 9 – 17)

Re: Amendment to By-Law 4 Respecting Ontario Provincial Planners Institute ('OPPI')

It was moved by Ms. Haigh, seconded by Mr. Simpson, that the amendment to By-Law 4 as shown at Appendix 1 in the Report to remove the exemption for the Ontario Professional Planners Institute ('OPPI') be approved.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 4
[LICENSING]

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009 and June 29, 2010, be further amended as follows:

1. Sub-subparagraph B of subparagraph iv of paragraph 7 of subsection 30 (1) of the By-Law is revoked.

Items for Information

- Amendments to By-Law 4 Respecting the Licensing Application Process
- Unbundled Legal Services
- Electronic Filing of Annual Reports
- 2010 Paralegal Annual Report
- Update on Paralegal College Accreditation

REPORT ON THE CONDUCT OF THE BENCHER ELECTION AND THE PROVISIONS OF BY-LAW 3

The Treasurer advised that the Report on the Conduct of the Bencher Election and the Provisions of By-Law 3 was deferred to the October 2010 Convocation.

TREASURER'S REMARK

The Treasurer welcomed Julian Falconer to Convocation.

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

Mr. Conway presented the Report.

Report to Convocation
September 29, 2010

Professional Development & Competence Committee

COMMITTEE MEMBERS

Thomas Conway (Chair)
Mary Louise Dickson (V-Chair)
Alan Silverstein (V-Chair)
Constance Backhouse
Larry Banack
Jack Braithwaite
Marshall Crowe
Aslam Daud
Paul Dray
Lawrence Eustace
Gary Lloyd Gottlieb
Jennifer A. Halajian
Susan Hare
Thomas Heintzman
Paul Henderson
Laura Legge
Dow Marmur
Susan McGrath
Janet Minor
Daniel Murphy
Nicholas Pustina
Catherine Strosberg
Bonnie Tough

Purpose of Report: Decision/Information

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

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COMMITTEE PROCESS

1. The Committee met on September 15, 2010. Committee members Tom Conway (Chair), Mary Louise Dickson (Vice-Chair), Constance Backhouse, Larry Banack, Marshall Crowe, Paul Dray, Larry Eustace, Gary Lloyd Gottlieb, Jennifer Halajian, Susan Hare, Paul Henderson, Dow Marmur, Susan McGrath, Janet Minor, Nicholas Pustina, and Bonnie Tough attended. Bencher James Caskey also attended. Staff members Diana Miles, Lisa Hall and Sophia Sperdakos also attended. Part of the meeting was a joint meeting with the Paralegal Standing Committee and the Professional Regulation Committee.

FOREIGN LEGAL CONSULTANTS AND ARBITRATIONS

MOTION

2. That Convocation approve the proposed amendments to By-law 4 [Licensing] and By-law 14 [Foreign Legal Consultants] as follows:

> THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009 and June 29, 2010, and By-Law 14, made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007 and April 30, 2009, be further amended as follows:
>
> 1. Section 35 of the English version of By-Law 4 is amended by adding the following paragraph:
>
> 2. An individual,
>
> i. who is authorized to practise law in a jurisdiction outside Ontario, and
>
> ii. whose practice of law in Ontario is limited to practising law as counsel to a party to an arbitration conducted in Ontario to which the *International Commercial Arbitration Act* applies.
>
> 2. Subsection 1 (2) of By-Law 14 is revoked.

Introduction and Background

3. In April 2009 the Committee recommended and Convocation approved an amendment to the provisions respecting Foreign Legal Consultants to permit them to participate in arbitrations held in Canada as follows:

   a. where the law governing the proceeding and the law at issue is either international law or the law of the Foreign Legal Consultant's home jurisdiction, or,

b. when assisted by counsel licensed to practice law in Canada, where the law at issue is either international law or the law of the Foreign Legal Consultant's home jurisdiction and the law governing the proceeding is Canadian.

4. By-law amendments were not drafted because shortly after Convocation approved the changes to the FLC regime, two lawyers who practise in the area of international commercial arbitrations alerted the Law Society to possible unintended consequences of the provisions, particularly (b).

5. After discussing the issue the Committee then invited one of the lawyers who raised concerns about the effect of the original policy on international arbitrations to attend the Committee to provide further information. Following its discussions of the issue, the Committee has concluded that,

a. In most jurisdictions there is no restriction on foreign lawyers appearing as counsel in international commercial arbitrations seated in those jurisdictions. International arbitrations are governed by supranational or autonomous arbitration processes. In Ontario the *International Commercial Arbitration Act* provides that the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration is in force in Ontario. The UNCITRAL Model Law sets out a code for conducting such arbitrations. In the course of such arbitrations there is no requirement for international counsel to be assisted by counsel called to the bar in the jurisdiction in which the arbitration is conducted, regardless of what "procedure" governs. (A copy of the Act is attached as Appendix 1.) It is important to note that Ontario's *International Commercial Arbitrations Act* makes it clear that parties that all have their places of business in Ontario cannot render an arbitration "international" and within the application of that act, simply because they so agree.

b. Such international commercial arbitrations take place regularly in Ontario without regulation by the Law Society. There does not appear to be a regulatory reason to interfere with their operation, provided they legitimately come within the purview of the *International Commercial Arbitration Act.*

c. Because the language referred to in paragraph 3 above would in fact make it impossible for such arbitrations to be carried out without local counsel, an alternative approach should be considered that would preserve the status quo respecting international commercial arbitrations. This approach does not require changes to the FLC regime, but rather involves simplifying By-Law 14 (FLCs) and introducing a general provision elsewhere in the by-laws that those lawyers not licensed in Ontario may conduct international commercial arbitrations without a permit or licence. This would include FLCs.

6. The *Law Society Act* ("the Act") defines "the provision of legal services" in sections 1(5) and (6) as follows:

Provision of legal services
(5) For the purposes of this Act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person. 2006, c. 21, Sched. C, s. 2 (10).

Same
(6) Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.

2. Selects, drafts, completes or revises, on behalf of a person,

   i. a document that affects a person's interests in or rights to or in real or personal property,

   ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,

   iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,

   iv. a document that relates to a matter under the *Bankruptcy and Insolvency Act* (Canada),

   v. a document that relates to the custody of or access to children,

   vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or

   vii. a document for use in a proceeding before an adjudicative body.

3. Represents a person in a proceeding before an adjudicative body.

4. Negotiates the legal interests, rights or responsibilities of a person. 2006, c. 21, Sched. C, s. 2 (10).

7. In defining what a foreign legal consultant can and cannot do, current By-Law 14 (Foreign Legal Consultants) tracks the section 1(5) and (6) definition in the Act. It reads as follows:

   1(1)"foreign legal consultant" means a person who holds a valid permit authorizing the person to give legal advice in Ontario respecting the law of a foreign jurisdiction.

   1 (2) For greater certainty, in this By-Law, giving legal advice in Ontario respecting the law of a foreign jurisdiction does not include,

(a) representing a person in a proceeding before an adjudicative body in Ontario;
(b) selecting, drafting, completing or revising, on behalf of a person, a document for use in a proceeding before an adjudicative body in Ontario; or
(c) selecting, drafting, completing or revising, on behalf of a person, a document that relates to or deals with the laws of Ontario or the laws of Canada applicable in Ontario.

8. The limitations set out in (2) of By-law 14 are already covered in section 1(5) and (6) of the Act and could be removed from the FLC by-law to simplify it. At the same time, and as stated above, to ensure that those lawyers, including FLCs, who wish to conduct international commercial arbitrations are entitled to do so without a licence (or FLC permit) there would be an amendment to the appropriate Law Society By-law to allow an exemption for lawyers not already licensed in Ontario (which would include FLCs) to conduct international commercial arbitrations that come within the *Ontario International Commercial Arbitration Act*, without being required to have a license or FLC permit.

9. This approach makes it clear that in these defined circumstances no licence or permit would be required, nor would there be a need for local counsel's participation.

10. A red-line version of the relevant by-law amendments is set out at Appendix 2. The official bilingual version of the by-law will be distributed at Convocation.

Appendix 1

International Commercial Arbitration Act

R.S.O. 1990, CHAPTER I.9

Consolidation Period: From June 22, 2006 to the e-Laws currency date.

Last amendment: 2006, c.19, Sched.C, s.1 (1).

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Definition

1. (1) In this Act,

"Model Law" means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in the Schedule. R.S.O. 1990, c. I.9, s. 1 (1).

Idem

(2) Except as otherwise provided, words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Model Law. R.S.O. 1990, c. I.9, s. 1 (2).

Definition of "this State" in Model Law

(3) In article 1 (1) of the Model Law, an "agreement in force between this State and any other State or States" means an agreement between Canada and any other country or countries that is in force in Ontario. R.S.O. 1990, c. I.9, s. 1 (3).

Idem

(4) In articles 34 (2) (b) (i) and 36 (1) (b) (i) of the Model Law, "the law of this State" means the laws of Ontario and any laws of Canada that are in force in Ontario. R.S.O. 1990, c. I.9, s. 1 (4).

Idem

(5) In article 35 (2) of the Model Law, "this State" means Canada. R.S.O. 1990, c. I.9, s. 1 (5).

Idem

(6) In articles 1 (2) and (5), 27, 34 (2) (b) (ii) and 36 (1) (b) (ii) of the Model Law, "this State" means Ontario. R.S.O. 1990, c. I.9, s. 1 (6).

Definition of "different States" in Model Law

(7) In article 1 (3) of the Model Law, "different States" means different countries, and "the State" means the country. R.S.O. 1990, c. I.9, s. 1 (7).

Definition of "competent court" in Model Law

(8) In the Model Law, a reference to "a competent court" means the Superior Court of Justice. R.S.O. 1990, c. I.9, s. 1 (8); 2006, c. 19, Sched. C, s. 1 (1).

Model Law in force in Ontario

2. (1) Subject to this Act, the Model Law is in force in Ontario. R.S.O. 1990, c. I.9, s. 2 (1).

Application

(2) The Model Law applies to international commercial arbitration agreements and awards, whether made before or after the coming into force of this Act. R.S.O. 1990, c. I.9, s. 2 (2).

Idem

(3) Despite article 1 (3) (c) of the Model Law, an arbitration conducted in Ontario between parties that all have their places of business in Ontario is not international only because the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country. R.S.O. 1990, c. I.9, s. 2 (3).

Conciliation and other proceedings

3. For the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, use mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure. R.S.O. 1990, c. I.9, s. 3.

Removal of arbitrator

4. (1) Unless the parties otherwise agree, if an arbitrator is replaced or removed in accordance with the Model Law, any hearing held prior to the replacement or removal shall start afresh. R.S.O. 1990, c. I.9, s. 4 (1).

Idem

(2) The parties may remove an arbitrator or a substitute arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed. R.S.O. 1990, c. I.9, s. 4 (2).

Article 11 (1) of Model Law replaced

5. Article 11 (1) of the Model Law shall be deemed to read as follows:

(1) A person of any nationality may be an arbitrator. R.S.O. 1990, c. I.9, s. 5.

Rules applicable to substance of dispute

6. Despite article 28 (2) of the Model Law, if the parties fail to make a designation pursuant to article 28 (1) of the Model Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute. R.S.O. 1990, c. I.9, s. 6.

Consolidation of proceedings

7. (1) The Superior Court of Justice, on the application of the parties to two or more arbitration proceedings, may order,

(a) the arbitration proceedings to be consolidated, on terms it considers just;

(b) the arbitration proceedings to be heard at the same time, or one immediately after another; or

(c) any of the arbitration proceedings to be stayed until after the determination of any other of them. R.S.O. 1990, c. I.9, s. 7 (1); 2006, c. 19, Sched. C, s. 1 (1).

Appointment of arbitral tribunal

(2) Where the court orders arbitration proceedings to be consolidated pursuant to clause (1) (a) and the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the court shall appoint the arbitral tribunal chosen by the parties, but, if the parties cannot agree, the Court may appoint the arbitral tribunal for that arbitration proceeding. R.S.O. 1990, c. I.9, s. 7 (2).

Court order not required for consolidation

(3) Nothing in this section shall be construed as preventing the parties to two or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking such steps as are necessary to effect that consolidation. R.S.O. 1990, c. I.9, s. 7 (3).

Stay of proceedings

8. Where, pursuant to article 8 of the Model Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates. R.S.O. 1990, c. I.9, s. 8.

Interim measures and security

9. An order of the arbitral tribunal under article 17 of the Model Law for an interim measure of protection and the provision of security in connection with it is subject to the provisions of the Model Law as if it were an award. R.S.O. 1990, c. I.9, s. 9.

Recognition and enforcement of foreign arbitral awards

10. For the purposes of articles 35 and 36 of the Model Law, an arbitral award includes a commercial arbitral award made outside Canada, even if the arbitration to which it relates is not international as defined in article 1 (3) of the Model Law. R.S.O. 1990, c. I.9, s. 10.

Enforcement

11. (1) An arbitral award recognized by the court is enforceable in the same manner as a judgment or order of the court. R.S.O. 1990, c. I.9, s. 11 (1).

Idem

(2) An arbitral award recognized by the court binds the persons as between whom it was made and may be relied on by any of those persons in any legal proceeding. R.S.O. 1990, c. I.9, s. 11 (2).

Crown bound

12. This Act applies to an arbitration to which Her Majesty is a party. R.S.O. 1990, c. I.9, s. 12.

Aids to interpretation

13. For the purpose of interpreting the Model Law, recourse may be had, in addition to aids to interpretation ordinarily available under the law of Ontario, to,

(a) the Report of the United Nations Commission on International Trade Law on the work of its eighteenth session (June 3-21, 1985); and

(b) the Analytical Commentary contained in the Report of the Secretary General to the eighteenth session of the United Nations Commission on International Trade Law,

as published in The Canada Gazette, Part I, Vol. 120, No. 40, October 4, 1986, Supplement. R.S.O. 1990, c. I.9, s. 13.

SCHEDULE

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission on International Trade Law on 21 June, 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. *Scope of application*

(1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement,

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. *Definitions and rules of interpretation*

For the purposes of this Law:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25 (a) and 32 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. *Receipt of written communications*

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. *Waiver of right to object*

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. *Extent of court intervention*

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. *Court or other authority for certain functions of arbitration assistance and supervision*

The functions referred to in articles 11 (3), 11 (4), 13 (3), 14, 16 (3) and 34 (2) shall be performed by the Supreme or District Court.

CHAPTER II. ARBITRATION AGREEMENT

Article 7. *Definition and form of arbitration agreement*

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. *Arbitration agreement and substantive claim before court*

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. *Arbitration agreement and interim measures by court*

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. *Number of arbitrators*

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

Article 11. *Appointment of arbitrators*

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties:

(a) a party fails to act as required under such procedure; or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. *Grounds for challenge*

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. *Challenge procedure*

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. *Failure or impossibility to act*

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13 (2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

Article 15. *Appointment of substitute arbitrator*

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. *Competence of arbitral tribunal to rule on its jurisdiction*

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. *Power of arbitral tribunal to order interim measures*

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. *Equal treatment of parties*

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. *Determination of rules of procedure*

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. *Place of arbitration*

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. *Commencement of arbitral proceedings*

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. *Language*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. *Statements of claim and defence*

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. *Hearings and written proceedings*

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. *Default of a party*

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23 (1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. *Expert appointed by arbitral tribunal*

(1) Unless otherwise agreed by the parties, the arbitral tribunal,

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. *Court assistance in taking evidence*

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. *Rules applicable to substance of dispute*

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. *Decision making by panel of arbitrators*

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. *Settlement*

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. *Form and contents of award*

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20 (1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. *Termination of proceedings*

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34 (4).

Article 33. *Correction and interpretation of award: additional award*

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1) (a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. *Application for setting aside as exclusive recourse against arbitral award*

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State, or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case, or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside, or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State, or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. *Recognition and enforcement*

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. *Grounds for refusing recognition or enforcement*

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case, or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced, or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place, or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State, or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1) (a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

R.S.O. 1990, c. I.9, Sched.

FOR INFORMATION

AMENDMENTS TO BY-LAW 4 RESPECTING THE LICENSING APPLICATION PROCESS

11. The Committee approved the changes to the licensing application process in By-law 4 being proposed by the Professional Regulation Committee in its Report to Convocation.

CERTIFIED SPECIALIST BOARD APPOINTMENTS

12. By-law 15 establishes the Certified Specialist Board whose members the Professional Development & Competence Committee appoints. The Board is to consist of not fewer than eight and not more than 12 persons as follows:

- Two benchers who are certified specialists
- One lay bencher
- Not fewer than five and not more than nine persons who are certified specialists who are not benchers.

13. In May 2010, the Committee discussed two vacancies on the Certified Specialist Board. It has approved lay bencher Dow Marmur to fill the vacancy for a lay bencher. It has approved Céline Allard to fill the certified specialist vacancy. Ms. Allard practises as a sole practitioner in association with Allard Labrosse in Ottawa. She was called to the bar in 1986 and certified as a specialist in Family Law in 2002. She was appointed to the Family Law specialty committee in 2007 just before the committees were disbanded. She is bilingual.

14. The Committee thanks both new Board members for accepting these positions.

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

Copy of the red-line version of the By-law 4 and 14 amendments.

(Appendix 2, pages 19 – 20)

Re: Amendments to By-Laws 4 and 14 Respecting Foreign Legal Consultants and Arbitrations

It was moved by Mr. Conway, seconded by Ms. Dickson, that the amendments to By-Law 4 (Licensing) and By-Law 14 (Foreign Legal Consultants) distributed under separate cover be approved.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009 and June 29, 2010, and By-Law 14, made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007 and April 30, 2009, be further amended as follows:

1. Section 35 of the English version of By-Law 4 is amended by adding the following paragraph:

2. An individual,

i. who is authorized to practise law in a jurisdiction outside Ontario, and

ii. whose practice of law in Ontario is limited to practising law as counsel to a party to a commercial arbitration that is conducted in Ontario and that is “international” within the meaning prescribed by the *International Commercial Arbitration Act*.

2. Section 35 of the French version of By-Law 4 is amended by adding the following paragraph:

2. Toute personne :

i. qui est autorisée à exercer le droit dans un ressort autre que l'Ontario,

ii. dont l'exercice du droit en Ontario se limite à l'exercice du droit en qualité d'avocat ou d'avocate d'une partie à un arbitrage commercial ayant lieu en Ontario et est considéré comme « international » au sens de la *Loi sur l'arbitrage commercial international*.

3. Subsection 1 (2) of By-Law 14 is revoked.

Mr. Conway spoke to the information item in the Report on the Certified Specialist Board appointments.

Items for Information
- Amendment to By-Law 4 Respecting the Licensing Application Process
- Certified Specialist Board Appointments

FINANCE COMMITTEE REPORT

Ms. Hartman spoke to the budget process.

Report to Convocation
September 29, 2010

Finance Committee

Committee Members
Carol Hartman, Chair
Linda Rothstein, Vice-Chair
Raj Anand
Larry Banack
Marshall Crowe
Larry Eustace
Carl Fleck
Susan Hare
Janet Minor
Ross Murray
Judith Potter
Paul Schabas
Catherine Strosberg
Gerald Swaye
Brad Wright

Purpose of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on September 15, 2010. The Committee members in attendance were: Carol Hartman, Chair, Linda Rothstein, Vice-Chair, Larry Banack, Marshall Crowe, Carl Fleck, Susan Hare, Janet Minor, Ross Murray, Judith Potter, Gerald Swaye and Brad Wright. The Treasurer, Laurie Pawlitza also attended.

2. Bruce Hutchison, Chair, LibraryCo Inc., Kathleen Waters, President & CEO LAWPRO, Steven Jorgensen Vice President Finance & Treasurer LAWPRO also attended,

3. Staff in attendance: Malcolm Heins, Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse, Zeynep Onen, Director of Professional Regulation and Roy Thomas, Director of Communications.

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FOR INFORMATION

2011 BUDGET PROCESS

22. In April 2010, Convocation reviewed a timetable for the preparation of the 2011 Budget which envisaged the approval of the 2011 budget by Convocation in October 2010.

23. In order to give the Committee more time and more detailed information to provide input into the budget, the Committee decided to extend the budget process by a month, amending the timing of budget submissions to:

- Finance Committee budget discussions in September 2010
- Finance Committee budget discussions in October 2010
- An information session for all benchers after Convocation on October 28, 2010
- A recommendation to Convocation on the budget by the Finance Committee in November 2010
- Approval of the 2011 budget by Convocation in November 2010.

24. Under the By-Laws, and to allow sufficient time for member billings, the budget must be approved by Convocation prior to the end of November.

25. At the September meeting, the Committee received the operational reviews for Professional Regulation and Communications which are available on Benchernet and reviewed the draft LibraryCo Inc. budget for 2011.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITE SUR L'EQUITE ET LES AFFAIRES AUTOCHTONES REPORT

Ms. Minor spoke to the information items on the report of the Discrimination and Harassment Counsel and the Equity Public Education Series Calendar.

Report to Convocation
September 29, 2010

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

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Constance Backhouse
Paul Copeland
Avvy Go
Susan Hare
Thomas Heintzman
Dow Marmur
Judith Potter
Heather Ross
Mark Sandler
Paul Schabas
Baljit Sikand
Beth Symes

Purpose of Report: Decision and Information

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

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For Information.....TAB B

Report of the Activities of the Discrimination and Harassment Counsel - January 1, 2010 to June 30, 2010

Equity Advisor's Report (2008-2010)

Aboriginal Initiatives Operational Review (2009-2010)

Equity Public Education Series Calendar (2010 – 2011)

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on September 14, 2010. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Paul Copeland, Avvy Go, Susan Hare, Dow Marmur, Judith Potter and Heather Ross participated. Cynthia Petersen, Discrimination and Harassment Counsel, participated to present her semi-annual report. Staff members Josée Bouchard, Alison Hurst, Marisha Roman, Ryan Schwab, Rudy Ticzon, Aneesa Walji and Mark Wells also attended.

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INFORMATION
REPORT OF THE ACTIVITIES OF THE
DISCRIMINATION AND HARASSMENT COUNSEL - JANUARY 1, 2010
TO JUNE 30, 2010

17. Subsection 20 (1) (b) of By-law 11 – *Regulation of Conduct, Capacity and Professional Competence* provides “unless the Equity and Aboriginal Issues Committee/Comité sur l’équité et les affaires autochtones (the Committee) directs otherwise, the Discrimination and Harassment Counsel (the DHC) shall make a report to the Committee not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.”

18. Subsection 20(2) of By-law 11 provides "The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting".

19. The Committee submits the DHC Report of the *Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada - January 1, 2010 to June 30, 2010* to Convocation, pursuant to Subsection 20(2) of By-law 11 (Appendix 3).

EQUITY ADVISOR'S REPORT (2008-2010)

20. The Equity Advisor's Report for the period of 2008 to 2010 is presented at Appendix 4.

ABORIGINAL INITIATIVES OPERATIONAL REVIEW (2009-2010)

21. The Aboriginal Initiatives Operational Review for 2009 and 2010 is presented at Appendix 5.

EQUITY PUBLIC EDUCATION SERIES CALENDAR 2010-2011

22. The Equity Public Education Series calendar for the period of 2010 to 2011 is presented at Appendix 6.

APPENDIX 3

REPORT OF THE ACTIVITIES OF
THE DISCRIMINATION AND HARASSMENT COUNSEL
FOR THE LAW SOCIETY OF UPPER CANADA

For the period from January 1, 2010 to June 30, 2010

Prepared By Cynthia Petersen
Discrimination and Harassment Counsel

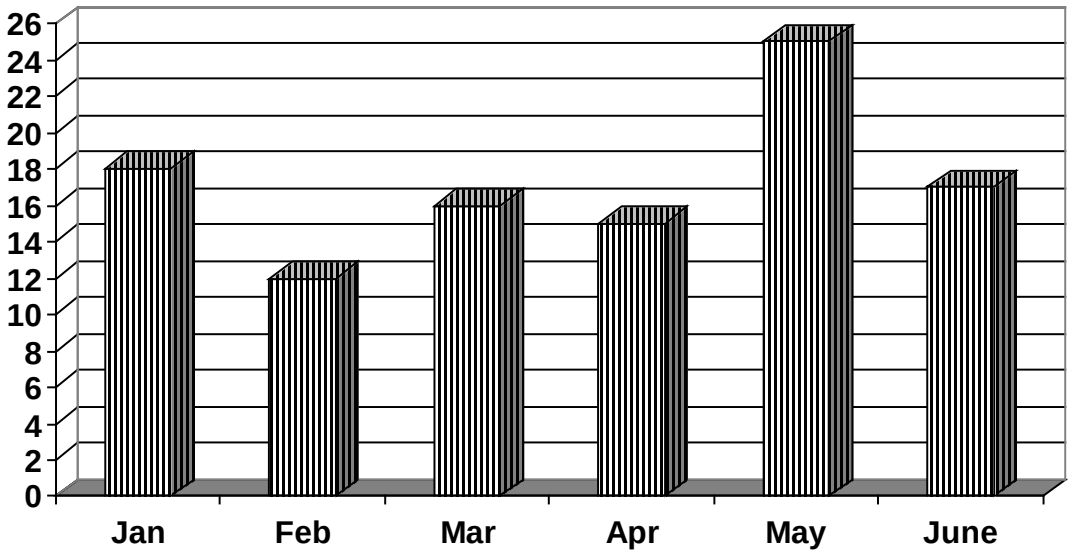
OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

1. During this six month reporting period (January 1 to June 30, 2010), 103 individuals contacted the DHC Program with a new matter.[6]

2. There was an average of 17 new contacts per month, significantly above the average of 14.5 new contacts per month over the past 7 years.

[6] Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same matter are not counted in this number.

3. The volume of new contacts was distributed as follows:



4. Of the 103 individuals who contacted the DHC, 68 (66%) used the telephone to make their initial contact, 32 (31%) used email, one (1) used a fax communication, one (1) used regular mail, and one (1) contacted the DHC in person.

5. During this reporting period, all of the new contacts with the Program were provided services in English. The DHC services are also available in French.

SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

6. Of the 103 new contacts with the Program, 40 individuals reported specific complaints of discrimination or harassment by a lawyer, law student or paralegal in Ontario. This is the single highest number of complaints received by the DHC in any 6 month reporting period since the inception of the Program.[7]

7. Two complaints were made against paralegals. The remaining 38 complaints were made against lawyers and law students.

8. The two complaints against paralegals were both made by members of the Law Society.

9. Of the 38 discrimination and harassment complaints against lawyers and law students, 14 (37%) were made by members of the public and 24 (63%) were made by members of the bar. This is an unusual ratio; members of the public have made, on average, 57% of the complaints against lawyers over the past 7 years.

[7] Note that there were 66 complaints in all of 2009, 43 complaints in all of 2008 and 35 complaints in all of 2007.

10. There were eight (8) complaints by law students. This is significantly higher than the average of 5.4 student complaints annually over the past 7 years. Indeed, it is the single highest number of student complaints ever received in a 6 month reporting period since the inception of the Program.

COMPLAINTS AGAINST LAWYERS AND LAW STUDENTS FROM MEMBERS OF THE BAR

11. In this reporting period, there were 24 complaints against lawyers and law students made by members (and student members) of the bar. Sixteen (16) of these complaints were made by lawyers and 8 were made by law students.

12. Of the 24 complaints by members of the legal profession, 15 (63%) were made by women and 9 were made by men. This is somewhat lower than the average percentage of complaints by women over the past 7 years: 78%.

13. Of the 16 complaints by lawyers, 9 (56%) were made by women and 7 were made by men.

14. Of the 8 complaints by law students, 6 (75%) were made by women and 2 were made by men.

15. Ten (10) of the 16 complaints by lawyers (63%) arose in the context of the complainant's employment.

16. The remaining complaints by lawyers arose in a variety of different contexts. Three (3) complaints were against lawyers who were providing a public service to the complainants. One (1) complaint was against an opposing counsel in litigation. One (1) complaint was against a lawyer who was a tenant of the complainant. One (1) complaint was made by a lawyer on behalf of his client, who had been sexually assaulted by another lawyer.

17. Of the 8 complaints by law students, 4 (50%) arose in the context of the complainant's employment (or a job interview). The remaining 4 complaints arose in a variety of contexts, including social interactions between law students.

18. The following grounds of discrimination were raised in the complaints from members of the legal profession: sex, disability, race, ancestry, marital status, age, and record of offences. Particulars of the complaints follow.

19. Sixteen (16) complaints were based (in whole or in part) on sex:

    a. A Black female lawyer complained about sexist and racist disrespectful and demeaning behaviour by an opposing white male counsel.

    b. A female law student from an unspecified racialized minority complained about racist and sexist harassment and discrimination by both male and female law professors (who were members of the Law Society).

c. A mature female articling student complained about discriminatory and sexist questions asked by a male lawyer/prospective employer during a job interview.

d. A female articling student reported that her male principal was harassing her on the basis of sex by, among other things, making sexist remarks about her appearance and manner of dress.

e. A female associate complained about sexist harassment by a male associate in her workplace, as well as reprisals by male partners in her firm after she made a formal harassment complaint about the other associate.

f. A female lawyer complained that her employment was unjustifiably terminated shortly after she announced that she was pregnant and intended to take a maternity leave from work.

g. A bi-racial male articling student reported that he was both sexually and racially harassed by male lawyers (of diverse ethnic and racial background) in his workplace.

h. A female lawyer reported that she was sexually harassed by a male lawyer in her workplace.

i. A female law student complained that she was sexually assaulted by a male law student in a social setting.

j. A female lawyer complained that she was subjected to misogynist and sexist language by a male lawyer in her office.

k. A female lawyer complained that her law firm was refusing to take any measures to protect her from a violent male ex-partner who was threatening her at work, contrary to a restraining order prohibiting him from having any contact with her in the workplace.

l. A female associate who had completed a maternity leave complained that her firm was discriminating against her on the basis of pregnancy in terms of her wage progression at work.

m. A male lawyer complained on behalf of a female client, reporting that she had been sexually assaulted by another male lawyer.

n. A female articling student reported a sexual assault by a male articling student.

o. A female associate complained that she was “mommy tracked” (i.e., given inadequate work and few opportunities for advancement in her firm) after she returned from a maternity leave.

p. A male lawyer complained about another male lawyer, who was a tenant in his office and who was sexually harassing his female staff.

20. Five (5) complaints were based (in whole or in part) on race:

    a. Two male lawyers complained about race discrimination by other lawyers in the provision of public services. One complainant self-identified as Black, the other was from an unspecified racialized minority.
    b. A Black female lawyer complained about sexist and racist disrespectful and demeaning behaviour by an opposing white male counsel.

    c. A female law student from an unspecified racialized minority complained about racist and sexist harassment and discrimination by white law professors (who were members of the Law Society).

    d. A bi-racial male articling student reported that he was both sexually and racially harassed by male lawyers (of diverse ethnic and racial background) in his workplace.

21. Four (4) complaints were based on disability:

    a. A female lawyer reported that her former employer (also a lawyer) was discriminating against her based on disability and adversely impacting her current employment prospects.

    b. A male lawyer complained about discrimination by another lawyer in the provision of a public service, based on a perceived disability.

    c. A male lawyer complained about discrimination in his employment based on his disability.

    d. A female lawyer complained about her employer's failure to accommodate her disability in the workplace.

22. One complaint was based on record of offences. An articling student reported discrimination against him by his employer based on a criminal conviction for which he had received a pardon.

23. One complaint was based on ancestry. A First Nations lawyer reported harassment based on, among other things, his ancestry, by a female lawyer who was a professional colleague.

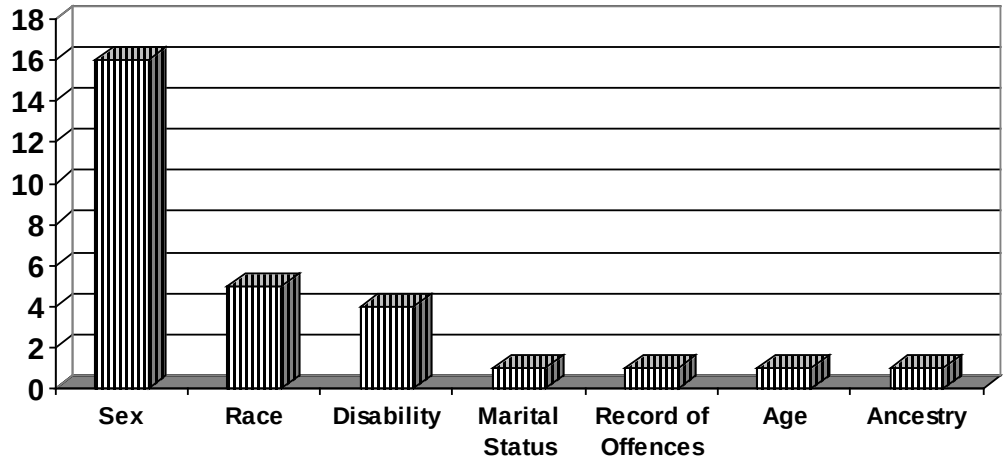
24. One complaint was based on age and marital status (as well as sex). A mature female articling student reported that she was asked inappropriate discriminatory questions during a job interview by a male lawyer.

25. In summary, the number of complaints[8] by lawyers and law students in which each of the following prohibited grounds of discrimination was raised are:

[8] The number exceeds 24 because some complaints involved multiple grounds of discrimination.

a.	sex	16	(6 sexual harassment; 3 pregnancy)
b.	race	5	
c.	disability	4	
d.	marital status	1	
e.	ancestry	1	
f.	record of offences	1	
g.	age	1	

Grounds Raised in Complaints by Members of the Bar



COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

26. During this reporting period, there were 14 complaints against lawyers made by members of the public.

27. Eight (8) of the public complaints (57%) were made by men and 6 were made by women. This is an unusual gender ratio; over the past 7 years, women have made an average of 62% of the public complaints against lawyers.

28. Of the 14 public complaints:

    a. Six (6) involved clients complaining about their own lawyer;
    b. Two (2) involved employees complaining about a lawyer in their workplace;
    c. Four (4) involved litigants who were complaining about the conduct of opposing counsel in their case;
    d. Two (2) complaints arose in other contexts in which lawyers were providing a public service.

29. The following grounds of discrimination were raised in one or more of the complaints from the public: sex, disability, sexual orientation, race and age. Particulars of the complaints follow:

30. Seven (7) complaints were based on disability:

    a. A disabled man complained that his own lawyer had mocked his disability.

    b. A man called on behalf of his disabled wife, complaining that his wife's lawyer was exploiting her disability in a discriminatory fashion.

    c. A disabled man reported that his own lawyer was mistreating him based on his disability.

    d. A man called on behalf of his psychiatrically disabled friend, reporting that his friend was being harassed by opposing counsel in litigation (based on disability).

    e. A male disabled lawyer complained about a failure to accommodate his disability by another lawyer who was a service provider.

    f. A male accused in a criminal proceeding complained about harassment and discrimination by a lawyer based on a perceived psychiatric disability. The lawyer was acting as his surety while he was released on bail.

    g. A disabled woman who was employed by a law firm reported that her employer/lawyer was not accommodating her disability.

31. Five (5) complaints were based (in whole or in part) on sex:

    a. A woman complained that her own male lawyer was bullying and intimidating her in a gendered way.

    b. A woman complained that her own male lawyer was sexist toward her.

    c. A female litigant complained about racism and sexism by opposing counsel in her case.

    d. A transsexual female litigant complained about discrimination based on her gender identity by opposing male counsel in her case.

    e. A female administrative assistant complained about sexual harassment by her former male employer/lawyer and about reprisal for ending a consensual sexual relationship with him.

32. One complaint was based on sexual orientation. A closeted gay male litigant complained that opposing counsel intentionally and maliciously "outed" him publicly as a means of intimidation and embarrassment.

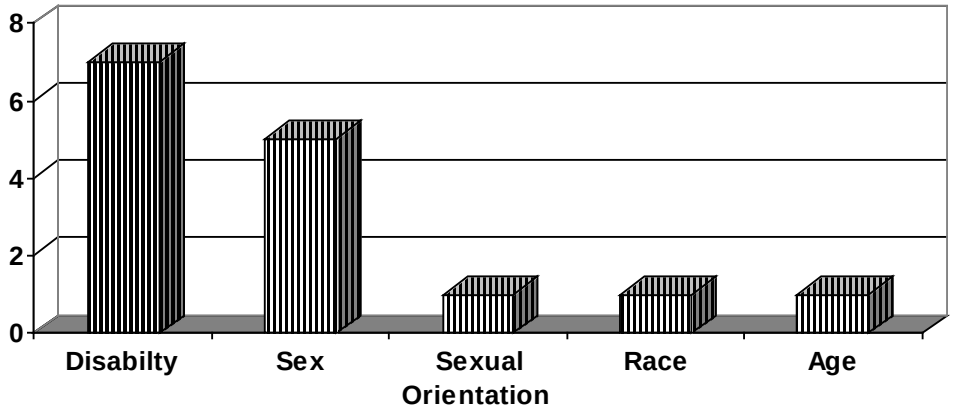
33. One complaint was based in part on race. A female litigant (from an unspecified racialized minority) complained about racism and sexist by opposing counsel in her case.

34. One complaint was based on age. A man called on behalf of his elderly mother, complaining that she was being exploited and mistreated by her own lawyer based on her advanced age.

35. In summary, the number of public complaints[9] in which each of the following grounds of discrimination was raised are as follows:

a.	disability	7	
b.	sex	5	(1 sexual harassment; 1 gender identity)
c.	sexual orientation	1	
d.	race	1	
e.	age	1	

Grounds Raised in Public Complaints



COMPLAINTS AGAINST LAWYERS BY PARALEGALS

36. In this reporting period, there were no complaints against lawyers or law students by paralegals.

COMPLAINTS AGAINST PARALEGALS

37. In this reporting period, the DHC received two (2) complaints of discrimination or harassment against paralegals.

38. Both complaints were made by women in the legal profession. Both complaints arose in the context of litigation.

39. A young female lawyer complained that a male paralegal, who was representing the opposing party in litigation, was condescending and sexist toward her.

[9] The total exceeds 14 because some complaints were based on multiple grounds of discrimination.

40. A paralegal complained that another paralegal, who was representing the opposing party in litigation, used demeaning sexist and racist language in addressing her.

SERVICES PROVIDED TO COMPLAINANTS

41. Complainants who contacted the DHC were advised of various avenues of redress open to them, including:

a. filing an internal complaint within their workplace;

b. making a complaint to the law firm that employs the respondent lawyer, law student or paralegal;

c. filing an Application with the Human Rights Tribunal of Ontario;
d. filing a complaint with the Law Society;

e. where appropriate, contacting the police; and

f. contacting a lawyer for advice regarding possible legal claims.

42. Complainants were also provided with information about each of these options, including:

a. what (if any) costs might be involved in pursuing an option;

b. whether legal representation is required in order to pursue an option;

c. referral to resources on how to obtain legal representation (actual referrals to lawyers are not made by the DHC);

d. how to file a complaint, Application or report (eg. whether it can be done electronically, whether particular forms are required, etc.)

e. the processes involved in each option (eg. investigation, conciliation, hearing, etc.)

f. what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.); and

g. the existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to precise limitation periods).

43. Complainants were told that the options available to them are not mutually exclusive.

44. Complainants were given information about who to contact in the event that they decided to pursue any of their options.

45. In some cases, upon request, strategic tips were provided to complainants about how to handle a situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).

46. Some complainants were referred to other agencies/organizations and/or were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

47. In addition to being advised about the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program. Where mediation was offered, the nature and purpose of mediation were explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in reaching a mutually satisfactory resolution of the complaint.

48. A number of mediation sessions were conducted during this reporting period. Informal interventions were also conducted by the DHC, upon complainants' request, to assist parties in resolving their disputes.

SUMMARY OF GENERAL INQUIRIES

49. Of the 103 new contacts with the DHC during this reporting period, 29 involved general inquiries. These contacts included:

    a. inquiries by lawyers about their responsibilities under the LSUC's Rules of Professional Conduct (eg. in respect of the duty to accommodate disabled employees, appropriate boundaries for sexual and social interactions with co-workers, obligations to disclose disabilities or pregnancy to an employer, etc.);

    b. questions about the scope of the DHC Program's mandate;

    c. questions about the services offered by the DHC;

    d. requests from the public for promotional materials about the DHC Program;

    e. inquiries about the data collected by the DHC; and

    f. inquiries about the Rules of Professional Conduct and human rights legislation as they apply to lawyers in practice in Ontario.

MATTERS OUTSIDE THE DHC MANDATE

50. During this reporting period, the DHC received 38 calls and emails relating to matters outside the Program's mandate.

51. These contacts included complaints about judges, complaints about workplace harassment that did not involve lawyers or paralegals, and complaints about discrimination that did not involve any paralegals or members of the bar (eg. complaints against landlords, the CAS, the police, etc.).

52. There were several harassment complaints against lawyers that did not involve any human rights issues or prohibited grounds of discrimination (eg. bullying, demeaning and intimidating behaviour by co-workers, employers, opposing counsel, etc.) There were also complaints of unprofessional conduct by lawyers that did not involve allegations of discrimination or harassment (eg. breach of confidentiality).

53. In addition, several individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.

54. Many of these individuals were referred to other agencies, including (but not limited to) the LSUC's Lawyer Referral Service. An explanation of the scope of the Program's mandate was provided to each person.

55. Although there is a relatively high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

PROMOTIONAL ACTIVITIES

56. The LSUC maintains a bilingual website for the DHC Program.

57. Throughout this reporting period, periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program.

58. French, English, Chinese and Braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.

59. In March 2010, the DHC gave a presentation on the Program to the first year class of law students at the University of Windsor. This is an annual event. Lynn Bevan (Alternate DHC) gave the lecture in March 2008, David Bennett (Alternate DHC) gave the lecture in 2009, and Cynthia Petersen (DHC) has done it in previous years.

60. In May 2010, the DHC gave a presentation about the Program at the annual meeting of the Prosecutors' Association of Ontario, which was attended by a significant number of paralegals, as well as lawyers. This event was part of the DHC's ongoing efforts to promote awareness of the Program among paralegals in particular.

61. The DHC works closely with the Law Society's Equity Advisor (Josee Bouchard) to design and deliver Discrimination and Harassment Prevention and Violence Prevention workshops to law firms across the province. In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the Program's services.

APPENDIX 4

Equity Advisor's Report
2008 - 2010

September 14, 2010

Report to the Equity and Aboriginal Issues Committee
Comité sur l'équité et les affaires autochtones

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

Background

1. In May 1997, the Law Society of Upper Canada unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (the "Bicentennial Report")*.[10] The Bicentennial Report reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians, bisexuals and transgender individuals and persons with disabilities in the profession, and the initiatives the Law Society had taken to promote equality and diversity. The *Bicentennial Report* made sixteen recommendations that have since guided the Law Society as it promotes equality and diversity within the legal profession.

2. The adoption of the *Bicentennial Report* led to a series of systemic changes to promote equality and diversity within the legal profession and within the Law Society. In the mid-1990's, the Law Society created a standing committee of Convocation, the Equity and Aboriginal Issues Committee (the "Equity Committee")[11] , with a mandate to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice or provision of legal services in Ontario and for addressing matters related to Aboriginal peoples and Francophones; and to consult with

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[10] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997). Report available on-line at www.lsuc.on.ca.

[11] The Equity Committee was not the first Law Society committee created to address equality issues in the legal profession. In 1988, the Law Society established a Women in the Legal Profession Subcommittee to consider emerging issues relating to women in the profession. In 1990, it became a standing committee of Convocation. In 1989, the Equity in Legal Education and Practice Committee was created. In 1996, the Women in the Legal Profession Committee and the Equity in Legal Education and Practice Committee were merged into the Admissions and Equity Committee, which later became the Equity Committee.

Aboriginal, Francophone and other equality-seeking communities in the development of such policy option.[12] It also created the Equity Initiatives Department, with five permanent staff members and one articling student, and an advisory group, the Equity Advisory Group (the "EAG")[13] , consisting of expert lawyers in the area of equality rights and legal associations that promote equality and diversity.

3. On July 31, 2003, Convocation established the Bicentennial Report Working Group to review and report on the implementation status of the recommendations contained in the *Bicentennial Report*. In January 2004, the Bicentennial Report Working Group presented the *Bicentennial Implementation Status Report and Strategies*[14] to Convocation detailing the programs, services and policies created by the Law Society as a result of the recommendations of the Bicentennial Report, analyzing the implementation status of each recommendation and proposing strategies to be examined and further implemented.

4. The Equity Advisor's report 2008-2010 focuses on the activities of the Equity Initiatives Department and the Equity Committee since 2008. In 2007, the Equity Initiatives Department also took on the responsibility of providing support to the Access to Justice Committee. Activities of that Committee are also included in this report, as they inform the work of the Equity Initiatives Department and the Equity Committee.

5. The purpose of the report is to assist the Equity Committee in developing its work plan for the period of 2010 – 2012 by outlining ongoing work and the deployment of resources of the Equity Initiatives Department. The report is divided as follows:
   a. Policy Development and Working Groups;
   b. Research Projects;
   c. Program Development and Initiatives;
   d. Public Education and Professional Development;
   e. Law Society as Leading Employer.

Policy Development and Working Groups

6. Over the years, the Equity Committee, under the advice of the Equity Advisory Group and the Equity Initiatives Department, developed a number of guidelines and model policies for the legal profession. The following are made readily available to the public and the profession, in both French and English:

[12] By-Law 3 – Benchers, Convocation and Committees.

[13] Formerly the Treasurer's Advisory Group.

[14] Available on-line at www.lsuc.on.ca.

a. *Addressing Harassment and Discrimination – A Guide to Developing a Policy for Law Firms or Legal Organizations, April 2009;*[15]

b. *Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context - Information about Lawyers' Responsibilities, January 2007;*

c. *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements,* updated May 2005;

d. *Respect for Religious and Spiritual Beliefs – A Statement of Principles of the Law Society of Upper Canada,* March 2005;

e. *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment - A Model Policy for Law Firms and other Organizations,* May 2004;

f. *Guide to Developing a Policy Regarding Workplace Equity in Law Firms,* updated March 2003;

g. *Guide to Developing a Policy Regarding Flexible Work Arrangements,* updated March 2003.

7. Between 2008 and 2010, the following working groups were actively engaged in developing policies and initiatives.

Equity Advisory Group

8. The EAG is a group of lawyers and legal organizations with expertise in the area of equality and diversity and has a mandate to assist the Equity Committee in the development of policy options for the promotion of equity and diversity in the legal profession. EAG identifies and advises the Equity Committee on relevant issues and provides input to the Equity Committee on the planning and development of policies and practices related to equity within the profession and within the Law Society. Between 2008 and 2010, EAG, provided expert advice and substantive comments on the following projects:

a. Aboriginal Consultation – feedback to the Aboriginal Initiatives Counsel on the survey and consultation with members of the Aboriginal Bar;

b. Retention of Women in Private Practice Project – actively participated in all aspects of this project, including participation as a member of the expert advisory groups.

c. Change of Status Survey –provided feedback on the methodology and survey instrument.

[15] The guidelines and model policies are available on-line at http://rc.lsuc.on.ca/jsp/equity/policies-publications-reports.jsp

d. Fiona Kay Transition and Exit and Re-entry studies –reviewed and provided advice on the survey instruments.

e. *Model Policy: Fair and Accessible Recruitment, Interview and Hiring* - developed a first draft of this model policy, to be considered by the Equity Committee in 2010/2011.

f. Law Foundation of Ontario: Linguistic and Rural Access to Justice Project – participated in submissions by the Access to Justice Committee and the Equity Committee to the Law Foundation of Ontario.

g. Demographic Data Collection – provided leadership and expert advice in the development of a demographic question to be included in the Lawyer and Paralegal Annual Reports.

h. Federation of Law Societies' *Consultation Paper on Canadian Common Law Degree* – participated in the Equity Committee's submissions to the Federation of Law Societies.

i. *Addressing Harassment and Discrimination: Guide to Developing a Policy for Law Firms and Legal Organizations* –reviewed the guide on addressing harassment and discrimination, which has been approved by the Equity Committee.

j. Consultation on Continuing Professional Development requirement – Worked and participated in the Equity Committee submissions.

k. Michael Ornstein Report – *The Racialization and Gender of Lawyers in Ontario* – provided feedback to professor Ornstein about methodology.

l. *Accessibility for Ontarians with Disabilities Act, 2005* – in the process of developing resources for the profession, under the guidance of the Equity Initiatives Department.

m. Return to Practice Working Group – provided feedback to the Working Group on barriers faced by lawyers form equality-seeking communities who leave practice for extended periods of time and wish to return. Also assisted in organizing focus groups with lawyers who are members of equality-seeking communities.

Retention of Women in Private Practice Working Group

9. The Retention of Women in Private Practice Working Group was very active between 2008 and 2010. In May 2008, Convocation approved the following nine recommendations to enhance the retention of women in private practice. The project is now in its second year of implementation and activities are described further in this report. The Project has led to the creation of a number of very active and dedicated working groups, also described below.

a. That the Law Society implement a three-year pilot project (the “Justicia Project") for firms of more than 25 lawyers and the two largest firms in each region, in which firms commit to adopting programs for the retention and advancement of women [Recommendation 1].

b. That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women through programs such as a leadership and professional development institute and on-line resources. This recommendation includes the implementation of a change of status survey and the establishment of a Women’s Leadership and Professional Development Institute [Recommendation 2].

c. That the Law Society develop a five-year pilot project to promote and support practice locums to address the challenges women face in finding available and competent lawyers to maintain their practice during leaves of absence. Such concerns were also raised in the report of the Law Society of Upper Canada’s Sole Practitioner and Small Firm Task Force [Recommendation 3].

d. That the Law Society implement a three-year Parental Leave Benefit Pilot Program, effective in 2009, as follows:
   i. benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans;
   ii. provide a fixed sum of $3,000 a month for three months (maximum $9,000 per leave per family unit) to cover among other things expenses associated with maintaining their practice during a maternity, parental or adoption leave [Recommendation 4].

e. That the Law Society provide access, in collaboration with legal associations where appropriate, to resources for women in sole practices and small firms through programs such as on-line resources and practice management and career development advice [Recommendation 5].

f. That the Law Society work with law schools to provide access to information and education opportunities about the practice of law, the business of law, types of practices, practising in diverse work settings and available resources [Recommendation 6].

g. That the Law Society create an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities to assist with the implementation of the recommendations outlined in this report [Recommendation 7].

h. That the Equity Committee facilitate the development of networking strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities in firms of all sizes [Recommendation 8].

i. That, after a period of three years of implementation of programs, and after a period of five years of implementation of the Practice Locum program, the Law Society assess the effectiveness of each program and identify further strategies for the retention and advancement of women in private practice [Recommendation 9].

Aboriginal Working Group

10. The Aboriginal Working Group continued its work under the leadership of its Chair, bencher Susan Hare, and the Aboriginal Initiatives Counsel, Marisha Roman. In January 2009, the *Final Report of the Aboriginal Bar Consultation*[16] was presented to Convocation for its information. As a result of the consultation, "Aboriginal law" was added as a practice category in the Lawyer Annual Report. The final report outlined three primary initiatives for the Law Society to maintain and/or develop in order to support Aboriginal Licensing candidates and lawyers. They related to maintaining networking and mentoring programs, developing continuing legal education programs in Aboriginal issues and continuing development of a certified specialist program in Aboriginal law. In 2010, the Aboriginal Initiatives Counsel and bencher Susan Hare embarked on province-wide outreach initiatives with Aboriginal members of the bar and Licensing candidates to provide information about Law Society initiatives, to enhance networking opportunities for Aboriginal Licensing candidates and lawyers and to gather further information from the bar.

Human Rights Monitoring Group

11. The Monitoring Group was created in 2006. The original mandate of the Monitoring Group approved by Convocation was to,

a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;

b. determine if the matter is one that requires a response from the Law Society; and

c. prepare a response for review and approval by Convocation.

12. The mandate was further expanded to state that where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate. In such instances, the Monitoring Group shall report on the matters at the next meeting of Convocation.

13. On September 20, 2007, Convocation approved the following recommendations, which expanded the Monitoring Group's mandate:

[16] Available on-line at http://rc.lsuc.on.ca/pdf/equity/aboriginalBarConsultation.pdf

a. That the Monitoring Group explore the possibility of developing a network of organizations, and work collaboratively with them, to address human rights violations against judges and lawyers;

b. That the Monitoring Group be authorized to collaborate with the Law Society of Zimbabwe (the "LSZ") to assist it in strengthening its self-regulation capabilities and the independence of the profession.

14. Since its inception in 2006, the Monitoring Group has recommended interventions to Convocation in support of lawyers and judges generally through letters of intervention to foreign authorities and public statements.

15. The legal profession reacted very strongly and positively to the Law Society's actions in support of lawyers in Pakistan, and numerous lawyers from foreign countries have noted that public interventions from organizations such as the Law Society are helpful in informing the community that human rights violations of lawyers and judges do not go unnoticed. The activities show support to the civil societies and legal organizations involved, enhance the public scrutiny of the authorities' treatment of lawyers and judges and increase the profile and awareness of cases within the legal profession.

16. To date, the Monitoring Group recommended, and Convocation approved, Law Society interventions in more than thirty matters originating from countries such as Algeria, China, Democratic Republic of Congo, Egypt, Georgia, Honduras, India, Iran, Kenya, Malaysia, Nepal, Pakistan, Philippines, Saudi Arabia, Sudan, Syria, Tunisia, Vietnam and Zimbabwe.

17. The interventions relate to cases of human rights violations against both judges and lawyers as a result of the discharge of their professional duties. Reports of the incidents indicate that the lawyers and judges have been subjected to various forms of persecutions, including,

a. harassment and intimidation;

b. unlawful detentions and incommunicado detentions;

c. unlawful house arrests;

d. violence, abuse and torture; and

e. assassinations.

18. The Monitoring Group has expanded its activities by launching a Rule of Law Education Series. In 2009, it held a Rule of Law Education Series event, organized by the Equity Initiatives Department, at which more than 100 participants attended. Christopher Alexander, former Ambassador of Canada and United Nations Deputy Special representative of the Secretary- General for Afghanistan spoke on the topic " *Peace, Reconciliation and Justice: The Afghanistan experience Reflections of a Canadian Diplomat".*

Return to Practice Working Group

19. In the spring of 2009, the Return to Practice Working Group was created as part of the Retention of Women in Private Practice Project. The Return to Practice Working Group has the following mandate:

    a. To identify strategies and develop resources to facilitate the return of women lawyers, following extended absences, to the workforce and more specifically into the medium and large firms and small firms and sole practice; and

    b. To identify strategies that would also be applicable to women lawyers who wish to re-enter the legal workforce in non private practice work environments.

20. The Working Group has undertaken the following activities:

    a. Held approximately 8 focus group meetings across Ontario with women who have left the practice of law for extended periods of time (5 years);

    b. Conducted individual meetings with women who did not attend the focus group meetings;

    c. Met with Professor Fiona Kay to explore the possibility of surveying the profession about gender based trends when lawyers take extended leaves from practice;

    d. Obtained statistical data of those who have left the profession and those who have left and returned;

    e. Participated in the Women in Transition executive education program with the University of Toronto;[17] and

    f. Conducted research synthesizing the findings of the focus groups and reviewing existing programs and initiatives to address barriers to returning to practice.

Steering Committee of the Ontario Civil Legal Needs Project (OCLNP)

21. The OCLNP is a comprehensive legal research project designed to promote access to justice by identifying and quantifying the "everyday" legal problems experienced by low and middle-income Ontarians. The OCLNP seeks to identify gaps as well as opportunities for enhancing access to civil justice for the people of Ontario. For the purpose of this project, low and middle-income is defined as annual household income of less than $75,000. The OCLNP is a collaboration between three partners, The Law Society of Upper Canada (the Law Society), Legal Aid Ontario (LAO), and Pro Bono Law Ontario (PBLO).

[17] The program, held on June 17-18, 2009, was developed by the University of Toronto's Summer Institute for Executive Legal Education and co-sponsored by the Law Society of Upper Canada. Speakers included Beth Symes, Co-Chair Return to Practice Working Group Co-Chair, and Janet Minor, Chair of the Equity and Aboriginal Issues Committee and member of the Return to Practice Working Group.

22. A Steering Committee was formed to lead the project. The Honourable R. Roy McMurtry is chair while bencher Marion Boyd for the Law Society, John McCamus for LAO and Lorne Sossin for PBLO are members of the Committee. The Steering Committee is responsible for making decisions governing the overall management of the OCLNP and the approval of the final report for release to the OCLN partners' respective boards of governors prior to its public release. Further information about the project is provided below.

Research Projects

23. Between 2008 and 2010, the Equity Committee, the Access to Justice Committee and the Equity Initiatives Department undertook the following significant research projects:

a. *Final Report - Retention of Women in Private Practice Working Group;*
b. *Change of Status Quantitative Survey*, April 30, 2010;
c. Professor Ornstein, *Racialization and Gender of Lawyers in Ontario,* April 2010
d. *Aboriginal Bar Consultation,* January 2009;
e. OCLNP – *Listening to Ontarians* report, May 2010;
f. Return to Practice study; ongoing;
g. Professor Kay, *Transitions Survey*, ongoing;
h. Professor Kay, *Exit/Re-entry Survey*, ongoing;
i. Lawyer and Paralegal Annual Report – Demographic Question;
j. Other noteworthy initiatives.

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Final Report – Retention of Women in Private Practice Working Group

24. *The Final Report – Retention of Women in Private Practice Working Group* was presented to Convocation in May 2008. In addition to providing recommendations that were approved by Convocation and have led to the implementation of an intensive program to retain women in private practice (described below), the report compiles the findings of focus groups with women in private practice and those who have left private practice, provides an extensive literature review and overview of the challenges faced by women in the legal profession and best-practices to retain women in private practice.

Change of Status Quantitative Survey

25. In 2008, the Law Society of Upper Canada retained The Strategic Counsel to undertake a longitudinal study with lawyers who change their professional legal status. The 2009 *Change of Status Quantitative Study – Report of Research Findings* was released publicly and is available on-line at http://www.lsuc.on.ca/news/b/conv/. The report is also available on the Law Society website (www.lsuc.on.ca) in the Retention of Women Project section.

26. The report provides findings from a survey conducted via an online methodology among a sample of Law Society lawyers who changed status in 2009. In total, 5263 lawyers filed a change of status with the Law Society last year and a total of 1257 respondents completed the survey, a strong response rate of 31%. The findings of the survey are used to inform the Retention of Women in Private Practice Working Group and the Equity and Aboriginal Issues Committee in the development of policies and initiatives. The findings are also used in presentations and conferences about the legal profession and have received media attention.

Professor Ornstein, Racialization and Gender of Lawyers in Ontario

27. Professor Ornstein's report provides a statistical portrait of Aboriginal, visible minority and women lawyers in Ontario, beginning with a detailed profile of the profession based on the 2006 Canadian Census. To understand the pace of change in the profession, the report compares age groups and examines changes in the number of Aboriginal and visible minority lawyers since 1981 and women lawyers since 1971. Comparisons between the number of lawyers from each racialized community and its population are used to measure the profession's capacity to serve Aboriginal and visible minority communities. A comparison of the number of lawyers to the number of university graduates with occupations in each community measures equity in access to the profession. Then the report considers the impact on access to the profession of immigration, the age at which immigrants come to Canada and a person's first language. To contextualize the degree of diversity in the legal profession, lawyers in Ontario are compared to lawyers in other provinces and territories and to other professions and managers in Ontario.

28. The second part of this report deals with the status of Aboriginal, visible minority and women lawyers, beginning with the numbers who work at law firms, for government, and as counsel in other areas, and then differentiating law firm associates and employees from partners and sole practitioners. Further analysis focuses on hours of work and earnings.

29. This report is based mainly on the 2006 Census, which collected highly detailed information about every person in one in every five Canadian households, including about 6,400 Ontario lawyers. The Census provides exact comparisons between lawyers and the entire population of Ontario and relevant sub-groups.

Aboriginal Bar Consultation

30. The Aboriginal Bar Consultation Project combined a mail-out survey and a face-to-face consultation with Aboriginal members of the bar. The survey instrument was developed in consultation with members of the Aboriginal Working Group. The consultation was conducted through face-to-face and telephone interviews with Aboriginal lawyers and gathered information about the experiences of Aboriginal lawyers in law school, the Bar Admission Course or the Licensing program and post-call.

31. This report provides an overview of the demographic profile of the Aboriginal bar in Ontario. It also discusses the assessment of services currently provided by the Law Society to support Aboriginal Licensing candidates and lawyers by the consultation respondents. Finally, this report provides the respondents' feedback on three initiatives that were developed by the Aboriginal Working Group under the direction of the Equity Committee. The report is divided into the following headings:

    a. Demographic profile of the Aboriginal Bar in Ontario;

    b. Common experiences of Aboriginal lawyers;

    c. Survey respondents' assessment of Law Society support initiatives for Aboriginal Licensing candidates and lawyers;

d. Analysis of consultation results for proposed initiatives and programs for Aboriginal lawyers;

e. Analysis of programs and initiatives for Aboriginal lawyers in other jurisdictions;

f. Conclusions and proposals for action.

OCLNP – Listening to Ontarians report, May 2010

32. This report is intended to provide an overview of civil legal needs of low and middle-income Ontarians, examine how those needs are being met, identify gaps, and suggests strategies for addressing those gaps. The Law Society of Upper Canada, Legal Aid Ontario and Pro Bono Law Ontario agreed in 2008 to undertake a joint research project to identify and quantify for the first time the civil legal needs experienced by low and middle-income Ontarians. The research has three phases: a phone survey to assess quantitatively the civil legal needs, a series of focus groups with front-line legal and social service providers to identify gaps and areas for collaboration, and a mapping exercise to show the availability and range of existing services. The first two phases are complete and this report, published in English and in French, contains the findings of the first two phases, which are focused on civil legal needs. The report is available on-line at http://www.lsuc.on.ca/latest-news/a/ontario-civil-legal-needs-project/.

Return to Practice project

33. The Return to Practice project is described above. The final report, to be presented to the Equity Committee in the fall 2010 will likely include the following information:

a. Challenges to returning to practice;

b. Focus group and interview findings;

c. Reports from other Canadian law societies;

d. Programs and initiatives across Canada and in foreign jurisdications;

e. Initiatives of the Law Society of Upper Canada;

f. Experiences from other professions;

g. Implications for women from equality-seeking communities;

h. Areas for further exploration.

Professor Kay, Transitions Survey

34. Professor Fiona Kay, Queen's University, received a grant from the Social Sciences and Humanities Research Council of Canada and the Law School Admissions Council to undertake a 20 year follow-up study to three surveys of the profession conducted in 1990, 1996 and 2002.

35. The purpose of the surveys was to assist the Law Society in identifying work transitions in the legal profession, including entries and exits from private practice, changes across and within various work settings, and motives for leaving the practice of law entirely. Participation in each of these surveys was at an average response rate of 70 percent.

36. The findings of each of these surveys were published in several reports by the Law Society entitled *Transitions in the Ontario Legal Profession* (1991), *Barriers and Opportunities within Law* (1996), and *Turning Points and Transitions* (2004). The findings of the surveys also contributed to a number of important Law Society policy initiatives (e.g., Rules of professional conduct dealing with discrimination and sexual harassment; model policies for alternative workplace arrangements; reduction in annual fee for members on parental leave; continuing education programs).

37. The fourth survey is now in its final form and was conducted in 2009/2010 be conducted in September. A report is anticipated in the fall 2010.

Professor Kay, Exit/Re-entry Survey

38. Professor Kay also received funding to undertake a second study that will aim to examine the factors leading to departures from law practice as well as the different conditions that operate either as barriers to or facilitators of re-entry to law practice following a period of absence.

39. The study consists of a questionnaire that includes the following topics:

    a. Education & professional training;

    b. Work history (key transitions prior to departure from practice);

    c. Duration of absence from the practice of law & activity (occupation) during this span;

    d. Mentoring and networks (support, networking strategies, and professional development);

    e. Returning to practice (intentions, points of re-entry, strategies, preparation, and job-seeking tactics);

    f. Resources to enable re-entry to practice (useful as identified by respondents);

    g. Family and household responsibilities;

    h. Demographic information.

40. The survey will consist of a sample of newer entrants (individuals called to the bar as of 1990 to 2009), spanning nearly twenty years of calls to the Ontario Bar. Approximately 5000 members have been surveyed. A report is expected in 2011.

Lawyer and Paralegal Annual Report – Demographic Question

41. The Law Society included in the Lawyer and Paralegal Annual Reports for 2009 the following self-identification demographic question:

Please check any of the following characteristics to which you self-identify (please select all that apply):

Aboriginal
- ❑ First Nations, Status Indian, Non-Status Indian
- ❑ Inuit
- ❑ Métis

Racialized / Person of Colour / Ethnic Origin
- ❑ Arab
- ❑ Black (e.g. African-Canadian, African, Caribbean)
- ❑ Chinese
- ❑ East-Asian (e.g. Japanese, Korean)
- ❑ Latin American, Hispanic
- ❑ South Asian (e.g. Indo-Canadian, Indian Subcontinent)
- ❑ South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino)
- ❑ West Asian (e.g. Iranian, Afghan)
- ❑ White

Other
- ❑ Transgender/ Transsexual
- ❑ Gay/Lesbian/Bisexual
- ❑ Person with Disability[2]
- ❑ Francophone[1]

Religion or Creed
- ❑ Agnostic
- ❑ Atheist
- ❑ Buddhist
- ❑ Catholic
- ❑ Christian Orthodox
- ❑ Christian (not included elsewhere)
- ❑ Eastern religions
- ❑ Hindu
- ❑ Jewish
- ❑ Muslim
- ❑ Protestant
- ❑ Sikh
- ❑ Other

42. The results of the first survey of lawyers and paralegals will be compiled in the fall 2010.

Other Noteworthy Initiatives

43. The Equity Committee and the Access to Justice Committee, in collaboration with the EAG, made submissions to the Law Foundation of Ontario about access to justice and equity considerations related to the *Linguistic and Rural Access to Justice Project.*

44. The Equity Committee made submissions, in collaboration with EAG, on the equity implications of the Federation of Law Societies' *Consultation Paper on Canadian Common Law Degree* and provided its views on the Continuing Professional Development requirement.

45. The Equity Committee made submissions, in collaboration with the EAG, on the Consultation on Continuing Professional Development requirement.

Program Development and Initiatives

46. Between 2008 and 2010, the Equity Initiatives Department and the Equity Committee continued to implement the following programs:

    a. The Retention of Women in Private Practice Project;

    b. Networking with Law Societies;

    c. Collaborating with Law Schools;

    d. Aboriginal Initiatives;

    e. Discrimination and Harassment Program;

    f. Mentoring Program.

Retention of Women in Private Practice Project

47. The following provides an outline of the implementation progress for each of the recommendations in the Retention of Women Project.

Recommendation 1 – The Justicia Project

48. Fifty-seven firms participate in the Justicia Project, including one large out of province firm from the Eastern provinces. The project was launched on November 17, 2008 and most Managing Partners and firm representatives attended the meeting and launch reception. All participating firms have appointed a firm representative.

49. The firms are divided into three groups, based on their size and location, as follows:

    a. Medium out of Toronto: co-chairs bencher Thomas Conway and Heather Williams;

    b. Firms of between 25 and 100: co-chairs bencher Linda Rothstein and Megan Shortreed;

    c. Firms of 100 and over: co-chairs Treasurer Laurie Pawlitza and Kirby Chown.

50. The groups of firm representatives met as follows:

    a. November 17, 2008 Launch of Project with Managing Partners and Firm Representatives;

    b. Firm Representatives of Out of GTA and Ottawa (four meetings by phone or in Orillia, Hamilton and Sudbury);

c. Firm Representatives of Medium Firms – five meetings;

d. Firm Representatives of Large Firms – five meetings.

51. A proposed work plan was distributed to the firm representatives. The Law Society also surveyed law firms to identify their policies and practices based on firm size.

52. As outlined in the Justicia commitment pledge, most participating firms have developed a process to compile and maintain gender data within their firm. The results of the gender data collection will not be reported to the Law Society but will be used by the firms to track their own progress and develop their own programming.

53. In order to work effectively, the firm representatives created a number of working groups to develop resources in the core areas outlined in the commitment pledge (written policies to address parental leaves, tracking demographics, flexible work arrangements, networking and business development initiatives and mentoring and leadership skills development for women).

54. The first series of resources developed focus on the following:

a. an implementation work plan;

b. a gender data collection template;

c. resources for pregnancy and parental leaves;

d. flexible work arrangements; and

e. career advancement.

55. The following working groups were created:

a. The Compensation Working Groups - mandated to develop options relating to compensation during and following leaves of absences; bonuses; reviews and billings; and the impact of leaves on admission to partnership. The Working Groups also reviewed the maternity and parental guides and provided advice on format and content.

b. The Firm Checklist Working Group - created to develop the *Preparing for a Lawyer's Pregnancy or Parental Leave – Guide for Law Firms*.

c. The Ramp Down Ramp Up Working Group m- created to develop options to assist lawyers who leave and return to private practice. The options were included in the guides on pregnancy and parental leaves. The Working Group also developed the *New Parent Tool Kit Template.*

d. The Managing Partners' Summits Working Group - created to assist in the development of an agenda and format for the Managing Partners Summits.

e. The FWA Working Groups (one working group for small and medium firms and one for large firms) - created to develop best-practices and implementation models for FWA within firms.

f. The Gender Data Collection Working Group - created to develop best-practices to maintain quantitative and qualitative information about lawyers in law firms.

g. The Career Advancement Working Group - recently created to consider initiatives to provide career advancement opportunities for women in law firms.

56. The Working Groups have been holding regular meetings as follows:

a. Compensation Working Group – six meetings;

b. Ramp Down Ramp Up Working Group – one meeting;

c. Firm Checklist Working Group – one meeting;

d. FWA Working Group (small and medium) – four meetings;

e. FWA Working Group (large) – nine meetings.

57. The Working Groups develop resources with the support of the Law Society. The Law Society of Upper Canada's Equity Committee reviews and approves the final resources. All final resources are posted on the Justicia Web Portal and templates are posted in formats that can be manipulated by the law firms. The following resources have been developed to date:

a. Gender Data Collection Template;
b. *Summary of Firm Pregnancy and Parental Leave Policies;*
c. *Report of the Survey of Justicia Out of GTA and Ottawa Firms;*
d. *Report of the Survey of Justicia Firms of Under 100 Lawyers;*
e. *Report of the Survey of Justicia Firms of Over 100 Lawyers;*
f. *New Parent Tool Kit Template;*
g. *Preparing for a Lawyer`s Pregnancy or Parental Leave – Guide for Law Firms;*
h. *Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Associates;*
i. *Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Partners;*
j. Law Firm's Self-Assessment Tool;
k. Justicia Icon.

58. In the Fall of 2009, the Law Society held a series of Managing Partners' Summits as follows:

a. October 21, 2009, Managing Partners' Justicia Summit in Toronto - The summit was a success with approximately 35 Managing Partners in attendance. Then Treasurer Millar and Co-Chairs bencher Thomas Conway and Treasurer Laurie Pawlitza presented the project. This was followed by roundtable discussions about the project.

b. November 9, 2009, Managing Partners' Justicia Summit in Toronto - The summit was a success with approximately 15 Managing Partners in attendance. Then Treasurer Millar and Co-Chairs bencher Thomas Conway and Treasurer Laurie Pawlitza presented the project. This was followed by roundtable discussions about the project.

c. November 18, 2009, Managing Partners' Justicia Summit in Ottawa - The summit was a success with approximately 20 Managing Partners and firm representatives in attendance. Co-Chairs bencher Thomas Conway, Treasurer Laurie Pawlitza and Heather Williams presented the project. This was followed by roundtable discussions about the project.

d. November 23, 2009, Managing Partners' Justicia Summit in Sudbury - The summit was a success with approximately 6 Managing Partners and firm representatives in attendance. Co-Chairs bencher Thomas Conway, Treasurer Laurie Pawlitza and Heather Williams presented the project. This was followed by roundtable discussions about the project.

e. November 24, 2009, Managing Partners' Justicia Summit in Hamilton - The summit was a success with approximately 10 Managing Partners and firm representatives in attendance. Co-Chairs bencher Thomas Conway and Heather Williams presented the project. This was followed by roundtable discussions about the project.

59. Patricia Gillette, Senior Partner at the law firm Orrick in San Francisco, met with Justicia firm representatives of FWA Working Groups on April 7, 2010. Ms. Gillette provided information about her firm's restructuring to customized work arrangements and compensation schemes along with alternative billing practices. Ms. Gillette is an expert on the issue of retaining women in private practice and she will continue to assist in the Justicia Project. Ms. Gillette has been invited and has accepted our invitation to present at the fall 2010 Justicia Managing Partners Summit.

60. The following five Justicia working groups are presently active: the two FWA Working Groups, the Data Collection Working Group, the Career Advancement Working Group and the Managing Partners' Summits Working Group.

61. Firm representatives are working on developing resources and best-practices in the area of FWA and gender data collection. They are also considering the development of best-practices and initiatives to promote the career advancement of women. *A Guide to Assist Law Firms and Lawyers in Developing Successful Flexible Work Arrangements* and a *Gender Data Collection Guide for Law Firms* have been drafted and it is anticipated that they will be adopted in the fall 2010.

62. The Law Society retained the accounting firm of Deloitte and Touche to develop a business case for flexible work arrangements in law firms. The project has begun and is expected to be completed in the fall 2010.

Recommendation 2 – Direct Support

63. This recommendation focuses on conducting a change of status survey and on the establishment of a Women's Leadership and Professional Development Institute. The additional element of this recommendation, the on-line resources, is being developed through the Justicia project for medium and large firms, and through the Women's Resource Centre for smaller firms, as described under Recommendation 5.

Change of Status Survey

64. As mentioned above, in 2008, the Law Society of Upper Canada undertook a longitudinal study with lawyers who change their professional status in the profession. The 2009 *Change of Status Quantitative Study – Report of Research Findings* is now available. The findings are used to inform the Retention of Women in Private Practice Working Group and the Equity Committee in the development of policies and initiatives. The findings are also used in presentations and conferences about the legal profession and have received media attention. The survey will continue in 2010/2011.

Women's Leadership Institute

65. In 2009/2010, the Law Society held a number of events in the context of the Women's Leadership Institute. The most significant was the *Women Lawyers' Symposium – Fostering and Celebrating Success* held in Ottawa on February 5, 2010. With approximately 100 participants from across the province, the symposium allowed women to network and to attend workshops on the business of law. The symposium was well received and participants indicated an interest in continued networking opportunities in Ottawa.

66. The Law Society also partnered with the Women's Law Association of Ontario in 2010 to hold a panel discussion entitled *Guide to Success – A Dialogue with Women in Law*. The panel discussion allowed women lawyers to hear about the experiences of senior women in various sectors of the legal profession.

Recommendation 3: Contract Lawyers' Registry

67. The Contract Lawyers Registry is in place with on-line resources and a list of available lawyers to take on contract work. There are between 30 and 50 lawyers registered on the site. This site provides great support for sole and small firm practitioners who need assistance while taking a maternity or parental leave, and support for example when a lawyer requires assistance for a large trial or a demanding file. The site also has tools and resources to help lawyers hire a contract lawyer. The site includes the following resources: sample contract clauses, a contract checklist, and issues to consider.

Recommendation 4 - Parental Leave Assistance Program (PLAP)

68. The Law Society launched the three-year pilot parental leave program to enable more lawyers to stay in practice after the birth or adoption of a child. Effective March 12, 2009, the Parental Leave Assistance Program provides financial benefits to practising lawyers who are partners in firms of five lawyers or fewer who do not have access to other maternity, parental, or adoption financial benefits under public or private plans and who meet the eligibility criteria.

69. Under the Program, the Law Society provides a fixed sum of $750 a week to eligible applicants for up to twelve weeks (maximum $9,000 per leave, per family unit) to cover, among other things, expenses associated with maintaining their practice during a maternity, parental or adoption leave.

70. To be eligible for benefits under the Parental Leave Assistance Program, the applicant must satisfy all of the following requirements:

a. be a birth parent (mother or father) or an adoptive parent (mother or father);

b. be a member in good standing;

c. be a sole practitioner or a partner in a firm of five lawyers or less;

d. have no access to other maternity, parental, or adoption financial benefits under public or private plans (anyone who is eligible for Employment Insurance is not eligible for the PLAP);

e. cease to engage in remunerative work or to practise law during the leave for which he or she is receiving payments under PLAP.

71. The following provides an outline of approved and completed applications by gender and practice type, current to July 23, 2010.

Approved & Completed Applicants by Gender and Practice Type

Gender	2009	2010	2011	Total
Female, Small Firm	8	3		11
Female, Sole	27	25		52
Male, Small Firm	5	1		6
Male, Sole	10	8		18
Total	50	37		87

72. The following provides an outline of approved and completed applicants by type of leave, current to July 23, 2010.

Approved & Completed Applicants by Type of Leave

Type of Leave	2009	2010	2011	Total
Birth of Child	48	33		81
Adoption	1	1		2
Miscarriage	0	0		0
Medical prior to Birth	1	3		4
Total	50	37		87

73. In January 2010, the federal *Employment Insurance Act* was amended to provide self-employed persons special benefits including maternity, parental, adoption, sickness, and compassionate care benefits. These benefits were previously available only to wage-earners and salaried workers.

74. The new legislation comes into effect January 1, 2010 but the new benefits will not be payable until January 1, 2011 at the earliest. Self-employed persons will need to opt into the Employment Insurance plan and pay premiums for at least one year before they can claim benefits. It is anticipated that the PLAP will continue to be available, with revised criteria to take into account the EI Special Benefits Plan.

Recommendation 5 – Direct Resources

75. This recommendation refers to the Women's Online Resource Centre. The preliminary content for the centre has been finalized and is being placed on the site.

Recommendation 6 – Beginning at Law School

76. Representatives of the Law Society, including the Lawyer Liaison Counsel, the Equity Advisor, the Aboriginal Initiatives Counsel, other Law Society staff members and benchers attended each law school in 2009/2010 and made presentations on women's issues.

Recommendation 7 – Creation of Advisory Group

77. The Equity and Aboriginal Issues Committee approved Terms of Reference for WEAG in January 2009 for the Women's Equality Advisory Group. In May 2009, WEAG members were contacted and WEAG is now in place.

78. The WEAG held its first meeting on November 27, 2009 to consider the type of activities the group wishes to be involved in regarding the Retention of Women in Private Practice Project. The group also met with benchers Beth Symes, Janet Minor and Judith Potter and lawyer Connie Reeve to discuss issues related to the return to practice following an extended leave, a project of the Return to Practice Working Group.

79. The WEAG held a second meeting on February 25, 2010. WEAG members appointed Ruby Wong as Chair and Jacqueline Beckles as Vice-Chair. The WEAG recommended a list of resources to be included in the on-line women's resource centre for consideration.

Recommendation 8 – Networking

80. The Law Society facilitates the development of networking opportunities by holding approximately ten equality public education and rule of law events and five continuing legal education events with organizations such as the Aboriginal Legal Services of Ontario, the Association des juristes d'expression française de l'Ontario (AJEFO), ARCH Disability Law Centre, B'nai Brith Canada, the Canadian Association of Black Lawyers,

the Feminist Legal Analysis Committee of the Ontario Bar Association, the South Asian Bar Association of Toronto, the Indigenous Bar Association, the Métis Nation of Ontario, the Official Languages Committee of the OBA, the Sexual Orientation and Gender Identity Committee of the Ontario Bar Association (OBA), the South Asian Legal Clinic of Ontario and the Women's Law Association of Ontario.

81. The Law Society also sponsors events or partners with associations to organize external events that facilitate networking opportunities, such as the Women's Law Association of Ontario's annual President award gala, the Canadian Association of Black Lawyers' gala reception, the annual AJEFO conference and the Women's Legal Education Action Fund. The Equity Committee developed sponsoring guidelines to assist the Equity Initiatives Department in planning these events.

82. In addition, the Equity Committee organizes networking events with the Equity Advisory Group (and now also the Women's Equality Advisory Group) to ensure continued dialogue between committee members and the advisory groups.

Networking with Law Societies

83. In 2005, the Equity Initiatives Department began strengthening its relationship with other law societies by working with provincial equity advisors and discrimination and harassment counsels - or equity ombudspersons - in organizing the first national meeting of law society equity advisors and equity ombudspersons. The objective of the meeting was to exchange information about initiatives undertaken by provincial law societies and to establish network and collaborative opportunities. Issues such as the role of law societies in promoting equality and diversity, education programs for the legal profession, mentoring programs and policy development were discussed. Following the first successful meeting, the equity advisors and equity ombudspersons continued to exchange information about successful initiatives and programs via teleconference calls, emails and meetings.

84. In May 2007, the Law Society hosted the second national meeting of equity advisors and equity ombudspersons. The two-day meeting provided an opportunity to exchange information about initiatives undertaken by law societies and allowed participants to develop strategies for further collaborations. The meeting was organized in conjunction with a national diversity summit conference held at the Faculty of Law of the University of Toronto. The summit meeting combined networking and professional development opportunities for equity advisors and equity ombudspersons.

85. In March 2008, the provincial equity advisors and equity ombudspersons held their third annual meeting at the Friends of Simon Wiesenthal Center for Holocaust Studies in Los Angeles. The meeting included two days of professional development on effective teaching pedagogy in the area of equality and diversity. The annual meeting led to further discussions about inter-provincial cooperation between the law societies in the area of diversity and equality. In 2009, the annual meeting was held in Montreal. The success of the meeting led to the development of the Law Societies Equity Network, including Terms of Reference adopted in December 2009. It is anticipated that, as a result of this more formal structure, the Law Societies Equity Network will report regularly on its activities to the Federation of Law Societies of Canada with a view to having the Federation act as a conduit to the national group of law society CEOs.

Collaborating with Law Schools

86. The Equity Initiatives Department works closely with the six Ontario law schools. In addition to annual visits to law schools to discuss available resources at the Law Society and exchange information about law schools and the Law Society, staff members of the department have held meetings with career officers and staff involved in equity initiatives and academic support programs in law schools. Career Officers have worked collaboratively with the Equity Initiatives Department in developing its programs such as resources for students with disabilities. In 2009, the Equity Initiatives Department visited most law schools in Ontario and delivered mandatory programs on addressing harassment and discrimination and the diversity of the legal profession to all first year law students.

Aboriginal Initiatives

87. The Aboriginal Initiatives Counsel coordinates Aboriginal students' symposia and works with Aboriginal Licensing Process candidates and lawyers. Between 2008 and 2010, the Law Society continued to organize career symposia for Aboriginal students, giving Aboriginal students from all Ontario law schools an opportunity to meet with Aboriginal lawyers and leaders of Ontario's legal profession. Events are held annually in Toronto, Ottawa and Windsor. Students and lawyers meet one-on-one in Toronto and in small groups in Ottawa and Windsor to discuss navigating career paths, the importance of developing mentoring relationships, exploring career options and work-life balance.

88. The relationship with Aboriginal law students continues into the Licensing Program through the Aboriginal Student Support Program and through the participation of Aboriginal Elders at the Calls to the Bar.

89. Through these and other initiatives, the Law Society is making steady progress in ensuring the legal profession reflects the communities it serves.

Discrimination and Harassment Counsel Program

90. In June 2001, the Law Society adopted the permanent DHC Program. Funded by the Law Society, the program operates at arms-length, and is available free-of-charge to the Ontario public and lawyers.[18] Since its creation, the person who has held the position of DHC has been bilingual (French and English). In 2004, the position of Alternate DHC was created. In 2005, the Law Society appointed two Alternate DHC. The Alternate DHC assume the functions of the DHC when she is unable to perform the function. The Alternate DHC may also provide mediation services. The DHC was reappointed for a three year mandate on September 26, 2009. The Alternate DHC were reappointed for a three year mandate May 27, 2008. Therefore, the Alternate DHC will be up for reappointment in the spring of 2011.

[18] Minutes of Convocation, June 22, 2001.

91. In January 2010, the DHC presented a seven-year report summarizing the data between January 1, 2003 and December 31, 2009. There have been a total of 1,220 contacts with the DHC Program during the seven-year period since January 1, 2003. There were 180 new contacts in 2003, 234 in 2004, 180 in 2005, 156 in 2006, 130 in 2007, 145 in 2008 and 195 in 2009. The Program has received an average of 14.5 new contacts per month over the past 5 years.

92. The DHC services are offered in French and English. Since January 1, 2003, 46 individuals have communicated with the DHC in French.

93. Of the 1,220 contacts with the Program over the past seven years, the DHC dealt with a total of 404 discrimination and harassment complaints against lawyers. (The remaining contacts with the Program involved general inquiries or matters outside the Program mandate.) There were a total of 66 complaints against lawyers in 2003, 78 in 2004, 60 in 2005, 56 in 2006, 35 in 2007, 43 in 2008, and 66 in 2009.

94. Out of the 404 discrimination and harassment complaints received since January 1, 2003, there have been 229 complaints from the public and 175 complaints from within the legal profession (i.e., from lawyers, law students, paralegals or paralegal students). Thus over the past 7 years, complaints from the public have constituted on average 57% of all discrimination and harassment complaints against lawyers.

95. A total of 38 law students[19] have made discrimination and harassment complaints to the DHC Program in the seven years since January 1, 2003 (out of a total of 175 complaints from within the legal profession). Student complaints therefore constitute 22% of the discrimination and harassment complaints received from members of the legal profession over the past 7 years.

96. The overwhelming majority (81%) of complaints by lawyers, law students and paralegals arise in the context of the complainant's employment or in the context of a job interview. There have been some discrimination and harassment complaints from lawyers in non-employment contexts, such as complaints about the conduct of opposing counsel, mediators or investigators. There have also been a few complaints by lawyers who had retained other lawyers to act for them and were complaining as clients.

97. Of the 175 discrimination and harassment against lawyers by members of the legal profession since January 1, 2003, 136 (78%) were made by women.

98. Of the 229 members of the public who have made discrimination and harassment complaints against lawyers to the DHC over the past 7 years, 143 (62%) were women.

[19] Either articling students, summer students, or university law students. There have been no complaints against lawyers by paralegal students.

99. There was a total of 404 discrimination and harassment complaints against lawyers between January 1, 2003 and December 31, 2009. Of these,[20]

a. sex was raised as a ground of discrimination in 204 complaints (50%);

b. disability was raised as a ground of discrimination in 100 complaints (25%);

c. race was raised as a ground of discrimination in 61 complaints (15%);

d. sexual orientation was raised as a ground of discrimination in 22 complaints (5%);

e. religion was raised as a ground of discrimination in 16 complaints (4%);

f. age was raised as a ground of discrimination in 15 complaints (4%);

g. family status was raised as a ground of discrimination in 15 complaints (4%);

h. ethnic origin was raised as a ground of discrimination in 12 complaints (3%);

i. place of origin was raised as a ground of discrimination in 4 complaints;

j. ancestry was raised as a ground of discrimination in 3 complaints;

k. record of offences was raised as a ground of discrimination in 3 complaints and

l. marital status was raised as a ground of discrimination in 2 complaints.

100. Since its creation as a permanent program, the expenses and budget for the DHC Program are as follows:

	2009	2008	2007	2006	2005	2004	2003	2002	2001
Expenses	95,045	78,080	42,555	65,184	74,714	66,298	79,401	71,412	106,740
Budget	150,000	150,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Under/(Over)	54,955	71,920	57,445	34,816	25,286	33,702	20,599	28,588	(6,740)

Equity Mentoring Program

101. The Law Society offers a structured Equity Mentoring Program that promotes law as a career choice and assists law students and recent calls to the bar by matching mentors – experienced members of the bar – with new lawyers, students-at-law, students in law school as well as university and high school students.[21] The following represents the number of matches made through the Equity Mentoring Program.

[20] The sum of the numbers in this paragraph exceeds 404 and the sum of the percentages exceeds 100% because many of the complaints involved multiple grounds of discrimination.

[21] Information available on Law Society website at www.lsuc.on.ca.

	2003	2004	2005	2006	2007	2008	2009
Mentees	15	46	58	35	**30**	22	30
Matches	8	38	47	29	**26**	21	25

Public Education and Professional Development

102. The Law Society holds the following equity educational programs for the public and the legal profession.

Public Education Events and Panels	**2006**	**2007**	**2008**	**2009**	**2010**
Louis Riel Day	80	100	N/A	250	N/A
Black History	250	150	120	200	190
International Women's Day	155	187	75	150	110
Rule of Law Series (formerly International Day for the Elimination of Racial Discrimination)	185	217	150	250	100

Public Education Events and Panels	2006	2007	2008	2009	2010
National Holocaust Memorial Day	120	105	115	200	130
Asian/South Asian Heritage Month	140	120	140	150	150
Access Awareness	N/A	175	170	150	150
National Aboriginal Day	90	115	120	150	100
Pride	250	150	175	225	N/A
Francophonie	N/A	N/A	N/A	N/A	

103. The Equity Initiatives Department has broadened its network of partners and community engagements. Partners include: Aboriginal Legal Services of Ontario, Association des juristes d'expression francaise de l'Ontario, ARCH Disability Law Centre, B'nai Brith Canada, Canadian Association of Black Lawyers, City of Toronto, Feminist Legal Analysis Committee of the Ontario Bar Association (OBA), Human Rights Research and Education Centre of the University of Ottawa, Human Rights Watch Canada, Legal Aid Ontario, Métis Nation of Ontario, Official Languages Committee of the OBA, Pro Bono Law Ontario, Sexual Orientation and Gender Identity Committee of the OBA, South Asian Bar Association of Toronto, South Asian Legal Clinic of Ontario, Women's Law Association of Ontario; and many more.

104. The Equity Initiatives Department and the Discrimination and Harassment Counsel continues to custom-design training programs for law firms, legal organizations and law schools. Between 2008 and 2010, a number of programs were delivered in law firms and law schools on topics such as preventing harassment and discrimination and providing legal services to persons with disabilities. With the adoption of Bill 168, which addresses workplace harassment and workplace violence, a number of training programs were delivered to firms of all sizes on the new legal requirements. Over the last two years, approximately 2000 members of the profession and the public attended the professional development programs.

Law Society as Leading Employer

105. The Equity Initiatives Department worked with the Human Resources Department to develop and amend workplace policies to address legislative changes, such as Bill 168 on addressing workplace harassment and workplace violence. The department also delivered workshops for new employees and for all Law Society managers on the prevention of harassment and discrimination and the duty to accommodate.

APPENDIX 5

Aboriginal Initiatives Operational Review (2009-2010)

Background

1. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report*). The *Bicentennial Report* reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays and lesbians and persons with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The Report made sixteen recommendations that have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.

2. In 1999, the Law Society created the position of Equity Advisor to implement the recommendations of the Bicentennial Report. Four other positions were created following the appointment of an Equity Advisor and the Department became a unit of five permanent full-time positions. The position of Aboriginal Initiatives Counsel was created as a full-time position in 2000 to develop policies, programs, resources and initiatives for Aboriginal members of the bar, law students, the public and the Law Society.

3. In 2004, the Aboriginal Initiatives Counsel initiated the Aboriginal Bar Consultation. The two phases of the Aboriginal Bar Consultation Project included a mail-out survey and a face-to-face consultation with Aboriginal members of the bar. The survey instrument and consultation guide were developed in consultation with members of the Aboriginal Working Group of the Equity and Aboriginal Issues Committee (the Committee). The goals of the survey and consultation were to,

a. collect information about Aboriginal lawyers identifying their experiences in law school, the Bar Admission Course (BAC) and Licensing Program and since their calls, the geographic region in which they live, where they work, what type of work they do and who their clientele is to create a demographic profile of the Aboriginal bar;

b. identify the most common stressors among Aboriginal lawyers in law school, the BAC and Licensing Program and post-call and how these stressors have influenced Aboriginal lawyers' career choices and views regarding the profession for the purpose of developing relevant Aboriginal programs and supports;

c. identify what Law Society services Aboriginal lawyers have used during the BAC, Licensing Program, post-call and currently for the purpose of assessing those services;

d. identify what other sources of support Aboriginal lawyers have accessed in law school, the BAC, the Licensing Program and post-call and how these support sources have helped them for the purpose of developing relevant Aboriginal programs and supports; and

e. identify how Aboriginal lawyers view the Law Society overall for the purpose of assessing current programs and initiatives for Aboriginal lawyers and the Aboriginal community.

4. On January 29, 2009, Convocation received the final report of the Aboriginal Bar Consultation report for its information. This report is available on the Law Society website at http://rc.lsuc.on.ca/pdf/equity/aboriginalBarConsultation.pdf. In addition to providing a demographic profile of the Aboriginal bar, the report identified four proposals for the Law Society to develop to enhance access to and retention in the legal profession of Aboriginal lawyers. The following summarizes the four proposals:

a. Expand the Lawyers' Annual Report (LAR) practice categories to include Aboriginal Law to enable the collection of data on how many lawyers in Ontario self-identify as practising Aboriginal law.

b. Continue the development of the Law Society's mentoring and networking programs for Aboriginal law students, Licensing candidates and lawyers with a focus on face-to-face and more interactive participation.

c. Work with the Professional Development and Competence department and the Aboriginal Working Group to develop a Continuing Legal Education (CLE) course in Aboriginal law and issues for lawyers/paralegals who provide legal services to Aboriginal clientele.

d. Continue to work with the Indigenous Bar Association externally and the Professional Development and Competence department for the development of a Certified Specialist program in Aboriginal Law and/or practice.

5. The Aboriginal Bar Consultation Report proposals identified the key components of the work plan for the Aboriginal Initiatives Counsel for 2009.

6. The purpose of this report is to outline Aboriginal initiatives undertaken by the Aboriginal Initiatives Counsel and the Equity Initiatives Department in 2009 and 2010.

Commitment of Law Society and Equity Initiatives Department

7. The goals, objectives and service standards of the Equity Initiatives Department (the Department) have been developed to implement Convocation policy on equality and diversity within the legal profession, the Law Society's departments and in the legal profession's relationship to the public.

8. The Department's goals aim at ensuring that,

    a. equality principles inform all Law Society policies;

    b. equality and diversity principles are integrated within the operations of the Law Society so as to ensure that Aboriginal, Francophone and equality-seeking communities have equal rights within the Law Society;

    c. policies and programs that promote diversity and equality are offered to the legal profession;

    d. there is public awareness of Law Society equality and diversity policies, programs and services; and

    e. the dialogue between the public, the Law Society and the legal profession is inclusive and promotes equality and diversity.

9. The Aboriginal Initiatives Counsel works to enhance these goals and objectives by providing services and developing programs, policies and resources for the Aboriginal bar and the community and building the Law Society's relationships with the Aboriginal bar and communities.

Objectives of the Aboriginal Initiatives Counsel

10. In keeping with the objectives of the Equity Initiatives Department, the Aboriginal Initiatives Counsel identified the following four main objectives for the development of Aboriginal initiatives for 2009 and 2010:

    a. to coordinate and support equity and Aboriginal policy research and programs;

    b. to develop the profile of the Law Society in the Aboriginal community and in equality-seeking communities;

    c. to conduct outreach and relationship building with the Aboriginal legal community and legal institutions; and

d. subject to the operating budget of the Equity Initiatives department, to develop and implement the proposals of the Aboriginal Bar Consultation Report.

11. The following outlines the work undertaken to fulfill these objectives.

Coordinate and Support Policy Research and Programs

12. The core objective of the Aboriginal Initiatives Counsel is to coordinate and support equity and Aboriginal policy research and programs and, in 2009 and 2010, the Aboriginal Initiatives Counsel undertook the following activities.

Aboriginal Bar Consultation Project

13. In 2009 and 2010, the Aboriginal Initiatives Counsel undertook the following steps toward the implementation of the report proposals:

a. maintained and updated the database of Aboriginal lawyers of the Law Society;

b. promoted the Consultation project and report to Aboriginal legal organizations for Aboriginal lawyers, including the Indigenous Bar Association, the Aboriginal Advisory Group for Legal Aid Ontario, Aboriginal Law Section of the Ontario Bar Association, Aboriginal Employees group for the Department of Justice, the Aboriginal Working Group of the Committee as well as the 2009 and 2010 Aboriginal Calls to the Bar; and

c. promoted and continues to promote the project and report at all speaking engagements and outreach events.

14. The following components of the Consultation Project proposals were implemented in 2009 and 2010:

a. The category of Aboriginal law as a practice category was added to the 2009 Lawyers' Annual Report (LAR);

b. A schedule of networking events for Aboriginal lawyers, judges, Licensing candidates and students was developed for 2010.

Coordinate and Support the Aboriginal Working Group (AWG)

15. The AWG was created in December 2004 as an advisory body to the Committee on issues of importance to the Aboriginal legal profession and the community in general. Bencher Tracey O'Donnell chaired the AWG from 2004 to 2007 during her term as bencher. Bencher Susan Hare took over as Chair in December 2007. The AWG is comprised of 29 Aboriginal members of the bar. The AWG meets in person and by teleconference 4 times per year or as required.

16. In 2009 and 2010, the Aboriginal Initiatives Counsel undertook the following steps with regard to the AWG:

a. coordinated plenary and small-group meetings (January, May and November) for AWG in 2009;

b. prepared update reports of AWG activity to the Committee outlining policy development recommendations and the work-plan

c. undertook a consultation with the members of the AWG on the implications of proposed changes to Rule 6.03 for Aboriginal lawyers

d. undertook and provided a report to the Committee on the Continuing Professional Development requirement;

e. in furtherance of the Aboriginal Bar Consultation report, coordinated 4 networking events for lawyers, Licensing candidates and law students in 2010 with AWG members; and

f. maintained communication with the members of the AWG throughout 2009 and 2010.

Support the Committee and Equity and Diversity Initiatives

17. The Aboriginal Initiatives Counsel supports the Committee as well as the diversity initiatives of the Equity Initiatives Department. Throughout 2009 and 2010, the Aboriginal Initiatives Counsel provided support to the department in the following ways:

a. acted as resource to the Committee and the Equity Initiatives Department for all public legal education events and outreach efforts.

b. provided primary staff support to the Access to Justice Committee and to the project staff for the Ontario Civil Legal Needs Project.

c. participated in external events to represent the Law Society and the Equity Initiatives Departments. Specifically, the Aboriginal Initiatives Counsel participated in speaking engagements and training sessions throughout 2009 and 2010 at the Department of Justice and Ontario law schools.

Develop the Profile of the Law Society in the Aboriginal Community

18. The Aboriginal Initiatives Counsel's role in this regard focuses on creating partnerships between the Law Society and external organizations, in particular Aboriginal legal and community-based organizations. The purpose of these partnerships is to develop opportunities for positive relationships between Aboriginal lawyers, individuals, organizations and communities and the Law Society. The positive relationships will, in turn, enable the Law Society to determine where needs exist with Aboriginal lawyers and the Aboriginal community in general to provide relevant supports and services. A positive relationship also provides to the Law Society the opportunity to educate the Aboriginal community about its existing services and supports.

Participation in Aboriginal Community Events and Initiatives

19. Throughout 2009 and 2010, the Aboriginal Initiatives Counsel participated in the following activities for the purpose of developing the Law Society's profile in the Aboriginal community:

    a. maintained membership on the Board of Aboriginal Legal Services Toronto;

    b. maintained membership with the Indigenous Bar Association;

    c. regularly attended Aboriginal Law Students Association of the University of Toronto (U of T) meetings and social gatherings;

    d. made presentations at Queen's University, U of T, Osgoode Law School and University of Ottawa on career path choices for Aboriginal law students and support services offered by the Law Society;

    e. collaborated with City of Toronto, Aboriginal Legal Services Toronto, the Aboriginal Working Group, the Indigenous Bar Association and the Aboriginal Law Section of OBA for National Aboriginal Day in 2009 and 2010. The 2009 event, hosted by the Law Society, featured a panel discussion on the topic of the Indian Residential Schools Adjudication process. Speakers included representatives from the Indian Residential Schools Adjudication Secretariat the Aboriginal Healing Foundation, the Residential Schools Survivor Society and Professor John Milloy of Trent University. The reception featured a keynote speaker, author and survivor of an Ontario residential school, Herb Nabigon. Approximately 150 people attended this event. In 2010, the event was renamed to recognize National Aboriginal Heritage Month. The 2010 event featured a keynote address from Justice Leonard Mandamin of the Federal Court. Approximately 100 people attended this event as Justice Mandamin described changes at the Federal Court in relation to Aboriginal legal issues;

    f. collaborated with the Métis Nation of Ontario, the Métis National Council, and the Aboriginal Working Group for a half-day symposium on the development of Métis rights in Canada on March 27, 2009. There were 4 panel sessions featuring Métis lawyers, Jean Teillet and Jason Madden. Clint Davis, Executive Director of the Canadian Council for Aboriginal Business moderated the panel. Approximately 200 people attended this event;

    g. coordinated with the organizers for the Toronto Indigenous Sovereignty Week committee for a Talking Circle at the Law Society in October 2009. Approximately 125 community members attended;

    h. Bencher Susan Hare attended and provided remarks at the Indigenous Bar Association's annual conference in October 2009. Copies of the Aboriginal Bar Consultation report were also distributed to participants;

    i. participated as an event volunteer at the Hamilton Pow Wow in November 2009;

j. coordinated with Aboriginal Legal Services Toronto for its inaugural fundraiser and recognition awards presentation, the Champions of Justice award in February 2010. Lawyer Murray Klippenstein was the recipient, Approximately 90 members of the legal and Aboriginal communities attended;

k. invited to attend Ryerson Aboriginal Student Service events at Ryerson University;

l. coordinated the attendance of Aboriginal Elders in Ottawa, London and Toronto for the five summer Calls to the Bar;

m. maintained a network of Aboriginal elders in Ottawa, Toronto, Windsor and London; and

n. developed the network of Aboriginal lawyers throughout Ontario through regular email communications and creation of a LinkedIn group: Canadian Aboriginal Lawyers and Law Students.

Conduct Outreach and Relationship Building with the Aboriginal Legal Community

20. In addition to relationship building with the Aboriginal community, the Aboriginal Initiatives Counsel's role is to develop relationships with Aboriginal law students and Licensing students, current Aboriginal lawyers and Aboriginal legal organizations and institutions. The outcome of positive relationships with these parties will enable the Law Society to promote its Aboriginal services and supports for students and members. Similarly, opportunities exist for Aboriginal students and lawyers to inform the Law Society of where gaps and opportunities exist for developing relevant services and supports.

Aboriginal Law and Licensing Student Outreach

21. The Aboriginal Initiatives Counsel undertook the following activities in 2009 and 2010:

a. Completed law school visit to Ontario law schools and to McGill University with the Professional Development and Competence Department in both 2009 and 2010. The Aboriginal Initiatives Counsel presented on Equity Initiatives and Aboriginal Initiatives at all visits as well as distributed information on the Equity and Diversity Mentorship Program, the articling positions available at the Law Society and the Discrimination and Harassment Counsel;

b. Coordinated the Aboriginal Law Student Symposium in Ottawa, Windsor and Toronto. For the 2009 Toronto event, the Aboriginal Initiatives Counsel coordinated with the Career Service Officers from U of T and Osgoode Hall law schools. Fourteen students and fourteen Toronto-area lawyers attended and participated in one-on-one mentoring sessions. For the 2009 Ottawa event, the Aboriginal Initiatives Counsel coordinated with the Equity Advisor at the University of Ottawa. A total of seven students and nine Aboriginal lawyers and articling students from Ottawa attended. At Windsor, five students and 4 Windsor

area lawyers attended. In 2010, the format was changed to enable students to contact lawyers by telephone, thereby allowing students greater choice in lawyers from across Ontario and Canada. As well, the forum was opened up to all law students interested in practising in Aboriginal law. Thirteen students from U of T, Osgoode and the University of Western Ontario attended. Twenty-five Aboriginal lawyers and judges attended the one-on-one sessions and the networking event following the sessions. Five students attended the Windsor event and spoke with 4 lawyers in person and three lawyers by telephone. The Law Society supported law students at the University of Ottawa by sponsoring the opening reception for the Kawashkimhon Aboriginal Moot. More than 60 law students from across Canada and approximately 40 lawyers from Ottawa and across Canada attended. Bencher Susan Hare presented welcoming remarks from the Law Society and spoke of the support services available to Licensing candidates at the Law Society. The law student events enable the Aboriginal Initiatives Counsel to create a database of Aboriginal law students and to facilitate an informal communication network. Through this network the Aboriginal Initiatives Counsel distributes information about community events and meetings, for example, the Law Society's equity public education series.

c. Participated as a facilitator at the 2009 Kawaskimhon Aboriginal Law Moot at the University of Windsor in March 2009. Approximately 50 law students from across Canada participated to negotiate an agreement regarding Aboriginal rights under Canada's Constitution;

d. Hosted the Queen's University Aboriginal Law Students Association members for a tour of Osgoode Hall and coordinated a visit to Gladue Court at Old City Hall and the offices of Aboriginal Legal Services Toronto in February 2010.

e. Hosted the Aboriginal Intensives Program (Osgoode Hall Law School) in both March 2009 and 2010.

f. Coordinated Aboriginal Licensing student services (Elders program, tutoring service, resume review and mentorship) with the Law Society's Education Support Services Unit for the 2009 and 2010 Licensing program. The Aboriginal Initiatives Counsel maintained regular electronic and telephone communications with Licensing students throughout 2009 and 2010.

g. Coordinated an off-site student-lawyer networking event in Toronto for Justice Leonard Mandamin. Approximately 4 students attended and 20 lawyers.

h. Moderated two panels for Ontario Justice Education Network (OJEN) events in March 2009 and in April 2010.

Aboriginal Bar Outreach

22. In addition to promoting the Equity and Diversity Mentorship program, throughout 2009 and 2010, the Aboriginal Initiatives Counsel,

a. coordinated informal introductions for Aboriginal law and Licensing students to Aboriginal practitioners;

b. coordinated 2 referrals to an Aboriginal lawyer at the request of a community member; and

c. maintained an informal electronic communications network with Aboriginal lawyers and community members to distribute information about job postings, events and developments of interest to the community.

Outreach to Legal Institutions and Organizations

23. For the purpose of creating a network of contact with legal organizations, the Aboriginal Initiatives Counsel developed relationships with and maintained regular contact with the following organizations:

a. Ontario Justice Education Network;
b. Aboriginal Law Section of the OBA;

c. Aboriginal Advisory Group of LAO;

d. Aboriginal Employee Group of Department of Justice;

e. Aboriginal Legal Services Toronto;

f. Native Women's Association of Canada;

g. Assembly of First Nations;

h. Indigenous Bar Association;

i. Rotiio>taties Aboriginal Advisory Group;

j. Pro Bono Law Ontario;

k. Métis Nation of Ontario;

l. Community Legal Education Ontario;

m. EcoJustice Canada; and

n. Ontario Federation of Indian Friendship Centres.

Develop and Implement the Aboriginal Bar Consultation Report Proposals

24. Subject to the operating budget of the Equity Initiatives department, the Aboriginal Initiatives Counsel initiated the implementation of the proposals of the Aboriginal Bar Consultation Report.

Addition of Aboriginal Law as Practice Category in the 2009 Lawyers' Annual Report (LAR)

25. The 2009 LAR results are not yet available. Analysis of the results of the LAR will enable the Law Society to collect data on the number of lawyers in Ontario who practice in this category. This data can then be used in the development process for Continuing Legal Education programs at the Law Society. Further, the 2009 LAR and Paralegal Annual Report (PAR) provided respondents the opportunity to voluntarily self-identify as a member of one or more of the prescribed equity categories. This data will be used to assist the Law Society in developing programs to support lawyers and paralegals.

Law Society's Mentoring and Networking Programs

26. The Aboriginal Initiatives Counsel initiated a series of interactive and face-to-face networking events in 2010. The events were held in the following locations:

    a. Ottawa on March 5 at the Kawaskimhon Aboriginal Moot opening reception;

    b. Toronto on March 26 after the Aboriginal Law Student Career Symposium;

    c. Thunder Bay on June 2;

    d. Toronto on June 3 with Justice Leonard Mandamin of the Federal Court of Canada; and

    e. Sudbury on July 26.

27. The format of the events focuses on informal interaction between local Aboriginal law students, Licensing candidates, lawyers and, where possible, judges. Bencher Susan Hare chaired the majority of the events and provided welcoming remarks. Copies of the Aboriginal Bar Consultation report are handed out to all participants along with an invitation to provide contact information to the other participants. The goal of sharing contact information is the continuation of these informal meetings by the participants independent of the Law Society.

APPENDIX 6

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES
2010 - 2011

JOURNÉE DES FRANCO-ONTARIENNES ET ONTARIENS RECEPTION
September 20, 2010
Upper and Lower Barristers' Lounge (6:00 p.m. – 8:00 p.m.)
Keynote speaker: The Honourable Martin Cauchon

CANADIAN ASSOCIATION OF BLACK LAWYERS FALL SEMINAR
November 9, 2010
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

LOUIS RIEL DAY
November 16, 2010
Convocation Hall (4:00 p.m. – 8:00 p.m.)
Topic: Year of the Métis

BLACK HISTORY MONTH
February 8, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

INTERNATIONAL WOMEN'S DAY
March 2, 2011
Lamont Learning Centre (*time to be determined)*
Convocation Hall (*time to be determined)*

RULE OF LAW SERIES
March 22 or 29, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

HOLOCAUST MEMORIAL DAY
April 27, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ASIAN AND SOUTH ASIAN HERITAGE MONTH
May 24, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ACCESS AWARENESS - DISABILITY ISSUES AND LAW FORUM
June 8, 2011
Lamont Learning Centre (4:00 p.m. – 8:00 p.m.)

NATIONAL ABORIGINAL DAY
June 16, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

PRIDE WEEK
June 23, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

WOMEN'S LAW ASSOCIATION & LAW SOCIETY SYMPOSIUM
Date to be determined
Lamont Learning Centre (5:00 p.m. – 7:00 p.m.)

Items for Information

- Discrimination and Harassment Counsel Semi-Annual Report
- Equity Advisor's Report
- Aboriginal Initiatives Operational Review
- Public Education Series Calendar

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AUDIT COMMITTEE REPORT

Mr. Hainey spoke to the information item on the Financial Statements for the six months ended June 30, 2010.

Report to Convocation
September 29, 2010

Audit Committee

Committee Members
Chris Bredt (Chair)
Susan Elliott
Seymour Epstein
Glenn Hainey
Vern Krishna
Doug Lewis
Jack Rabinovitch
Heather Ross
William Simpson

Purpose of Report: Information

Prepared by the Finance Department
Wendy Tysall, CFO, 416-947-3322

COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on September 14, 2010. Committee members in attendance were Chris Bredt (c), Susan Elliott, Glenn Hainey, Vern Krishna, Doug Lewis, Jack Rabinovitch, Heather Ross and William Simpson.

2. Also in attendance were LAWPRO President & CEO, Kathleen Waters and Vice President Finance & Treasurer, Steven Jorgensen and Jill Taylor Smith, Senior Consultant from AON Consulting.

3. Law Society staff attending were Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.

FOR INFORMATION

LAW SOCIETY OF UPPER CANADA - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2010

4. Convocation is requested to receive the 2010 second quarter financial statements for The Law Society of Upper Canada for information.

Law Society of Upper Canada Financial Statements
For the six months ended June 30, 2010

Fund Descriptions

General Fund

- The General Fund is the Society's operating fund representing the bulk of its revenues and expenses relating to the licensing and regulation of lawyers and paralegals.

Restricted Funds

- The Compensation Fund is restricted by statute. The Fund exists in order to mitigate losses sustained by clients as a result of the dishonesty of a lawyer or paralegal. The fund is financed primarily through annual levies on lawyers and paralegals, investment income and recoveries for grants previously paid. The annual Compensation Fund levy for the 2010 year was set at $257 for lawyers and $183 for paralegals. The respective figures for the 2009 year were $226 and $145.

  At June 30, 2010 the lawyer Compensation Fund balance was $22.6 million and the paralegal fund balance was $86,000. The appropriate size of the Compensation Fund balance is currently being assessed, particularly as changes are being contemplated in the calculation of the Provision for Unpaid Grants focusing on the amount of unallocated loss adjustment expenses included in the provision.

- The Errors and Omissions Insurance (E&O) Fund accounts for the mandatory professional liability insurance program of the Society which is administered by LAWPRO. Insurance premium expense, as well as related levies and income from their investment are tracked within this fund. The Society is insured for lawyers' professional liability and recovers annual premium costs from lawyers through a combination of annual base levies and additional levies that are charged based on a lawyer's claims history, status, and real estate and litigation levies.

The current composition of the E&O Fund balance is:	
Investment in LawPRO	$35,642,000
Cumulative excess investment income	2,915,000
Backstop for Endorsement Retention	15,000,000
E&O Fund Contribution (50% of $3.5 million)	1,750,000
Available for future operating expenses, transaction levy shortfall and premium contributions etc.	7,756,000
TOTAL	$63,063,000

- The Capital Allocation Fund is the source of funding for the Society's acquisition of major capital assets and the repair and upgrade of Osgoode Hall. The fund is replenished by a dedicated annual levy on all lawyers and paralegals of $65 in 2010, increased from $45 in 2009.

- The Invested in Capital Assets Fund represents the net book value of the Society's physical assets. Additions to the fund are made by the capitalization of assets acquired through the Capital Allocation Fund. Additions are recorded annually by means of an inter-fund transfer on the Statement of Changes in Fund Balances. Amortization is reported as an expense of the fund.

- The County Libraries Fund reports the transactions between LibraryCo Inc. and the Law Society. The Law Society levies an amount on lawyers as approved by Convocation in the annual budget; $203 in 2010 and $220 in 2009. This levy is reported as income of the fund and payments to LibraryCo Inc. are reported as an expense of the fund.

- The Working Capital Reserve is maintained by policy of Convocation to ensure cash is available to meet the operating needs of the Society. By policy, the fund is maintained at a balance of up to two months' operating expenses.

- Other Restricted Funds:
    - Under the Parental Leave Assistance Plan, which commenced in March 2009, the Law Society provides sole and small firm practitioners a fixed sum of $750 per week for up to twelve weeks to cover, among other things, expenses associated with maintaining practice expenses during a maternity, parental or adoption leave. For 2010, as of June 30, $239,000 has been expensed for 30 approved parental leaves, and four applications are being processed. In 2009, the last nine months of the year saw 48 parental leaves completed. Funding of $540,000 is budgeted for 2010.

    - The Repayable Allowance Fund is used to provide financial assistance to those enrolled in the Society's Lawyer Licensing Process. The fund is replenished annually through the budget process by a $100,000 annual contribution from the lawyer General Fund.

- The Society's Endowment Fund is the J. Shirley Denison Fund, administered under the terms of Mr. Denison's will by Convocation for the relief of poverty for lawyers and licensing process lawyer candidates and their spouses.

- The Special Projects Fund is used to carry forward funding to a future fiscal period for a program or activity yet to be completed, for which funding is not provided in the future year's budget. For 2010, the fund is primarily comprised of funding for the Civil Needs Project, Data Management and Heritage First. Also included is a contribution from Canada Life for the ongoing maintenance of the Society's lawns, gardens and trees.

Financial Statement Highlights

The Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit organizations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.

The Financial Statements for the six months ended June 30, 2010 comprise the following statements with comparative numbers for June 30, 2009:

- Balance Sheet
- Statement of Revenues and Expenses. Detailed results of operations for lawyers and paralegals are combined on the Statement of Revenue and Expenses. Summarized results for both lawyers and paralegals are reported on the Statement of Changes in Fund Balances. Supplementary schedules comparing actual results to budget are also provided for lawyers and paralegals.
- Statement of Changes in Fund Balances

Supplemental schedules include Schedules of Revenues and Expenses for the Lawyer and Paralegal General Funds, the Compensation Fund and the Errors and Omissions Insurance Fund.

Balance Sheet

- Current assets at the end of June 2010 have increased to $125.2 million from $110.8 million. Cash and short-term investment balances have increased due to surpluses in the prior year. Accounts receivable balances have increased due to higher member levies and premiums in the current year. At June 30, 2010, current assets comprise $17.7 million in cash, $36.4 million in short-term investments, $22.5 million in accounts receivable (annual fees, insurance premiums and levies owing) and $48.6 million in prepaid expenses. Most of the prepaid expense balance relates to annual E&O insurance premiums paid or payable for the year, which are expensed over the full year.

- The Investment in LAWPRO totaling $35.6 million is made up of two parts. The investment represents the share capital of $4,997,000 purchased in 1991 when LAWPRO was established plus contributed capital of $30,645,000 accumulated between 1995 and 1997 from a special capitalization levy by the Law Society.

- Portfolio investments are shown at fair value of $72.3 million compared to $82.7 million in 2009. The decline is largely attributable to the funding of insurance transactions in 2009 (approximately $19 million), partly offset by the $8 million recovered through settlement of the E&Y/Tillinghast litigation. Investments are held in the following funds:

Fund ($ 000's)	2010	2009
Errors & Omissions Insurance	$32,148	$45,513
Compensation Fund	27,831	25,778
General Fund	12,295	11,422
Total	**$72,274**	**$82,713**

- Deferred revenue has increased to $68.0 million from $60.4 million. This relates to annual E&O insurance premiums and General Fund annual fees received or receivable for the year, recognized over the full fiscal year.

- The amount due to LAWPRO has increased to $35.1 million from $30.8 million. The payable will decline by year-end as insurance premiums and levies collected are paid to LAWPRO. Any balance owing to LAWPRO at year end is paid by March 31 of the following year.

- The provision for unpaid grants / claims comprises the provision for unpaid grants – Compensation Fund and the provision for unpaid claims – E&O Fund with balances at the end of June 2010 of $12 million and $1.1 million respectively. The provision for unpaid grants – Compensation Fund represents the estimate for unpaid claims and inquiries against the Compensation Fund, supplemented by the costs for processing these claims. The provision for unpaid claims – E&O Fund represents claims liabilities for 1995 and prior. Effective 1995, 100% of the risk above the individual member deductible was insured through LAWPRO so the E&O Fund is in run-off mode.

- The Law Society Act permits a member who has dormant trust funds, to apply for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. At the end of June, unclaimed money held in trust amounts to $2 million.

- Fund Balances have decreased to $126.5 million from $134.4 million with 2010 activity analyzed on the Statement of Changes in Fund Balances.

Statement of Revenues and Expenses

- The General Fund incurred a deficit of $1.6 million at the end of the second quarter of 2010, compared with a deficit of $770,000 in 2009. This is due to an increase in net expenses of $1.8 million partly offset by an increase in revenues of $949,000. The 2010 budget incorporated the use of $5.8 million in funding from the Unrestricted Fund and $920,000 from the Paralegal Fund accumulated reserves.

- The Society's restricted funds report a surplus of $7.1 million for the period. The surplus is primarily in the E&O Fund ($5.7 million) and in the Compensation Fund ($1.9 million).

- The E&O Fund surplus is largely due to the settlement of the E&Y/Tillinghast litigation matter for $8 million, reported as other revenue under restricted funds.

- The surplus in the Compensation Fund is partly due to a lower than budgeted provision for unpaid grants. Further contributing to the surplus are higher than budgeted realized gains on long-term investments.

- General Fund annual fee revenue is recognized on a monthly basis. Annual fees recognized in the first half have increased to $19.9 million in 2010 from $19.4 million in 2009, with a fee decrease of $1 per lawyer and $25 per paralegal, offset by an increase in the number of lawyers and paralegals billed.

- Restricted fund annual fees comprising county library, Compensation Fund and capital allocation levies increased by a total of $34 per lawyer in 2010. However in the Statement of Revenues and Expenses, restricted fund annual fees recognized are lower for the first half of 2010 than the first half of 2009. In 2009 the Law Society advanced annual fee funding to LibraryCo earlier in the year in order to fund the cost of electronic products. The decrease in annual fee revenue is consistent with the decline in county library expenses in 2010.

- Premiums and levies have increased to $43.6 million from $34.7 million. This increase is primarily a result of the increase in base premiums charged to lawyers in 2010. The base premium in 2010 is $2,950 compared to $2,450 in 2009.

- Professional development and competence revenues have increased to $6.5 million from $5.6 million in 2009. This is due to increased continuing education course and materials revenue and an increase in paralegal licensing candidates.

- Total investment income has decreased to $2.0 million from $3.9 million. The interest and dividend income component has decreased from $1.8 million to $1.4 million reflecting declining interest rates. Total realized and unrealized gains have decreased from $2.1 million to $517,000 reflecting capital market conditions.

  Investment income for the Compensation Fund for the six months was $891,000 compared to the budget for the year of $1 million. Investment income for the General Fund for the six months was $188,000 compared to the budget for the year of $1.2 million. The Compensation Fund portfolio is twice the size of the General Fund and was set up a year ahead of the General Fund at a better time to purchase fixed income investments. E&O Fund investment income totaled $947,000, $1 million less than the same period last year.

- Other income in the restricted funds has increased to $8.1 million from $257,000 due to the settlement of E&Y/Tillinghast litigation in the first quarter of 2010.

- Regulatory expenses of $9.9 million are higher than the same period in 2009 by $1.1 million. The 2010 budget envisaged these expenses increasing for the year in response to the increasing number of complaints and the requirement for additional intake resources dedicated to paralegal regulation. Year-to-date, the increase in actual expenses is concentrated in Investigations for the budgeted staffing increases and in Complaints Resolution and paralegal good character hearings where temporary staff were hired later in 2009. Counsel fees, expert opinion and witness costs for the year to date are in line with budget at around $1 million.

- Professional development and competence expenses are $772,000 higher than for the same period in 2009 ($9.0 million versus $8.2 million). Increases were budgeted in Spot Audit and Practice Review, where additional staffing is required to meet the goal of auditing all Ontario law firms once every five years and to support the increased number of revisits to sole and small firm lawyers. In the second quarter, staffing is higher than in 2009; however the full budgeted complement is not yet in place. Further contributing to the variance is an increase in licensing process exam administration and invigilation costs. These cost increases are due to the higher number of candidates writing barrister and solicitor examinations as well as greater demand for writing accommodations which require additional invigilators.

- Administrative expenses are $290,000 more than the same period in 2009, consistent with budgeted increases.

- Other expenses include bencher related payments, payments to the Federation of Law Societies, insurance, catering costs and other miscellaneous expenses and total $3.4 million for the first six months of 2010.

- Expenses in the Errors and Omissions Insurance Fund have increased to $46.9 million from $40.2 million. This is largely due to the increase in insurance premiums.

- Compensation Fund expenses have decreased to $3.6 million from $5.6 million. The main contributor to this decrease has been the provision for unpaid grants with a balance of $40,000, compared to a prior year figure of $2.6 million. The provision is adjusted monthly based on the number of new inquiries, open claims and cases closed. Costs for spot audit, investigations and discipline allocated from the General Fund have increased over 2009, as budgeted.

- County Libraries Fund expenses are $1.8 million less than for the same period in 2009 ($3.5 million versus $5.3 million) primarily due to the timing of transfers noted in the revenue section above. In 2009, the transfer of funds to cover third quarter grants to the libraries was completed prior to July 1st.

- Expenses for the Parental Leave Assistance Plan were $239,000 in the first half of 2010 for 30 parental leaves. The budget for the whole of 2010 is $540,000 equating to sixty parental leaves. Comparatives for 2009 of $62,000 represent second quarter activity only as the program was established in March 2009.

Statement of Changes in Fund Balances

- This statement reports the continuity of the Society's various funds from the beginning of the year to the end of the current period. Details related to the revenues, expenses and interfund transfers summarized on this statement are reported in detail in the accompanying Statement of Revenues and Expenses as well as supporting schedules relating to the Lawyer and Paralegal General Funds, the Compensation Fund and the Errors and Omissions Insurance Fund.

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Compensation Fund – Schedule of Revenues and Expenses & Change in Fund Balance

- Total annual fee revenue has increased by $671,000 primarily as a result of an increase in the lawyer and paralegal levies from $226 to $257 and from $145 to $183 respectively.

- Expenses have decreased by $1.9 million primarily as a result of the decreased provision for unpaid grants. The decrease was slightly offset by increased costs for spot audits approved in the 2010 budget. The expanded spot audit program was the primary driver in the increase in the annual levy for the lawyers' Compensation Fund.

Errors and Omissions Insurance Fund – Schedule of Revenues and Expenses & Change in Fund Balance

- Insurance premiums and levies have increased $8.9 million primarily due to the increased base premium for Ontario lawyers. Premium revenue comprises base premiums and claims history surcharges prorated for the year and transaction levies.

- Other income includes $8 million from the settlement of outstanding E&Y/Tillinghast litigation.

- Administrative expenses have increased by $428,000 over 2009 due to the final litigation expenses incurred in relation to the above-noted settlement.

- The trend in insurance expenses is in line with premium revenues as the E&O Fund acts as a conduit to LAWPRO for this funding. The insurance expense represents the prorated annual policy premium set up in LAWPRO's insurance report to Convocation last September. At June 2010 there were no additional / returned premiums.

FOR INFORMATION

LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2010

5. Convocation is requested to receive LibraryCo Inc. second quarter financial statements for information.

6. The financial statements have been reviewed and approved by the board of LibraryCo.

LIBRARYCO INC.
FINANCIAL REPORT
For the six months ended June 30, 2010

KEY POINT SUMMARY

Statement of Revenues and Expenses – LibraryCo only

Comparison of Actual to Budget

The overall excess of expenses over revenues (line 18) for the quarter was $61,471 compared to a budgeted loss of $81,406. The variance is primarily a result of lower actual expenditures compared to budgeted amounts in other-head office expenses and other law libraries expenses. Capital and special needs exceeds budget and is discussed along with other variances below. The budget for 2010 included a transfer of $295,000 from the General Fund, so on current trends the full amount of this funding will not be required.

Revenues

1. Law Society grant (line 1) is the lawyer-based fee that is transferred to Library Co. This transfer includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was $3.4 million for the quarter and matched budgeted amounts for the period.

2. The Law Foundation of Ontario grant (line 2) was provided to LibraryCo to match the purchase of electronic resources. A variance occurred as the originally budgeted Westlaw Canada resource was not purchased and LFO funding was reduced accordingly.

Expenses

3. Salaries and administration expense (line 5) includes salaries, benefits and costs per the Administrative Services Agreement with the Law Society.

4. Professional fees (line 6) are predominantly the accrual for the annual audit and smaller amounts for consulting, and counsel fees.

5. Contingency (line 7) - There is no expense charged against contingency.

6. Other expenses (line 8) are lower than budget for the period by $23,719 primarily because of decreased costs for board of directors' expenses, printing and stationery, web expenses, and miscellaneous expenses.

7. Electronic products and services (line 10) expenditures of $819,630 are lower than budget as the Westlaw Canada resource was not purchased as noted in the grant revenue from the LFO above. There are no further expenses to be incurred.

8. Group benefits and insurance (line 11) of $149,937 approximate budget and represent health, dental, long term disability and other benefits for the county library employees. It also includes the general commercial insurance for the county libraries.

9. Other – law libraries (line 12) include expenses related to staff and travel, COLAL and CDLPA Library Committee meetings, COLAL continuing education and bulk purchases of publications for the library system. Expenses for the year are $19,039 lower than budget primarily as there was less staff travel, publications purchased and continuing education.

10. Law Libraries – grants (line 14) of $2,915,076 is $8,550 more than budget due to supplementary grants of $5,000 and $3,550 paid to Halton and Peterborough respectively. These additional amounts were approved by the Board and will continue for the next 2 quarters.

11. Capital and special needs grants (line 15) are provided to help the libraries replace aging furniture and equipment, perform library renovations and relocations, and pay for unbudgeted expenditures. These expenditures do not follow a pattern. Six grants were paid to five libraries and totalled $51,336. This results in negative variance of $27,336 for the year to date and already exceeds the annual budget by $2,336.

Balance Sheet - LibraryCo only

12. Cash and short-term investments of $1,647,742 is $1,334,682 lower than 2009 as the 2009 balance included the third quarter grant amount which was advanced to LibraryCo prior to July 1, resulting in the deferred revenue balance in 2009.

13. Prepaid Expenses consists of insurance amounts paid in advance for commercial insurance for the county libraries and directors and officers insurance. Commercial insurance for the libraries had a 22% increase for the April 30, 2010 renewal while directors and officers insurance remained the same.

14. Accounts payable and accrued liabilities (line 5) consist of amounts payable for goods and services and amounts due to the Law Society for payroll and administrative services.

14. Deferred revenue is nil as the third quarter grant amount was not received until after June 30. In 2009 the second quarter grant amount was received prior to July 1.

Statement of Changes in Fund Balances – LibraryCo

15. The General fund balance at June 30, 2010 was $757,164 compared to $518,252 in 2009. This is due to last year's operating surplus of $648,584.

16. The Reserve fund at December 31, 2009 was $885,389, unchanged from last year.

Schedule of Revenues and Expenses - LibraryCo and County Law Libraries

Comparison of 2010 to 2009 Actuals Year-to-Date

17. The Law Society grant (line 1) was $3.4 million compared to $3.7 million the previous year in line with the reduced member fee in the approved budget.

18. The Law Foundation of Ontario Grant (line 2) of $819,630 increased by $129,780 from the 2009 period in line with the related expense. The increase resulted from a change in the toolkit of legal electronic resources.

19. Other income (line 3) of $262,258 noted under the Law Libraries column represents income from local recoveries such as members' dues, photocopying, faxing, printing, and fees charged for specific research services.

20. Salaries and administration expenses (line 5) of $309,416 at the LibraryCo level are $25,572 higher than the previous year due to increases in salaries and benefits, a part time position which started last June, and administration costs. Salaries and administration at the Law Libraries were $93,538 higher due to furniture purchases and moving expenses for Durham of $33,000 as well as salary increases.

21. Electronic products and services (line 9) of $819,630 are $129,780 higher than in 2009 because the toolkit of legal electronic resources was modified.

22. Collections (line 10) of $1,135,174 has declined slightly (2009 - $1,153,792) due to cost saving measures such as annual updates of some collections materials.

23. Group benefits (line 11) of $149,937 are $18,041 higher than in 2009 in line with premium increases in September of last year.

24. Law Library grants (line 15) are $65,281 higher than the previous year in line with the general increase of 2% in the 2010 grant amounts.

Other Items of Note

25. Total payables and accrued liabilities at 48 Law libraries amounted to approximately $675,800. This represents an average balance of $14,079 (2009 - $12,335).

26. All 48 law libraries were able to submit their financial information for inclusion in this report with 96% submitting before the deadline.

FOR INFORMATION

LAWPRO - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2010

7. Convocation is requested to receive LAWPRO's 2010 second quarter financial statements for information.

8. The financial statements have been reviewed and approved by the board of LAWPRO.

FOR INFORMATION
INVESTMENT PERFORMANCE REPORT

9. A report on the performance of our long-term investments for the six months to June 30, 2010 is attached for Convocation's information.

10. The Law Society's long-term investments are divided into three portfolios for the General Fund, the Compensation Fund, and the Errors & Omissions Insurance Fund. All the investments are managed by Foyston Gordon &Payne.

11. At June 30, 2010, portfolio investments totalled $72.3 million broken down as follows:

Fund ($ 000's)	**2010**
Errors & Omissions Insurance	$32,148
Compensation Fund	27,831
General Fund	12,295
Total	**$72,274**

12. The Investment Monitoring Report as at June 30, 2010, prepared by AON Consulting, our new investment consultants, is attached.

FOR INFORMATION
INVESTMENT COMPLIANCE REPORTING

13. Compliance Statements for the General Fund and Compensation Fund long and short-term portfolios and Errors & Omissions Fund long-term portfolio as at June 30, 2010 are attached for information.

FOR INFORMATION
OTHER COMMITTEE WORK

14. The Committee reviewed a summary of the Law Society and LAWPRO's insurance coverage.

15. The Committee reviewed usage statistics for LibraryCo.

16. A copy of the latest litigation report was reviewed by the Committee.

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

(1) Copies of Law Society Financial Statements for the six months ended June 30.
(pages 13 – 20 (pages 16 – 18 in camera))

(2) Copy of LibraryCo Inc. Financial Statements for six months ended June 30.
(pages 25 – 28)

(3) Copy of the Lawyers' Professional Indemnity Company Report to the Audit Committee of the Law Society of Upper Canada dated September 14, 2010.
(pages 30 – 43)

(4) Copy of the Investment Monitoring Report as at June 30, 2010.
(pages 45 – 83)

(5) Copies of Compliance Statements for the General Fund and Compensation Fund long and short-term portfolios and Errors & Omissions Fund long-term portfolio as at June 30, 2010.
(pages 85 – 89)

LAWPRO REPORT

Mr. Caskey presented the Report.

LAWPRO

September 2010

Report to
Convocation

Our Vision

To be regarded as the preferred insurer in all markets and product

lines in which we do business.

Our Mission

To be an innovative provider of insurance products and services that enhance the viability and competitive position of the legal profession.

Our Values

Professionalism
Individually and as a team, we hold ourselves to the highest professional standards.

We deliver programs and services known for quality and cost-effectiveness, and for being practical, helpful and relevant.

We demand the best of ourselves every day and in everything we do.

Innovation
We foster a climate in which creativity, innovation and change can flourish.

We share ideas, skills and knowledge and encourage continual learning.

We value teamwork and collaboration, and the diverse strengths and perspectives of others.

Integrity
We act with the highest levels of integrity in all of our interactions and decisions.

We aim to always be consistent, fair, ethical and accountable.

Service
We strive for excellence in customer service.

We share our knowledge, experience and expertise with our customers and with each other, so that together we can identify, prevent and solve problems.

We take the time to listen and understand, so we can respond effectively and empathetically to our customers and to each other.

We demonstrate courtesy and genuine respect for all.

Leadership
We try to make the world a better place, and to that end lend our energy and expertise to many communities.

LAWPRO

September 15, 2010

TO: The Treasurer and Benchers of the Law Society of Upper Canada

RE: Transmittal of 2010 Report to Convocation

As a scan of the news headlines on any given day makes clear, we have not yet been able to put behind us the economic woes of the past few years: Economies everywhere are struggling as investment markets remain volatile, housing markets weaken and projections of economic activity and growth are revised downwards.

Although LAWPRO has weathered this troubled period without enduring any critical body-blows, many of the issues on which we reported to Convocation last year are with us still: Claims numbers and costs are at record levels; investment returns continue to be weak; the Harmonized Sales Tax (HST) that came into effect on July 1, 2010, has added significant cost to the program; and the fund created to help mitigate premium increases is virtually depleted. Moreover, we live in a world of heightened regulatory and compliance scrutiny – the result of well-documented collapses of major financial institutions. This reality not only adds significantly to our workload, but also has the effect of limiting our control over certain benchmark results.

This is the new normal in which LAWPRO operates today. It is a very different environment to that of 15 years ago when the Law Society chose to create a separate company to manage its malpractice insurance operations. As we enter the second decade of this millennium – and start to close the door on our 15th anniversary year of operating the program -- the time is ripe for reflection and consolidation. The attached Report recommends few changes for the 2011 insurance program. The focus instead will be on strengthening the insurance program for the long-term and on meeting the challenges that the current economic environment presents.

Despite significant increases in the cost of claims discussed in more detail below, Benchers are assured that LAWPRO has sufficient funds to pay the claims received: Specifically, our asset-liability matched investment fund continues to **fully** back our existing claims portfolio.

The other piece of positive news is that LAWPRO will not be recommending that the Law Society proceed with the $450 per insured lawyer special levy, which was approved on a contingent basis last fall to bolster LAWPRO's claims reserves in anticipation of the HST implementation.

The challenge of premium and income

A consistent LAWPRO message over the past year – communicated through LAWPRO magazine, our annual report and a special Year in Review issue of the magazine this spring – is that we appear to have moved to a world where the claims in the primary professional liability program will cost LAWPRO more than $80 million per year, excluding the cost of operating LAWPRO.

For 2007, 2008 and 2009 we are currently projecting total losses in the range of $83 million to $91 million per annum. The trend for 2010 is no different: Claims numbers reported to date are consistent with the higher numbers seen over the past few years. Based on that trend, we do not expect the overall cost of claims to decline.

The stark reality we face is that claims costs are, on average, up by about 45 per cent at the end of the decade compared to the start of this decade. Gone are the years in which costs

hovered in the $55 million to $60 million range annually, as was the case in the first five years of this decade.

As mentioned earlier in this memo, LAWPRO has few options for generating the revenue required to pay claims and operate the program. If insurance premiums were to increase in lock-step with claims costs, the annual base premium for 2011 would be about $4,000. Fortunately, we are not there in terms of our funding needs to pay claims and operate LAWPRO.

But ensuring sufficient revenue to fund the overall program on a break-even basis annually is not an acceptable – or frankly desirable – operating standard. As explained in the most recent LAWPRO Magazine, as a licensed insurance company we must each year prove to our regulator that we can meet our financial obligations and that we satisfy prescribed, specific solvency tests. The most important of these is the Minimum Capital Test (MCT) – a ratio of the available capital (net assets) to the amount of capital required (a defined calculation set by our regulator), expressed as a percentage.

Since December 2009, our MCT has fallen from 206 per cent to 186 per cent – for a variety of reasons including: adverse claims developments for the claims on our books from earlier years, the ongoing decline in the discount rate (which increases how much we have to set aside to pay the claims, taking into account the time value of money) and the impact of HST on our claims and operations. (The money transferred from the E&O Fund to the LAWPRO account under the terms of last year's policy may have covered the projected HST shortfall dollar for dollar, but it did not include a gross-up for the additional margin that the regulator requires of us for every dollar of anticipated claim costs.)

The bottom line is that the extra margin that the regulators (and basic financial prudence) require of us means that LAWPRO needs to make at least five to seven million dollars in either net profit or unrealized gains on our surplus portfolio every year in which we continue to operate the insurance program. If investment returns were good (as they were earlier in the new millennium), that could fulfill our need for extra margin at least in part. But unfortunately, LAWPRO exists in the same investment climate as individual members of the bar: And as we all know, returns are not what they once were.

To generate the income to pay the higher claims costs and support LAWPRO's MCT – thus assuring the long-term viability of the program – we need to increase premium income. For most of the past decade, base premiums have hovered in the $3,000 range: Healthy investment results in 2007 prompted LAWPRO to provide practicing lawyers with the benefit of those results by reducing premiums to their lowest levels in 2008 – but the warning was always there: Claims are rising and premium income will likely have to increase.

So, the message being delivered by LAWPRO is that for the foreseeable future, the premium we collect each year needs to cover the cost of claims and operating LAWPRO, and protect the stability of the MCT as part of our stewardship of the company. Simply to meet program costs, we need about $113 million in 2011, which translates into a base premium of $3,350 per lawyer after the other sources of revenue (such as investment income) are taken into account.

LAWPRO employees have recently completed a Vision & Values exercise, as described in the 15th anniversary insert in the most recent LAWPRO Magazine. You will notice from our new Vision, Mission and Values statement reproduced also on the inside cover of this Report that professionalism, integrity, service and leadership are among the values espoused by LAWPRO. These values are the foundation on which the success of this company has been built – and on

which we will continue to build. They are reflected in this Report to Convocation and in the insurance program that we will be dedicated to delivering as your insurer for 2011.
Ian D. Croft
Chair

Kathleen A. Waters
President & CEO

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LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")
REPORT TO CONVOCATION – SEPTEMBER, 2010

BACKGROUND

1. The Law Society of Upper Canada (the "Law Society") governs the legal profession in the public interest. One of the ways it discharges its responsibilities is through the mandatory requirement it places on practising lawyers to obtain professional liability insurance coverage. This coverage is provided by LAWPRO, a provincially licensed insurer that is owned by the Law Society.

2. The coverage that the mandatory LAWPRO program provides is considered to be both in the best interests of the public and in the best interests of Ontario lawyers – in that the public has reasonable assurance that an insurance policy backstops errors committed by lawyers in practice, and lawyers have assurance that they have a degree of financial protection for their professional liability that is customized to their practice needs.

3. In recent years, over 3,100 insurance claims have been open at any one time. The gross value of open claims was estimated at $384 million as at December 31, 2009. Overall, the insurance program manages about 85 per cent of the Law Society's $705 million in combined assets.

4. Each September since 1995, LAWPRO's Board of Directors has reported to Convocation on changes to the Law Society's professional liability insurance program for the following calendar year. The timing of this report is necessitated by the logistics of renewing in excess of 22,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.

5. This report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy direction where necessary. Financial information on LAWPRO and the program is provided to Convocation throughout the year.

6. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report (the "Task Force Report"). The mandate and principles of operation derived from the Task Force Report are as follows:

- that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
- that LAWPRO be operated in a commercially reasonable manner;
- that LAWPRO move to a system where the cost of insurance reflects the risk of claims;and
- that claims be resolved fairly and expeditiously; however, this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied or coverage was limited.

For 2011, we have conducted our annual review of the program to re-validate the approach and rating structure in light of these Task Force recommendations.

7. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed program for 2011 continues to fulfill these principles. This report deals solely with the mandatory professional liability program. The LAWPRO optional programs, such as TitlePLUS® title insurance and the Excess professional liability insurance program, are operated on an expected break-even or better basis.

2011 PROGRAM SUMMARY

8. The following summarizes the 2011 professional liability insurance program, as provided for in this report.

Premium Pricing for 2011:

(i) The base premium is $3,350 per lawyer for 2011, an increase of $400 from the base premium charged in 2010 (paragraph 101[a]).

(ii) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at $25.4 million for the purposes of establishing the base premium for 2011 and other budgetary purposes (paragraph 101[b]).

(iii) $2.5 million (approximately $110 per insured lawyer) is expected to be drawn from the available surplus in the E&O Fund built up in previous years and applied to the 2011 insurance premium (paragraph 101[c]).

(iv) To the extent that levies (noted in (ii) above) collected in 2011 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the E&O Fund (paragraph 101[d]).

(v) 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2011, subject to limited capital backstop protection provided by the Errors & Omissions Insurance Fund, and reinsurance protecting the program from multiple losses arising out of a common event or nexus (paragraph 74).

(vi) Notwithstanding LAWPRO's recommendation in the September 2009 Report to Convocation, LAWPRO will not be seeking a special levy (formerly predicted to be $450 per practising lawyer) for the one-time reassessment of existing claims reserve liabilities arising from enactment of the legislation to introduce HST in Ontario (paragraph 33).

Temporary Leave of Absence:

(vii) The age restriction will be removed from "Exemption c) Temporary Leave of Absence" to bring it up-to-date in light of the Human Rights Code (Ontario) (paragraph 18).

CPD (formerly CLE) Premium Credit:

(viii) The Continuing Professional Development Premium Credit (formerly the CLE Premium Credit) will be continued for the 2012 program, with a $50 premium credit per program, subject to a $100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and successfully completed by lawyers between September 16, 2010, and September 15, 2011, for which the lawyer has successfully completed the online CPD Declaration Form (paragraph 49).

(ix) Subject to the changes identified earlier in this report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2010 will remain unchanged for the 2011 insurance program (paragraph 106).
Errors & Omissions Insurance Fund:

(x) The investment income of the Errors & Omissions Fund which is surplus to the obligations of the fund will be made available to the Law Society during 2011 (paragraph 11).

Conclusion:

(xi) The LAWPRO Board considers the program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this program of insurance for 2011 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2011 insurance program can be implemented by January 1, 2011.

PART 1 – THE ERRORS & OMISSIONS INSURANCE FUND

9. LAWPRO provides services to the Law Society with respect to the Errors & Omissions Insurance Fund ("E&O Fund") of the Law Society, which is currently in run-off mode. (The E&O

Fund was responsible for the insurance program prior to 1990, and for a group deductible of up to $250,000 per claim prior to 1995).

10. As of June 30, 2010, the E&O Fund had outstanding claims liabilities of $1.1 million. The number of open files for 1994 and prior years stood at 10. Since there are sufficient assets in the E&O Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the E&O Fund is surplus to the needs of the E&O Fund and can be used by the Law Society for its general purposes.

11. Accordingly, the investment income of the Errors & Omissions Fund which is surplus to the obligations of the fund will be made available to the Law Society during 2011.

PART 2 – CHANGES TO THE INSURANCE PROGRAM FOR 2011

12. In developing the details of the 2011 program, LAWPRO has, as always, considered the changing environment in which lawyers practise and any comments received from the profession during the previous year. But the general structure of the current program, as well as policy limits, coverage and available options, appear to generally meet the needs and practice realities of the profession for 2011.

13. Consequently, for the 2011 program relatively few modifications in the structure of the program, and in the form and substance of the policy, are contemplated.

Temporary Leave of Absence

14. Under “Exemption c), Temporary Leave of Absence”, lawyers may apply for temporary leave from the insurance program provided the absence is not more than (a) five years if taken for reasons of family or illness, or (b) two years if taken for any other reason. This exemption is said not to apply if the lawyer is 65 years of age or older, or if the lawyer has taken alternate employment. Under this form of exemption, lawyers are provided with $1 million per claim/$2 million aggregate limit protection without making premium payments. This contrasts with the usual $250,000 per claim/aggregate limit protection offered under most other forms of exemption.

15. It is proposed that the form of this exemption be brought up-to-date by removing the age restriction. This will ensure that lawyers are equally entitled to this exemption regardless of age and enhance compliance with the *Human Rights Code* (Ontario), since its amendment in recent years to prohibit age discrimination regarding those over age 65. Section 1 of the Code currently provides as follows:

> Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

16. Professional liability insurance comes within the scope of this provision (although some other types of insurance are exempt).

17. According to program statistics for 2010, 239 lawyers currently claim the relevant

temporary leave of absence exemption. The proposal to remove the age restriction is not expected to have a significant impact on the insurance program from an underwriting or cost perspective.

18. Accordingly, the age restriction will be removed from "Exemption c) Temporary Leave of Absence" to bring it up-to-date in light of the Human Rights Code (Ontario).

PART 3 — THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

19. Persistent increases in the number and cost of claims over the past few years is putting significant pressure on the program. The program is also subject to ongoing uncertainty regarding investment income and transaction levies. Because of the elimination of the Premium Stabilization Fund, there is no longer a significant pool of money in the Law Society Errors and Omissions Insurance Fund which can be used to insulate the program from negative impacts.

20. As LAWPRO works through these challenging times, the company's prudent and conservative approach to the issues of the day has stood it in good stead. LAWPRO experienced a growth in its capital base as of December 31, 2009, and its minimum capital test ("MCT") as of June 2010, was 186 per cent. This MCT result is above the regulators' minimum level of 100 per cent and supervisory threshold of 150 per cent, and above LAWPRO's internal minimum target of 175 per cent. LAWPRO has a robust asset-liability matching program to ensure that the funds are available to satisfy the claims obligations undertaken to date. Also, LAWPRO has received a consistent "A" (Excellent) rating from A.M. Best Co. ten times since 2000.

21. However, LAWPRO was given a "negative" outlook by A.M. Best Co. in early 2010. (An "outlook", which looks more to the future, is different from a "rating".) This was in essence a message from the rating agency that attention needs to be paid to some key issues (especially level of premium income when compared to the cost of claims) if LAWPRO intends to keep assuming claims liabilities at its current rate. The MCT of 186 per cent as of June 2010, represents a decline from 206 per cent as at December 31, 2009. The proposals outlined in the following pages are designed to address the present challenges in a prudent fashion and maintain the company's ability to meet the needs of the bar in the years to come.

22. To establish the recommended program for 2011, the LAWPRO Board considered several factors, such as:

- the cumulative effect of the recent underwriting and investment results, and the economic environment, on the program;
- the expected future loss costs;
- the revenue sources which are expected to supplement the base levies; and
- the inherent uncertainties associated in predicting the results of the program each year.

23. To ensure the program's long-term viability, LAWPRO and the Board took a prudent approach to projections of revenue, as well as claims frequency and severity, taking into account factors such as emerging claims trends, general economic conditions, tax changes and inflationary pressures on the claims portfolio.

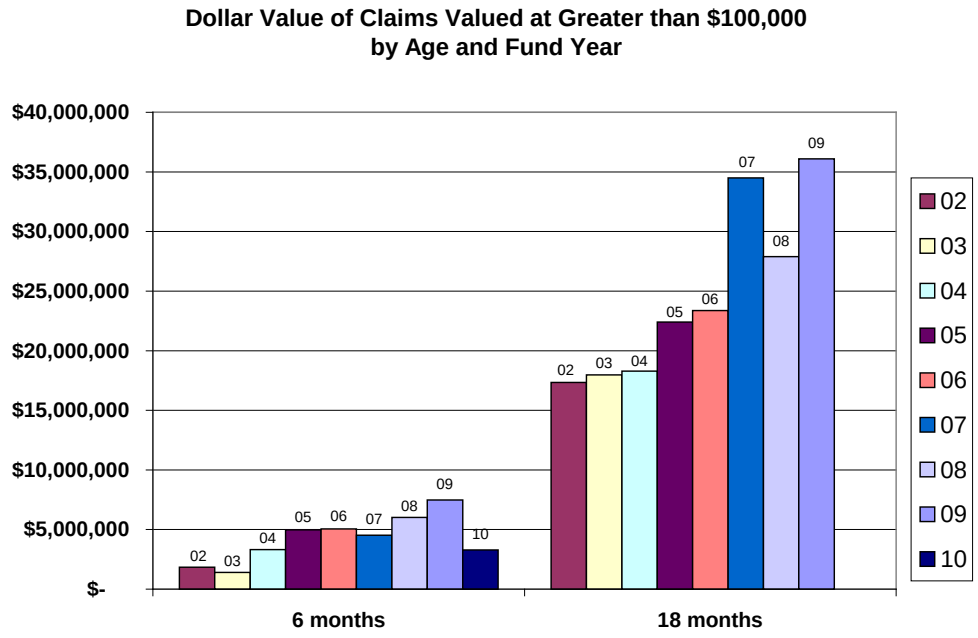
24. As part of its ongoing planning process, LAWPRO looked at a five-year time horizon,

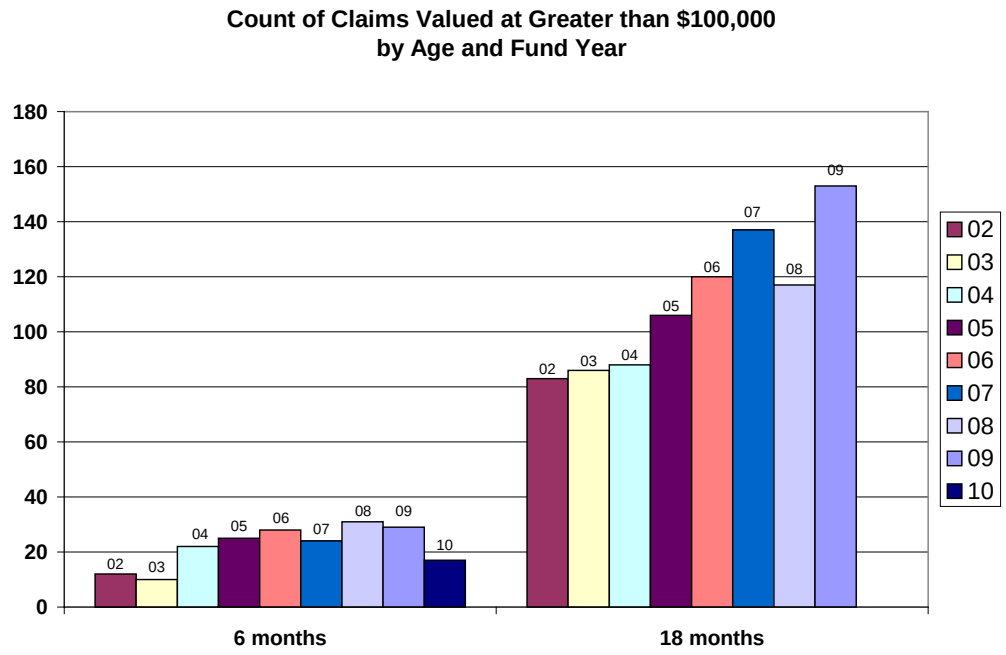
whereas typically LAWPRO has used a three-year horizon. Any LAWPRO forecast is reviewed and revised periodically based on new information as it emerges. The subject forecast reflects the trends detailed in this report, and takes a conservative approach to projecting the frequency and cost of claims under the program. This prudent approach is dictated by uncertainties associated with predicting (a) general economic and inflationary trends, and (b) claims associated with recommended or recent program changes, as applicable.

Program Costs

25. LAWPRO's revenue requirements for the 2011 insurance program are based on the anticipated cost of claims for the year, as well as the cost of applicable taxes and program administration.

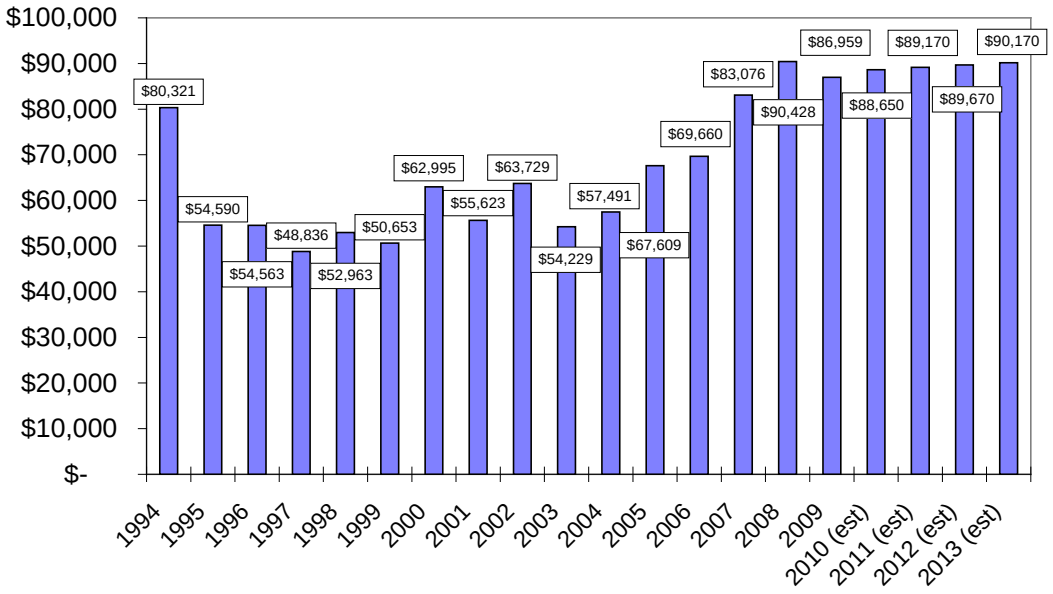
26. Loss experience has trended up noticeably in terms of frequency since 2004, with more claims reported than in the recent prior years. While it is too early to form a final view on the development of the most recent fund years' claims, such as 2008 through 2010, recent statistics also indicate an increase in the number of claims involving $100,000 or more (as seen below) and a resulting overall increase in claims severity (cost per claim).





27. For 2011, LAWPRO expects direct claims costs alone to be $89.2 million (see chart following). LAWPRO estimates total program funds (that is, claims costs plus general expenses) required for 2011 to be $112.8 million. This estimate is higher than the current forecast of total program funds for 2010, which is approximately $111.2 million. The anticipated increase in 2011 is mainly due to the general upward claims trend and the first full-year impact of the harmonized sales tax (see below).

Claims Cost of Ontario Program, by Fund Year ($000's)



Impact of the Harmonized Sales Tax

28. As part of its 2009 Budget, the Ontario government announced plans to harmonize its provincial sales tax ("PST") with the federal government's goods and services tax ("GST").[1] The resulting harmonized sales tax ("HST") came into effect on July 1, 2010, and has placed an extra eight per cent sales tax burden on expenditures such as corporate rent, certain utilities, certain new home purchases and – most importantly for LAWPRO -- services.

29. Because insurance is considered a financial service and therefore an "exempt supply" under the *Excise Tax Act*, LAWPRO does not charge GST (or HST) on its premiums, but also does not get to recover GST/HST paid while conducting its business. Therefore, the additional eight per cent sales tax that LAWPRO is incurring as a result of the harmonization represents a permanent cost to the company.

30. In 2011 LAWPRO will experience the impact of the HST for the full 12 month period. (The impact in 2010 is only six months, due to the implementation date of July 1.) Given the anticipated costs of rent, utilities and services (such as legal, audit and other consulting work), LAWPRO has estimated that HST will increase its annual program administration expenses by approximately $250,000, in comparison to a typical 12-month period without HST.

31. Of even greater concern, however, is the impact that HST has had on LAWPRO's claims costs. Resolving claims on behalf of the legal profession involves incurring significant defence costs, and legal fees in particular. In addition, claimants' legal and other consulting costs often

[1] Note that the Ontario government's current position is that, post-harmonization, the eight per cent provincial sales tax on insurance premiums continues to be collected on most non-auto insurance premiums.

factor into indemnity payments made by LAWPRO. Given the current estimates of future claims costs, the company expects the annual burden of HST on claims costs to be $3.2 million (or about $150 per lawyer). This expected cost for a full 12 months has been factored into the total claims costs presented in the chart in paragraph 27, and is included in the base premium recommended for the 2011 program (see paragraph 101[a]).

32. The introduction of HST imposed a retrospective tax on many industries, such as insurance. In addition to the HST impact on the claims costs associated with future policies issued by LAWPRO, the company had to revalue its loss provisions for claims that were already on the books but that would be resolved in the time period after the July 1, 2010, implementation of the HST regime. That revaluation occurred as of December 31, 2009, in accordance with standard actuarial practice, as the legislation was substantively enacted before year-end. The increased claims liabilities of over $10 million was compensated for by automatic payment of an additional premium from the E&O Fund under the terms of the 2009 insurance program, as reported in the Annual Reports of the Law Society and LAWPRO for 2009.

33. Therefore, notwithstanding LAWPRO's recommendation in the September 2009 Report to Convocation, LAWPRO will not be seeking a special levy (formerly predicted to be $450 per practising lawyer) for the one-time reassessment of existing claims reserve liabilities arising from enactment of the legislation to introduce HST in Ontario.

Risk Rating

(a) Background

34. As already discussed in this report, the Task Force Report concluded that the cost of insurance under the program should generally reflect the risks.

35. Specifically the Task Force Report indicated that "... as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk." [2]

36. In keeping with this approach, LAWPRO regularly conducts detailed analyses of the risks associated with the program. The earlier results of these analyses are summarized in previous Reports to Convocation. These analyses concluded that the practice of real estate and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

37. The objective of risk rating was finally achieved in 1999 by applying various discounts and additional levies (such as the real estate and civil litigation transaction levies and claims history levy) to the insurance program.

38. Risk rating, however, is not static. Because the relationship between the cost of claims and different areas of practice may change, LAWPRO must continue to monitor the program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are reevaluated each year, and the factors used to assess risk and determine premium under the program are re-evaluated for degree of relevance. The factors currently used to match risk to

[2] 1994 Task Force Report, at page 17.

premium include area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

39. As in the past, LAWPRO's risk analysis also examined the degree of specialization, size of firm, and geographic location of practice as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a combined basis to determine any correlation or dependencies.

40. In 2010 this review has reaffirmed the validity and magnitude of the rating structure currently in place. The results of the customary re-evaluation of the earlier risk analyses are addressed in this report at paragraphs 50 to 66.

(b) Practice Trends

41. LAWPRO's present risk analysis reaffirms the results of its last report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with real estate currently equalling or leading the practice of civil litigation as the area of practice with the greatest relative exposure for losses. In particular, the analysis indicates that overall, the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice. These two areas of practice represented 34 per cent of the claims reported and 56 per cent of the claims costs under the program in 2009.

42. In particular:

a) Real estate claims costs have trended upwards consistently in the 2000 to 2009 period with real estate accounting for 28 per cent or more of costs consistently over this time. Since 2004, costs in this area of practice have increased more than 81 per cent;

b) In 2009, the exposure relating to the practice of civil litigation was again substantially more than that traditionally seen, with civil litigation accounting for 32 per cent of the claims reported and 30 per cent of the claims costs under the program (well above the traditional levels of 27 per cent and 18 per cent seen in the 1989-94 period);

c) In 2009, the nature of claims against civil litigators was also reaffirmed, with general conduct or handling of the matter accounting for about 70 per cent of litigation claims compared to missed limitation period claims which accounted for only 30 per cent of these claims; and

d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior 10 years were more than three times more likely to report a claim during the past year than those with no claims in the prior 10 years.

43. The results of this analysis are summarized in the graphs contained in **Appendix "B"** of this report.

(c) Risk Management Initiatives

44. A principal mandate of LAWPRO is to help the legal profession manage the risk associated with practice. This is accomplished by providing lawyers with tools and resources that help them

manage risk and practise in a more risk-averse fashion. Among LAWPRO's major risk management initiatives are:

• **TitlePLUS® Program:** TitlePLUS insurance is a competitive product that has made a positive difference in the Ontario real estate market. It expands the choice offered to consumers and lawyers. It influences the behaviour of other title insurers. It educates consumers and has expanded policy coverages available to them. It also provides education on title insurance and real estate trends to lawyers.

In the past year, the TitlePLUS Department has hosted a series of events in which staff spoke to lawyers and support staff about risk mitigation strategies and best practices. TitlePLUS staff have given presentations to lawyers covering topics such as:

1. Title insuring commercial properties;
2. "Red flags" of fraud in real estate transactions; and
3. Claims trends, including strategies for prevention.

They have also given lectures at law schools on title insurance and fraud prevention measures in real estate transactions. More presentations and lectures will take place in the coming months. These are designed to provide the legal profession, including new lawyers entering practice, with the tools they need to manage risk and avoid claims under both the errors and omissions and TitlePLUS programs.

The TitlePLUS EXPRESS, the Department's news bulletin, is sent regularly to subscribing lawyers across Canada, providing legal and underwriting updates on current national real estate issues. Also, in recognition of the role support staff play in real estate transactions, the Department is preparing the first issue of "TitlePLUS Tips", a bulletin written specifically for support staff in the offices of subscribing lawyers.

In 2010, LAWPRO continued with its consumer education program which involves a media campaign highlighting the role of lawyers in real estate transactions and TitlePLUS insurance. This initiative includes a consumer-oriented, online "Real Simple Real Estate Guide" which helps educate consumers about what to expect in real estate transactions and the role a lawyer plays in the transaction. In addition, posters promoting the lawyer's role in real estate matters were placed in Toronto subway stations and transit shelters.

• **practicePRO®**: Now in its 12th year, LAWPRO's successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources, both inside and outside of Ontario. This year, practicePRO helped lawyers avoid malpractice claims through articles in LAWPRO Magazine and other law-related publications, information on the practicePRO website, and live presentations and/or an exhibitor presence at CLE programs and other law-related events. practicePRO has a significant presence in the legal community by maintaining relationships and actively working with its various constituents, including the Law Society, the Ontario and Canadian Bar Associations, local law associations, legal goods and service providers, the legal press and others.

• **LAWPRO Magazine:** With its strong risk management focus, LAWPRO's flagship publication continues to play an important role in helping lawyers avoid malpractice claims. The December 2009 edition explored social media and the risks for lawyers who use the new tools without careful thought about the potential pitfalls. Also, there was an article on the issue of supervision and the lawyer's obligations in that regard. It is an increasingly complex

topic as lawyers enter new forms of business relationships with suppliers and service providers. The May/June 2010 issue reviewed claims numbers and trends, while providing many suggestions on ways to avoid claims. A special issue on the 15th anniversary of LAWPRO's operation of the insurance program is scheduled for release in September 2010.

• **Fraud:** In terms of count and cost, fraud-related claims are an important concern for LAWPRO. LAWPRO continues to take steps to combat fraud through measures within its own operations, its relationship with the legal profession, and by working with law enforcement, land registry, banking, insurance and other organizations and industries also affected by fraud. The December 2009 and May/June 2010 issues of LAWPRO Magazine contained articles that highlighted for lawyers the recent fraud schemes, including new forms of fraud involving counterfeit certified cheques and bank drafts. The articles also contained information to help lawyers recognize and avoid handling fraudulent matters. practicePRO continues to provide a webinar, available as a free download to all Ontario lawyers, on how lawyers can avoid being victimized by fraud.

• **Consultations:** practicePRO actively worked with the Law Society and various bar associations to ensure that risk management factors were taken into account when policy issues were under discussion. For example, submissions were made regarding draft file retention policies and the implementation of continuing professional development by the Law Society.

• **practicePRO Lending Library:** To help lawyers improve their practices, this library makes 120 of the best books on law practice and risk management topics available on loan for free to all Ontario lawyers. To date in 2010, 55 books went out on loan to 39 lawyers.

45. The Continuing Legal Education ("CLE") Premium Credit offered under the program is another significant LAWPRO risk management initiative. The name of the credit is being changed to the "Continuing Professional Development ('CPD') Premium Credit," to match the new Law Society nomenclature for this area.

46. In 2001, a premium credit of $50 was first offered to lawyers using the practicePRO Online Coaching Centre, an Internet-based, self-coaching tool that helps lawyers enhance their business and people skills.

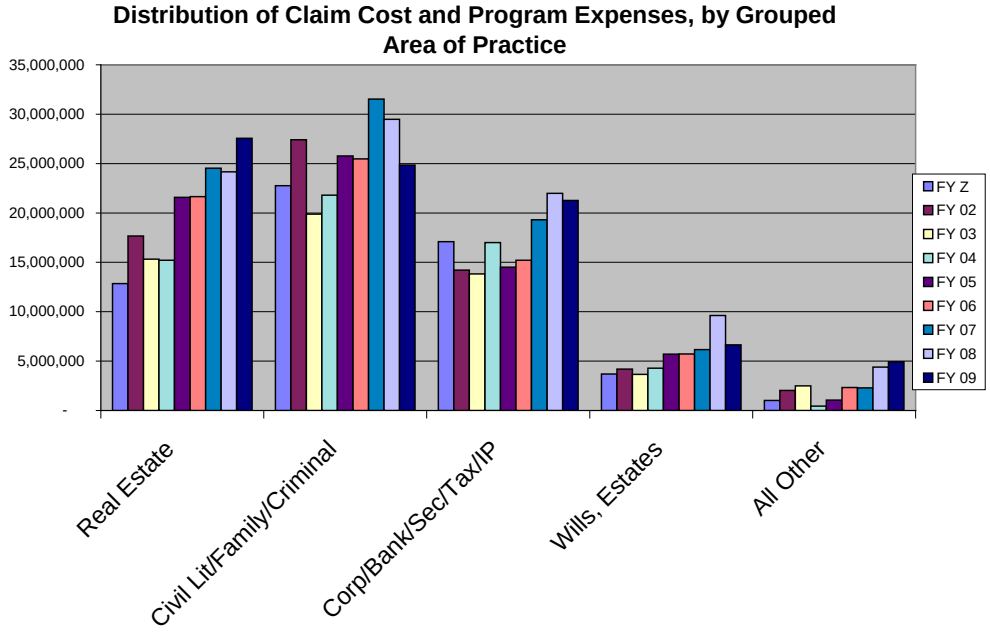
47. The premium credit was broadened in the following year to provide a $50 credit (to a maximum of $100 per lawyer per year) for designated law-related CLE courses and programs completed by the lawyer. These courses are offered by the Law Society, Ontario Bar Association, The Advocates' Society and other not-for-profit CLE providers, and must include a substantial risk management component. In keeping with the most frequent causes of loss, the risk management content of these programs deals with the "soft" skills of lawyering, such as lawyer/client communication, documenting a file, and time management, rather than substantive law.

48. For a credit on premiums for 2011, lawyers must have participated in LAWPRO-approved CLE programs between September 16, 2009, and September 15, 2010. In addition to the Online Coaching Centre, and the Law Society's Skills Self-Assessment tool, 177 programs qualified for the credit during this period, with an estimated 22,000 lawyers eligible for a premium credit. Prior to the implementation of the CLE credit, most CLE programs focused solely on substantive law. Due to the CLE credit, the content of a significant number of Ontario CLE programs has been broadened to include risk management and claims prevention content.

49. Accordingly, the Continuing Professional Development Premium Credit (formerly the CLE Premium Credit) will be continued for the 2012 program, with a $50 premium credit per program, subject to a $100 per lawyer maximum amount, to be applied for preapproved legal and other educational programs taken and successfully completed by lawyers between September 16, 2010, and September 15, 2011, for which the lawyer has successfully completed the online CPD Declaration Form.

(d) Revalidating Risk Rating

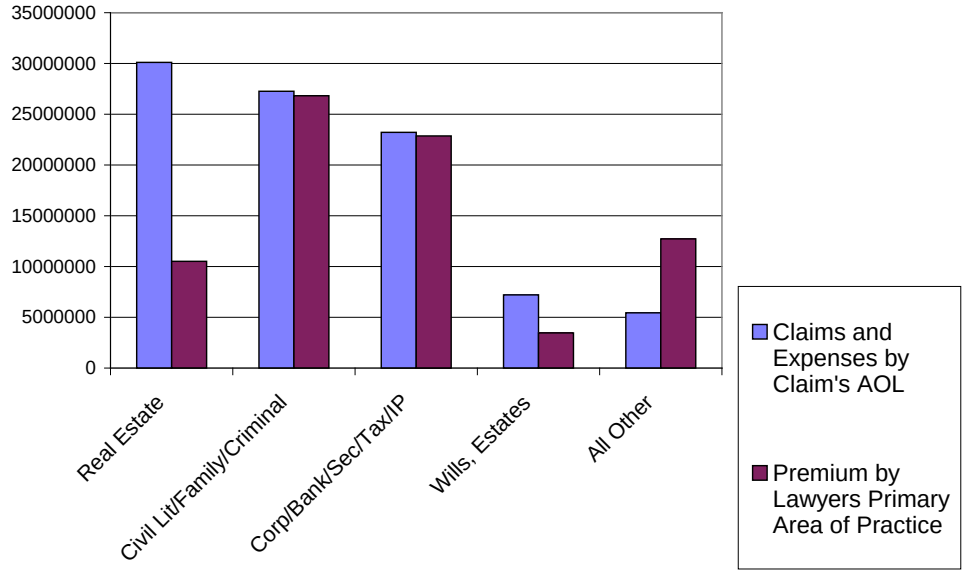
50. It is important to periodically re-evaluate the program by area of practice to ensure that it continues to be effective in its risk rating. The following chart shows the distribution of claims costs by detailed area of practice since 2001.



51. Apparent from this chart are the significant and growing claims costs in many practice areas and the fact that real estate and litigation continue to be higher risk.

52. The fact that few lawyers practise exclusively in one area provides a compelling reason to group together common or related areas of practice. However, to ensure that risk rating is being achieved, the program's anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program up to December 31, 2009), the following chart compares the anticipated losses distributed by area of law to the proposed base premiums by primary area of practice. The premiums in this chart include the proposed base premiums with real estate practice coverage, innocent party and base premium adjustments, but exclude transaction levies and claims history surcharges.

Comparison of Projected 2011 Premium by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law



53. The shortfall between the anticipated claims costs and expenses to base premiums is particularly significant for the area of real estate law.

54. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, the 2011 base premium would be over $9,000 for those whose primary area of practice is real estate.

55. Past Reports to Convocation have discussed the importance of using the transaction and claims history surcharge levies as premium, to avoid any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.[33]

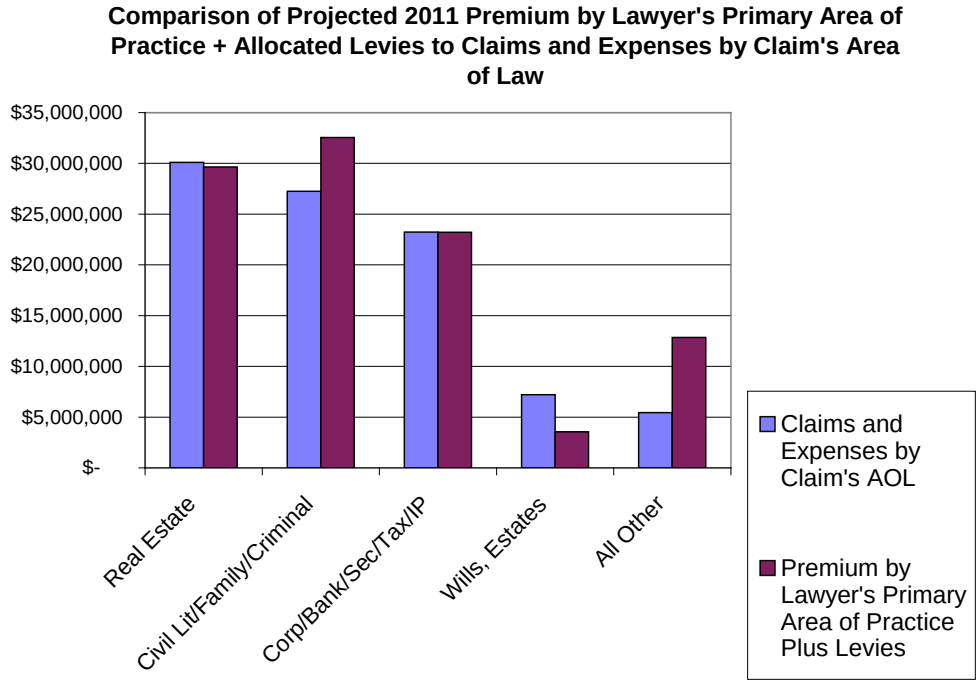
56. By including the transaction and claims history surcharge levies as in past years without the adjustment to the real estate transaction levy that was made effective January 1, 2010, a large shortfall between anticipated claims costs and expenses to total insurance levies would have existed for the area of real estate law. By adjusting the real estate transaction levy from $50 to $65 3 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-37; and effective for transactions on or after January 1, 2010, the shortfall for real estate claims costs was largely overcome. Therefore, it is proposed to maintain the real estate transaction levy at $65.

57. In April 2008, LAWPRO introduced a real estate practice coverage option ("REPCO"). One REPCO claim has arisen as of June 30, 2010. LAWPRO is maintaining an actuarial loss reserve for this claim plus potential incidents that have occurred but have not yet been reported to the company. (Since the essence of REPCO coverage is to compensate for an act of fraud by the insured lawyer, it is unlikely that there will be an immediate report by the lawyer involved; therefore, LAWPRO is making a conservative assumption that there will often be delays in

[3] 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-37; and 1996 LAWPRO Report to Convocation, pp. 32-36.

reporting under this coverage.) To acknowledge the promising results to date, the price of the REPCO coverage was decreased by a prudent $100, from $500 to $400, for the 2010 program. It is proposed to maintain the cost of REPCO coverage at $400 for the 2011 program.

58. The following chart compares the anticipated premiums sorted by the lawyer's primary area of practice (plus the claims history surcharge and transaction levies as revised), to the anticipated claims costs and expenses for each area of law.



59. This comparison indicates that, with the benefit of the transaction and claims history surcharge levies, and including the REPCO premium, there is a substantial correlation between revenues and claims for the major practice areas.

60. The graph does indicate some subsidy by area of practice. This subsidy changes somewhat over time and may vary considerably from year to year for the smaller practice areas.

61. The area of wills and estates has experienced a significant increase in claim costs in the last few years. Given the relatively small number of practitioners in this area, a few large claims often skew the results. LAWPRO will continue to monitor these results and propose any action, if appropriate, at a future date.

62. Appreciating the foregoing variables and possibilities of comparison by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year. Although some subsidy may exist for certain areas of practice, when taking into account operating costs and commercial realities, the cost of insurance under the program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "…no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."[4]

63. Other aspects reviewed in the analysis included the exposure based on the size of firm, year of call, geographic location and prior claims history. The results of this analysis reaffirm the premium discounts already in place, including the discounts for new and for part-time practitioners and the surcharge applied to practitioners with a prior claims history. The results of this analysis support the conclusions of previous reports, and are summarized in the graphs in **Appendix "B"**.

64. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice as well as the higher risk associated with real estate conveyancing and civil litigation.[4]

65. Accordingly, the LAWPRO Board is satisfied with the continued use of the transaction and claims history levy revenues as premium, with the result that the cost of insurance under the program continues to generally reflect the risk.

66. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized in **Appendix "C**" of this Report.

Reinsurance and Capital Preservation

67. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.

68. In its early years, LAWPRO purchased program-wide quota share reinsurance. A stronger financial position and more stable claims experience enabled the company to cease reinsuring the program with quota share reinsurance starting in 2003. In addition to relying on LAWPRO's own capital, the resources of the E&O Fund up to a $15 million cap were effectively relied on starting in 2003. An enhanced retrospective premium endorsement provided that for certain years actual loss experience above a certain threshold would be borne by the E&O Fund through additional premiums. On the other hand, actual loss experience below a certain threshold would trigger a refund of premiums to the E&O Fund. The E&O Fund has used the Premium Stabilization Fund ("PSF") as a mechanism to fulfill its potential obligation for additional premiums and as a place to hold premiums refunded.

69. Given the current uncertain environment for future claims, transaction levies and investment income, and the rapidly declining balance of the PSF, it was decided in September 2009, that LAWPRO would achieve greater program stability by retaining in the company any future favourable claims development. As a result, the refund aspect of the retrospective premium endorsement was not continued in the 2010 insurance program.

70. As noted above, under the endorsement as drafted in certain years before 2010, additional premium payments relating to past insurance fund years were potentially required as final claims costs emerged. Accordingly, recognizing the decreased size of the PSF and not wanting to place undue pressure on the E&O Fund as a whole, the threshold for the additional premium aspect of the retrospective premium endorsement was increased in 2010.

71. For 2011, it is proposed that there continue to be a $15 million dollar cap on the E&O Fund's exposure to provide additional premium to LAWPRO. As in 2010, to the extent that the net loss ratio exceeds the anticipated loss ratio for the year by an absolute 10 per cent, the E&O Fund would cover the losses. The 2010 and 2011 backstop provisions will be evaluated

[4] 1994 Insurance Committee Task Force Report, at page 17.

separately, with the $15 million limit shared by the two fund years. The lower likelihood of a payout by the E&O Fund in this regime, as it commenced on January 1, 2010, makes the protection more akin to a catastrophic coverage, providing payout only in the unlikely scenario that an insurance fund year experienced significant deterioration from its initial expectations.

72. By relying on its own resources and the $15 million backstop from the E&O Fund as described above, LAWPRO will not need to pursue the expensive course of purchasing insurance on a program-wide basis.

73. For 2011, LAWPRO will again consider purchasing reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005. This protection against aggregated losses extends across both the professional liability and TitlePLUS programs, and offers some measure of protection against a series of claims such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in title affecting an entire condominium project.

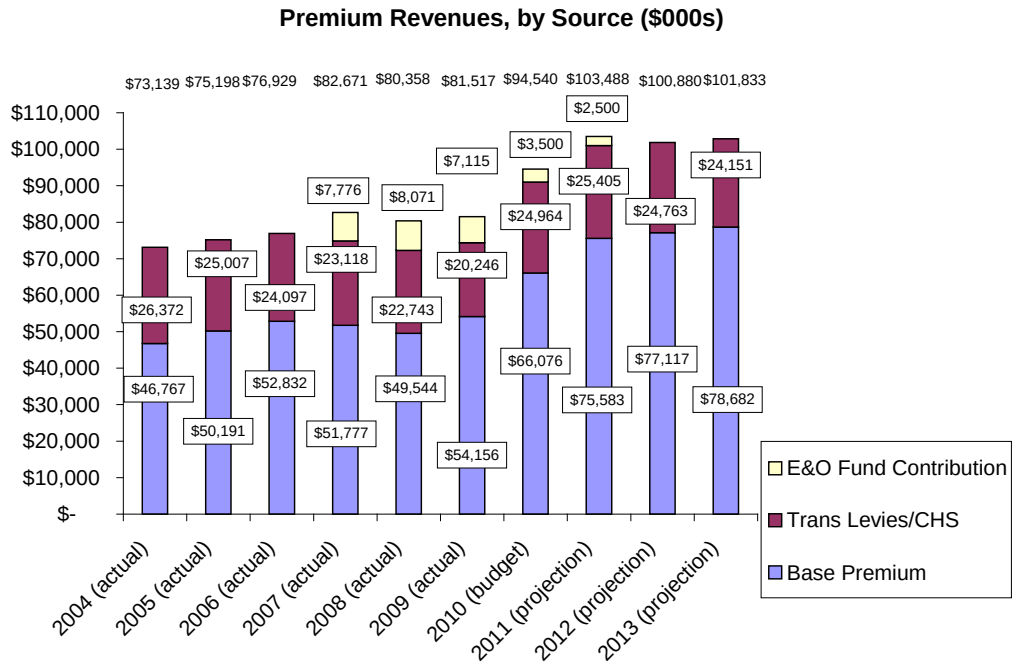
74. Accordingly, 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2011, subject to limited capital backstop protection provided by the Errors & Omissions Insurance Fund, and reinsurance protecting the program from multiple losses arising out of a common event or nexus.

Revenues

75. To meet the total expected program obligations for 2011, LAWPRO first evaluates its likely investment income, then considers premium sources. As in past years, premium revenues to meet fiscal requirements for 2011 will come from three principal sources: the base premiums[5], levy surcharges, and E&O Fund premium contributions.

76. The projected premium revenues from these three sources are as follows:

[5] "Base premiums" includes base premiums with applied discounts or charge, as well as innocent party and REPCO premiums



(a) *Investment Income*

77. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs, by investing any available funds into a well-diversified portfolio of fixed income and equity securities. LAWPRO uses the resulting investment income to help pay operating and claim expenses, thereby reducing the amount of funds that must come from premium sources.

78. LAWPRO provides further stability to the program by segregating into a separate portfolio (the liability-matched portfolio) sufficient money to pay anticipated future claim costs, with any surplus capital held in a different portfolio. The securities in the liability-matched portfolio consist of high quality government and corporate fixed income securities, with the future cash inflows to the company arranged to coincide with the expected payout patterns of the future claim costs. The surplus portfolio consists of a prudent mix of fixed income and equity securities.

79. During recent years investment returns have weakened as the worldwide credit crunch resulted in some depressed equity and fixed income prices. In addition, with central banks such as the Bank of Canada lowering their overnight interest rates to rock-bottom levels, the rates of return on fixed income securities have also dropped significantly. For LAWPRO, the downward pressure on returns is exacerbated as fixed income securities mature and need to be reinvested at these low rates. Although the Bank of Canada has recently started the process of increasing its overnight interest rates, it will likely be some time before interest rates available upon purchasing new fixed income securities equal the rates that have been available to LAWPRO in the past.

80. LAWPRO's prudent investing philosophy helped protect its portfolios (both liability matched and surplus as described above) from significant losses of principal during the economic

turbulence of recent years. However, as a result of continued market uncertainty, the company has lowered its expected return on investments for 2011 to 3.75 per cent from 5 per cent (or higher) in previous years.

(b) *Levy Surcharges*

81. The Ontario real estate market has been very volatile in the last number of quarters, with indications that this trend will continue for some time. Statistics published by Canada Mortgage and Housing Corporation (CMHC) in June 2010 indicate that the number of resale transactions decreased by approximately 33 per cent in 2009, and is forecast to rebound 26 per cent in 2010 and then drop by 7 per cent in 2011. Similarly, after a 15 per cent drop in 2008, new housing starts rebounded by 8 per cent in 2009, with forecasts of an 11 per cent increase in 2010 followed by a 11 per cent drop in 2011.

82. At present, the levy surcharges include a $50 civil litigation transaction levy and a $65 real estate transaction levy, as well as a claims history levy surcharge ("CHS").[6] Re[6]venues from these levy surcharges are applied as premiums, to supplement the base levy.

83. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the number of real estate transaction levies as of 2009 has declined close to 50 per cent since 1999.

84. The increased use of title insurance is considered to be largely responsible for the reduction in real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers.

85. It is estimated that well over 90 per cent of residential real estate transactions in Ontario are [7]title-insured.[7] In recent years, the number of real estate transaction levies collected has moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

86. More recently, the number of transaction levies has been affected by the ongoing decline in Ontario real estate sales: As of June 2010, transaction levy revenues are more than $1.1 million under budget.

87. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges for 2011.

88. As described above in this report, the use of transaction levies ensures an element of risk rating in the insurance program, as both real estate and civil litigation continue to represent a

[6] The claims history levy surcharge ranges from $2,500 for a lawyer with one claim paid in the last five years in practice, to $25,000 for a lawyer with five claims paid in the last five years in practice (an additional $10,000 is levied for each additional claim paid in excess of five).
[7] LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy filings.

disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995.

89. For 2011, reflecting the rate increase noted above, LAWPRO estimates transaction and claims history levy surcharge revenues at $25.4 million.

(c) *E&O Fund*

90. Since the introduction of the 1999 program, any receipts in excess of those budgeted from the transaction levies and claims history surcharges collected in the year have been held within the PSF component of the E&O Fund. They have been managed on a revolving account basis and applied to the insurance program. These funds are used to guard against any future shortfall in levy receipts in a given year, appreciating the difficulties in forecasting transaction levy revenues in a changing economic climate, and acted in some years as a buffer against the need for increases in base premium revenues.

91. To meet its retrospective premium obligation for 2009, which was pushed to over $13 million given the one-time retrospective impact of the HST (see paragraphs 28 through 33), the PSF was exhausted as of December 31, 2009. While the E&O Fund has approximately $63.1 million of surplus as at June 30, 2010, some of those funds have already been committed for specific purposes, such as the $15 million backstop (see paragraphs 67 through 74). The remaining available surplus may be used by the E&O Fund to pay for ongoing operating costs, make an annual premium contribution, or fund potential shortfalls in expected transaction levies and/or claims history surcharges.

92. Given the funds required to fund future operating costs of the E&O Fund and provide stability against potential transaction levy shortfalls in the short term, an amount of $2.5 million (about $110 per insured lawyer) will be drawn from that surplus and applied towards the 2011 program. The current LAWPRO five-year projection does not assume further contributions from the E&O Fund to support the base rate premium.

(d) Capital Requirements

93. As a final consideration before determining the base premium, LAWPRO must consider its capital needs. Canadian regulators use the MCT in order to assess capital adequacy of a property and casualty insurer. The MCT is a risk-based ratio calculation which compares the insurer's capital or net assets available to the "capital required". Through the capital required component of the test, regulators prescribe certain additional capital or margins that must be held based on the various types of assets and liabilities on the insurer's balance sheet.

94. A significant margin requirement relates to the 15 per cent additional capital that must be held for all the net claims liabilities on the books that relate to commercial liability (which includes errors and omissions coverage). Given the steady historical growth of LAWPRO's net claims liabilities over the last decade or so, even a net income of $5 million can often lead to a decline in LAWPRO's MCT ratio. As a very general rule of thumb, LAWPRO requires between

$5 and $7 million of either net income or increased after-tax net unrealized gains on its surplus portfolio[8] to achieve a stable to slightly increasing MCT ratio.[8]

95. The determination of a specific insurer's "ideal" MCT ratio is no easy task, as the current industry metrics are primarily designed simply to identify levels that are too low. Canadian regulators require that insurers do not fall below various MCT levels, such as the 100 per cent minimum and 150 per cent supervisory levels. In addition, working in conjunction with LAWPRO, the regulators have approved a further 175 per cent internal target level. All of these figures represent minimum MCT levels, not ideal operating targets in and of themselves.

96. Subject to subsequent regulatory direction in this regard, the Board believes that a longterm operating MCT target in the neighborhood of 220 to 230 per cent balances LAWPRO's risk profile and its unique ability to set premiums and raise capital, which differs significantly from commercial insurers in Canada. An MCT in this range would allow LAWPRO some capacity to absorb unexpected losses or changes in market conditions, and have time to implement a strategy to restore capital levels to the desired range. An MCT above this range would potentially allow LAWPRO the opportunity to explore changes to premium levels or coverage terms.

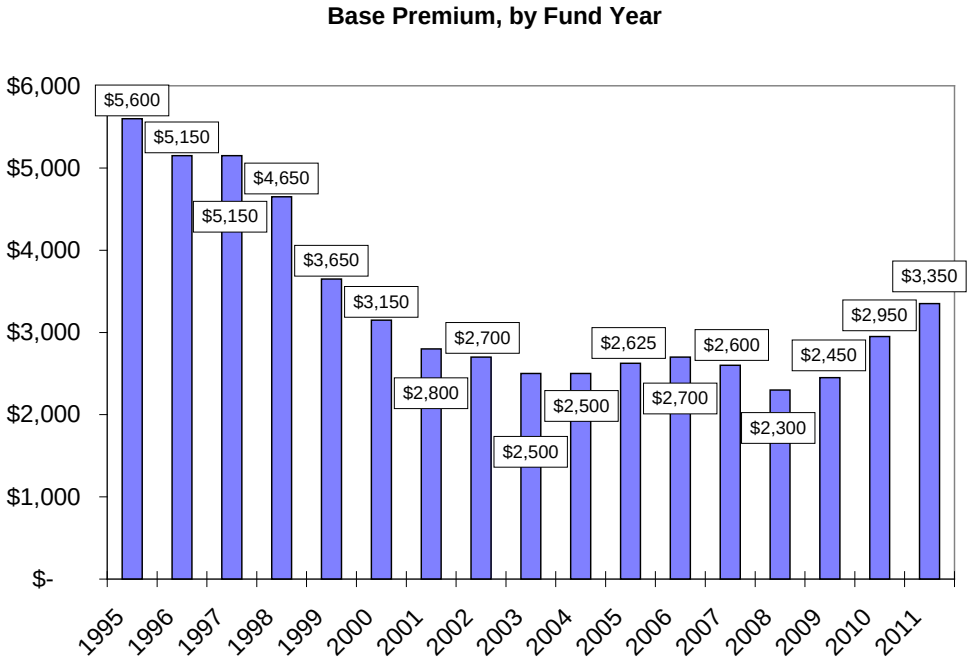
97. With LAWPRO's MCT at 186 per cent as of June 2010, the premium for 2011 and onwards must be set at a level that generates significantly more than a break-even result, allowing the Company to enter a phase of capital ratio stabilization and replenishment.

(e) Base Premiums

98. Based on the previous discussion of program costs, sources of revenue and capital needs, the base premium will be set at $3,350 per member to account for a deterioration in claims experience and the likelihood of continuing economic uncertainty. In summary, the 2011 proposed base premium is based on the following key assumptions:

- 22,889 practicing insured lawyers (full-time equivalents);
- $112.8 million in anticipated total claims costs (paragraph 27);
- $25.4 million in budgeted transaction and claims history levy revenues (paragraph 89);
- $2.5 million drawn from the E&O Fund (paragraph 92); and
- 3.75 per cent return on investment (paragraph 80).

[8] Increases in net unrealized gains relating to the matched portfolio, as well as realized gains, are included in net income.



99. At this time, the Board is satisfied that this increase in base rate appropriately recognizes the uncertainties in emerging claims experience and economic conditions, and allows the program to continue to operate on a self-sustaining basis while protecting the company's overall financial position. The increase is consistent with information provided in the Report to Convocation in recent years. It was repeatedly noted that the historically low base premium (for example, less than $2,500 per insured lawyer) may not be sustainable in future years, as higher claims costs had already begun to emerge. In particular, the beneficial 2008 base premium level was a method of giving the benefit to the bar during 2008 of some superior 2007 investment results and favourable claim reserve development for earlier fund years. As noted earlier, investment returns in the current market are lower than in 2007 and 2008, and claims experience in terms of frequency and severity has continued to deteriorate. Also, the full impact on the program of Ontario's adoption of HST has now been evaluated and factored into the premium calculations.

100. In setting a base rate for 2011, LAWPRO tested its five-year planning horizon under various scenarios. Assuming a modest level of subsidization for the base premium from the E&O Fund in 2011 and none thereafter, overall company results are projected to exceed break-even, thus allowing LAWPRO to both stabilize and strengthen its capital position for the possible challenges of coming years. Many factors influence this forecast, most significantly interest rates and claims experience. The results of this forecast cannot be considered definitive in nature and further base rate increases may be required in future years.

101. Accordingly:

a) The base premium is $3,350 per lawyer for 2011, an increase of $400 from the base premium charged in 2010;

b) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at $25.4 million for the purposes of establishing the base premium for 2011 and other budgetary

purposes;

c) $2.5 million (approximately $110 per insured lawyer) is expected to be drawn from the available surplus in the E&O Fund built up in previous years and applied to the 2011 insurance premium; and

d) To the extent that levies (noted in (b) above) collected in 2011 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the E&O Fund.

(f) *Other Adjustments*

102. With the exception of the changes specifically described in this report, all aspects of the insurance program for 2011 will remain unchanged from the program now in place.

103. As detailed in **Appendix "A"**, subject to the noted changes, the current insurance program for lawyers in private practice encompasses the following:

- standard practice coverage, including Mandatory Innocent Party Coverage;
- coverage options, including Innocent Party Buy-Up, Part-Time Practice, Restricted Area of Practice and Real Estate Practice.

104. The current program also provides for premium discounts and surcharges. Discounts and surcharges expressed as a percentage of premium include:

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a surcharge in the event that no application is filed.

105. Discounts and surcharges expressed as a stated dollar amount include:

- the Mandatory Innocent Party premium;
- optional Innocent Party Buy-Up premium;
- the Real Estate Practice Coverage premium;
- premium discount for early lump sum payment;
- e-filing discount; and
- Continuing Professional Development (formerly Continuing Legal Education) discount.

106. Subject to the changes identified earlier in this report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2010 will remain unchanged for the 2011 insurance program.

CONCLUSION

107. The LAWPRO Board considers the program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this program of insurance for 2011 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2011 insurance program can be implemented by January 1, 2011.

ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September 2010

Ian D. Croft
Chair of the Board
Lawyers' Professional Indemnity Company

James R. Caskey, Q.C.
Vice-Chair of the Board
Lawyers' Professional Indemnity Company

APPENDIX A

Appendix "A"

The Standard Insurance Program Coverage for 2011

Eligibility

- Required of all sole practitioners, lawyers practising in association or partnership, and lawyers practising in a Law Corporation, who are providing services in private practice.
- Required of all other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who do not fully meet the program exemption criteria.
- Available to lawyers who do meet the exemption criteria but opt to purchase the insurance coverage.

Coverage limit

- $1 million per CLAIM/$2 million aggregate (i.e. for all claims reported in 2011), applicable to CLAIM expenses, indemnity payments and/or cost of repairs together.

Standard DEDUCTIBLE

- $5,000 per CLAIM applicable to CLAIM expenses, indemnity payments and/or costs of repairs together.

Standard base premium

- $3,350 per insured lawyer.

Transaction Premium Levy

- $65 per real estate transaction and $50 per civil litigation transaction;

- No real estate transaction levy generally payable by transferee's lawyer if title-insured.

Premium reductions for new lawyers

- Premium for lawyers with less than 4 full years of practice (private and public):
  ◊ less than 1 full year in practice: premium discount equal to 40 per cent of base premium;
  ◊ less than 2 full years in practice: premium discount equal to 30 per cent of base premium;
  ◊ less than 3 full years in practice: premium discount equal to 20 per cent of base premium;
  ◊ less than 4 full years in practice: premium discount equal to 10 per cent of base premium.

Mandatory Innocent Party Coverage

Eligibility
The minimum coverage of $250,000 per claim/in the aggregate must be purchased by all lawyers practising in association or partnership (including general, MDP and LLP partnerships), or in the employ of other lawyers.

The minimum coverage must also be purchased by all lawyers practising in a Law Corporation, where two or more lawyers practise in the Law Corporation.

Premium
$250 per insured lawyer.

2011 Program Options

1. Deductible option
$Nil deductible

- Increase in premium equal to 15 per cent of base premium ($502.50 increase).

$2,500 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Increase in premium equal to 7.5 per cent of base premium ($251.25 increase).

$2,500 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 12.5 per cent of base premium ($418.75 increase).

Standard insurance program: $5,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Base premium of $3,350 per insured lawyer.

$5,000 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 10 per cent of base premium ($335 increase).

$10,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Decrease in premium equal to 7.5 per cent of base premium ($251.25 decrease).

$10,000 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 7.5 per cent of base premium ($251.25 increase).

$25,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs

- Decrease in premium equal to 12.5 per cent of base premium ($418.75 decrease).

2. Innocent Party Sublimit Coverage Options

Innocent Party Coverage Sublimit Buy-Up: For lawyers practising in associations, partnerships and Law Corporations
Lawyers practising in association or partnership (including general, MDP and LLP partnerships) or a Law Corporation (with more than one practising lawyer) can increase their Innocent Party Coverage in two ways:

Increase coverage sublimit to:	Additional annual premium:
$500,000 per CLAIM/aggregate	$150 per insured lawyer
$1 million per CLAIM/aggregate	$249 per insured lawyer

Optional Innocent Party Sublimit Coverage: For sole practitioners and lawyers practising alone in a Law Corporation
Coverage limits

- $250,000 per CLAIM/in the aggregate
- $500,000 per CLAIM/in the aggregate
- $1 million per CLAIM/in the aggregate

3. Practice Options

Restricted Area of Practice Option

Eligibility
Available only to lawyers who agree to restrict their practice to criminal[9] and/or immigration law[10]
throughout 2011.

[9] Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.
[10] Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining in this report, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights.*

Premium
Eligible for discount equal to 40 per cent of base premium, to a maximum of $1,340.[11]

Part-Time Practice Option

Eligibility

Available only to part-time practitioners who meet the revised part-time practice criteria.

Premium

Eligible for discount equal to 40 per cent of base premium, to a maximum of $1,340.

Real Estate Practice Coverage Option

Eligibility

All lawyers who intend to practice REAL ESTATE LAW in Ontario in 2011 must be ELIGIBLE for and apply for this coverage option.

"ELIGIBLE" means eligible to practice REAL ESTATE LAW in Ontario in accordance with the *Law Society Act*, R.S.O. 1990, c. L.8. Categories of lawyers who would not be ELIGIBLE to practice REAL ESTATE LAW in Ontario, include:

- Those who are in bankruptcy;
- those who have been convicted or disciplined in connection with a real estate fraud;
- those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practicing real estate, or an undertaking not to practise real estate.

Premium
$400 per insured lawyer.

4. Premium Payment Options

Instalment Options:

- Lump sum payment by cheque or pre-authorized bank account debit: eligible for $50 discount.
- Lump sum payment by credit card
- Quarterly instalments
- Monthly instalments

5. E-filing Discount

- $25 per insured lawyer (if filed by November 1, 2010)

6. Continuing Professional Development (Risk Management) Premium Credit

[11] The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Practitioners' discount combined cannot exceed 40 per cent of the base premium.

- $50 per course, subject to a $100 per insured lawyer maximum discount, will be applied under the 2012 insurance program.
- For pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2010, and September 15, 2011, where the lawyer completes and files the required LAWPRO CLE electronic declaration by September 15, 2011.
- LAWPRO'S Online Coaching Centre is included as a pre-approved course, where the insured lawyer completes at least three modules between September 16, 2010, and September 15, 2011.

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

(1) Appendix B re Distribution of Claims.

(pages 43 – 47)

(2) Appendix C Premium Rating Examples.

(page 51)

It was moved by Mr. Caskey, seconded by Mr. Eustace, that Convocation approve the program of insurance offered by LawPRO for 2011 as set out in the Report.

Carried

REPORTS FOR INFORMATION ONLY

Compensation Fund Committee Report
- Budget/Levy Issues
- Grants Paid from the Fund

Report to Convocation
September 29, 2010

Compensation Fund Committee

Committee Members
Susan McGrath (Chair)
Marshall Crowe
Michelle Haigh
Jack Rabinovitch
Catherine Strosberg

Purpose of Report: Information

Prepared by the Professional Regulation Division
(Dan Abrahams 416.947.7626 / Zeynep Onen 416.947.3949)

COMMITTEE PROCESS

1. The Committee discussed the matters reported here on September 14, 2010. Committee members in attendance were Susan McGrath (Chair), Marshall Crowe, Michelle Haigh and Jack Rabinovitch. Staff members Zeynep Onen, Maria Loukidelis and Fred Grady also attended. The Compensation Fund's actuary, Brian Pelly of Eckler Ltd., was present to explain his analysis and answer questions.

FOR INFORMATION

BUDGET AND LEVY ISSUES, 2011

Background

2. At its September 2010 meeting, the Compensation Fund Committee considered various budget and levy matters, including the required levy from lawyers and paralegals to pay grants from the Fund in 2011. It also considered a memorandum from the Finance Department concerning a change in the methodology for calculating the reserve for unpaid grants.

3. The Finance Department, with the concurrence of the auditors, has proposed the removal of the allocated administration expenses associated with the Spot Audit program from the unallocated loss adjustment expenses (ULAE) as a component of the Compensation Fund's reserve for unpaid grants. The methodology employed over the last several years has included allocated administration expenses associated with the Spot Audit program funded by the Compensation Fund, although the Spot Audit program itself is not included in the ULAE calculation. The Finance Department's opinion is that the ULAE methodology should be amended to exclude the allocated administration expenses associated with the Spot Audit program. The Committee was advised that this will have the effect of reducing the reserve and increasing the Compensation Fund balance.

4. The Committee was in agreement with the proposal to remove from the ULAE the allocated administration expenses associated with the Spot Audit program.

5. The Committee's recommendation concerning the 2011 Compensation Fund levy for lawyers and for paralegals was forwarded to the Finance Committee in the normal course. The recommendation is based on the report of the Law Society's actuary, as well as advice from the Finance Department. The Committee reviewed and discussed reports from the Fund's actuary, Brian Pelly of Eckler Ltd., as well as a memorandum from the Finance Department.

Funds required to meet the needs for projected grant payments in 2011

6. With respect to lawyers, the actuary had recommended that the Law Society allocate $2.45 million for expected routine grant payments in 2011, which is unchanged from that assumed for 2010.

7. With respect to paralegals, the actuarial reporting as well as staff reports concerning inquiries and claims received indicates that 2011 paralegal incurred claims of about $119,000 can be estimated.

8. The Committee is therefore recommending to the Finance Committee that:

   a. The Compensation Fund provision for expected claims for lawyers be set at $2.45 million in 2011.

   b. The Compensation fund provision for expected claims for paralegals be set at $119,000 in 2011.

FOR INFORMATION

GRANTS APPROVED BY THE FUND

9. A number of grant recommendations were submitted to the Committee for approval, in accordance with the changes to By-Law 12 approved by Convocation in May 2010. These grants will be reported to Convocation when paid.

FOR INFORMATION

GRANTS PAID FROM THE FUND

10. The Committee wishes to report that the following grants were approved and paid from the Fund between April 21, 2010 and August 31, 2010, in the amounts shown. (Only licensees whose discipline proceedings are completed, who are not subject to discipline, or who are deceased are identified by name).

Lawyers	**Number of Claimants**	**Total Grants Paid**
Solicitor #190 (Suspended June 13, 2008)	1	$ 10,252.57
Solicitor #193 (Suspended April 1, 2009)	3	$ 5,600.00
Solicitor #196 (Suspended June 19, 2009)	2	$ 85,474.78
Solicitor #200 (Suspended February 23, 2009)	2	$ 2,200.00
Solicitor #203 (Suspended September 23, 2008)	1	$ 500.00
Solicitor #204 (Suspended January 12, 2007)	1	$ 200.00
Solicitor #205 (Suspended June 11, 2010)	4	$ 5,375.00
Aguirre, Ricardo (Licence Revoked August 4, 2009)	1	$ 1,375.00
Clarke, Edmund (Licence Revoked February 23, 2010)	1	$ 18,000.00
Karalis, Antonios (Deceased March 5, 2010)	1	$ 300.00
Poolman, Willem (Deceased June 8, 2009)	3	$ 10,690.00
Ranieri, Julia (Suspended April 27, 2009)	1	$ 27,741.38
Rein, Anthony (Licence Revoked April 21, 2010)	1	$ 4,200.00
Winchie, Stephen (Deceased July 27, 2009)	4	$ 11,617.97

Sub-total (Lawyers)	26	**$183,526.70**
Paralegals		
Paralegal #2 (Suspended May 13, 2010)	1	$ 1,150.00
Paralegal #3 (Suspended July 6, 2010)	4	$ 2,502.50
Antonio Marrazzo (Deceased March 10, 2009)	3	$ 2,400.00
Sub-total (Paralegals)	8	**$ 6,052.50**
TOTAL GRANTS PAID		**$ 189,579.20**

Government & Public Affairs Committee Report

- Ontario *Not-for-Profit Corporations Act* (Bill 65)
- Long Form Census
- Federal Task Force for the Payments System Review

Report to Convocation
September 29, 2010

Government Relations & Public Affairs Committee

Committee Members
James R. Caskey, Co-Chair
Douglas Lewis, Co-Chair
Julian Porter, Vice Chair
Marion Boyd
Thomas Conway
Michelle Haigh
Glenn Hainey
Carol Hartman
Susan McGrath
Bill Simpson

Purposes of Report: Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

COMMITTEE PROCESS

1. The Committee met on September 14th, 2010. Members of the Committee in attendance were: Douglas Lewis (Co-Chair), James Caskey (Co-Chair), Marion Boyd, Tom Conway, Michelle Haigh, Glenn Hainey, Carol Hartman, Susan McGrath, and William Simpson. Staff members in attendance were Malcolm Heins, Roy Thomas, Sheena Weir, and Julia Bass.

FOR INFORMATION

BILL 65: ONTARIO *NOT-FOR-PROFIT CORPORATIONS ACT*

2. On May 12th 2010, the Ontario Minister of Consumer Services introduced Bill 65, *An Act to revise the law in respect of not-for profit corporations*. Bill 65 removes non-profit organizations from the regime of the Corporations Act and places them under a new *Not-for-Profit Corporations Act ('the Act')*. The proposed regime provides a more detailed organizational framework governing the creation, governance, and dissolution of non-profit organizations, and will apply to a wide range of organizations, including charities and regulatory bodies such as the Law Society.

3. The bill was referred to the Standing Committee on Social Policy for four days of hearings in August; the Law Society appeared on August 23rd, and submitted the presentation at Appendix 1. The Law Society requested a consequential amendment to the *Law Society Act* to exempt the Law Society from the Act.

4. On August 31st, Bill 65 was amended by unanimous consent during clause-by-clause consideration at the Standing Committee, to exempt the Law Society from the Act, except as may be prescribed by regulation. The wording of the motion is attached at Appendix 2.

THE LONG FORM CENSUS

5. On August 5th 2010, the Treasurer wrote to the federal minister of employment about the Law Society's use of data from the long form census, which provides the necessary information to prepare studies of the changing demographics of the legal profession, for example the reports prepared by Professor Michael Ornstein. The Law Society has now received a reply confirming the government's position on the issue.

FEDERAL TASK FORCE ON PAYMENTS SYSTEM

6. On June 18th 2010, the Hon. Jim Flaherty, Minister of Finance, announced the launch of the Task Force for the Payments System Review to help guide the evolution of the payments system in Canada. The announcement of the Task Force is attached at Appendix 3.

7. The Law Society has an interest in some of the issues that the Task Force will be considering, including the accessibility and timeliness of the payments system. For example, lawyers often need to transfer funds expeditiously to complete transactions for their clients. There are increasing difficulties in being able to do this efficiently and safely through the current payments system. As a result, transactions such as the purchase and sale of homes are being affected and consumers are not being well served by the payments system.

8. Accordingly, the Law Society made the submission to the Task Force attached at Appendix 4.

Appendix 1

SUBMISSION TO THE
STANDING COMMITTEE ON SOCIAL POLICY
ON BILL 65,
THE NOT-FOR PROFIT-CORPORATIONS ACT

AUGUST 23, 2010

1. My name is Malcolm Heins. I am the Chief Executive Officer of the Law Society of Upper Canada. The Law Society appreciates this opportunity to comment on Bill 65, the proposed legislation governing not-for-profit corporations.

2. For 213 years, the Law Society of Upper Canada has regulated Ontario's lawyers in the public interest. Since 2007, it has also regulated licensed paralegals in Ontario. Today, the Law Society regulates 40,000 lawyers and 2,700 paralegals.

3. We support the important objectives of the proposed legislation to modernize the legal framework of not-for-profit corporations and charities and strengthen their organizational structure. We recognize that many non-profit organizations lack the kind of corporate governance required to promote accountability and transparency.

4. I am here to express the concerns of the Law Society about the potential application of the proposed legislation to the Law Society as a professional regulator that governs its members in the public interest. Although we are a not-for-profit corporation, many of the provisions of this legislation are antithetical to our mandate to regulate Ontario's lawyers and paralegals in the public interest. These provisions would give our members, the people we regulate, broad powers to veto or curtail regulatory measures adopted by the Law Society in the public interest.

5. The Law Society asks that it be exempted from the application of this legislation, as we already have a clear and comprehensive corporate and organizational structure contained in the *Law Society Act*, the regulations made under the Act, and our by-laws. The governance of the Law Society already meets all of the accountability and transparency objectives of the proposed legislation.

6. The Law Society is subject to the current Corporations Act, but is exempt from the application of certain sections. Furthermore, if there is a conflict between a provision of the Law Society Act and a provision of the Corporations Act, the *Law Society Act* expressly states that the provision of the *Law Society Act* prevails. The current *Corporations Act* co-exists with the *Law Society Act* without difficulty.

7. The legislature has given the Law Society the responsibility, in the Law Society Act, to make by-laws in the public interest with respect to many of the matters dealt with in the *Corporations Act*. The Law Society has made many by-laws further to this responsibility. As a result, the provisions in the *Corporations Act* have, over time, come, not to govern the Law Society, but to supplement the *Law Society Act* and the by-laws in areas where the *Law Society Act* and the by-laws are silent.

8. Bill 65 removes the Law Society from the regime of the Corporations Act and places it under the *Not-for-Profit Corporations Act*. While the bill includes many of the provisions contained in the *Corporations Act,* it also introduces new features, which when applied to the Law Society, fit poorly with its structure and regulatory mandate.

   In some situations, Bill 65 would actually negatively affect the ability of the Law Society to fulfill its public interest mandate.

9. Bill 65 does not exempt the Law Society, nor does it amend the Law Society Act to expressly exempt the Law Society from the application of the *Not-for-Profit Corporations Act*. While the bill provides that in a case of conflict between it and another Act or regulation made under that Act, the other Act or regulation prevails, this is not entirely satisfactory for the Law Society for two reasons:

   a. Firstly, there are many direct conflicts between the provisions of Bill 65 and our by-laws, which set out most of our regulatory requirements.

   b. Secondly, there is a great deal of overlap between the provisions of Bill 65 and our by-laws and it is always a matter of interpretation whether there is a conflict when our by-law is silent on an issue and Bill 65 speaks to it. Our by-law may be silent, not because the Law Society has failed to deal with an issue, but because it has decided the issue, in the public interest, in a way that requires silence in the by-law.

10. I want to give you just a few examples where the provisions of Bill 65 do not fit well with the Law Society's public interest mandate.

    a. Section 17 of the bill is the first example. It requires the members to confirm at the annual general meeting all by-laws made by the Law Society.
    This is inconsistent with the Law Society's mandate to regulate in the public interest, as members could vote down by-laws that impose requirements on them in the public interest. The Law Society is exempt from the current provision to this effect in the *Corporations Act*. Bill 65 does not continue this exemption.

b. Secondly, section 26 of the bill permits members to remove directors by resolution. This provision could be invoked by Law Society members who are unhappy with an elected bencher's role in the development of a policy or with the decision of an elected bencher on a hearing panel adjudicating a case involving lawyer or paralegal misconduct.

c. Thirdly, subsection 173(2) of Bill 65 would permit a member to apply to the court for an oppression remedy. A lawyer or paralegal unhappy with the result of a discipline or licensing hearing, or the results of a licensing examination, could invoke this section. The *Law Society Act*, together with the regulations and the Rules of Practice and Procedure set out a complete code of procedure for hearings before the Law Society's Hearing Panel, and appeals before the Law Society's Appeal Panel, followed by an appeal to the Divisional Court.

11. These are but a few examples of the provisions of Bill 65 that are inconsistent with the Law Society's mandate to govern its members in the public interest.

There are also a number of other provisions in the bill that are contrary to the governance structure of the Law Society. They relate to the length of a director's term, the means available to a member to dispute an election and the manner in which directors' meetings are conducted.

12. For example, section 45 of the bill allows directors who are not present at a meeting to submit their dissent to any resolution adopted at the meeting within seven days of the meeting. This provision would prevent the immediate announcement of important policy initiatives to the public and the profession once adopted by the Law Society, and could delay implementation of initiatives.

13. As I indicated earlier, Bill 65 provides that where there is a conflict between one of its provisions and the provisions of another Act, the other Act prevails. In the case of the *Law Society Act*, we have been given the authority by the legislature to make by-laws to govern our members in the public interest. If the Law Society has the authority to make a by-law regarding a particular matter that is also the subject of a provision in Bill 65, we consider that to be a conflict between the two acts, and the *Law Society Act* prevails. We assume that the legislature intended to give us unlimited authority to make by-laws in the public interest, not just the authority to make by-laws that are consistent with Bill 65. For the sake of clarity and transparency, a clear exemption from the provisions of Bill 65 is necessary.

14. We suggest that a consequential amendment be made, as soon as possible, to s. 6 of the *Law Society Act* to state that the *Not-for-Profit Corporations Act* does not apply to the Law Society. Section 217 of the bill gives a similar exemption to the College of Early Childhood Educators.

15. Thank you for your attention. I would be pleased to answer your questions.

Appendix 3

Vancouver, June 18, 2010
2010-057

MINISTER OF FINANCE ANNOUNCES TASK FORCE TO

REVIEW PAYMENTS SYSTEM

The Honourable Jim Flaherty, Minister of Finance, today announced the launch of the Task Force for the Payments System Review to help guide the evolution of the payments system in Canada.

“Today, Canadians can pay for things in a bewildering number of ways, even by tapping a cell phone against a scanner,” said Minister Flaherty. “It is important to ensure the payments system facilitates the introduction of new and exciting technologies to the benefit of users without compromising Canadian safety and efficiency or consumer protection.”

The task force fulfills a commitment made in Budget 2010 to review the safety, soundness and efficiency of the payments system; whether there is sufficient innovation in the payments system; the competitive landscape; whether businesses and consumers are being well served by payments system providers; and whether current payments system oversight mechanisms remain appropriate. The task force will be chaired by Pat Meredith, an expert on financial sector strategy with a particular focus on payments issues.

“Technology and the Internet have fundamentally changed the way Canadians access and spend their money,” said Ms. Meredith. “The work of the task force will therefore be dynamic and thoughtful, with the broad aim of laying the foundation towards making our payments system a leader and an example for the rest of the world to follow.”

The task force, which will begin work immediately, is mandated to provide the Minister of Finance with recommendations by the end of 2011. In the coming weeks, the task force will invite submissions from stakeholders and all interested Canadians. More information will be available soon at www.PaymentSystemReview.ca.

Biographical notes of the task force members are attached.

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For further information, media may contact:

Annette Robertson
Press Secretary
Office of the Minister of Finance
613-996-7861

Jack Aubry
Media Relations
Department of Finance
613-996-8080

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

(1) Copy of the wording of the amended Bill 65 motion.
(Appendix 2, page 12)

(2) Copy of a letter to Pat Meredith, Chair, The Task Force for the Payments System Review from Malcolm Heins, CEO dated September 10, 2010 re Payments Issues in Time Sensitive Residential Real Estate Transactions.
(Appendix 4, pages 14 – 22)

Tribunals Committee Report
- Tribunals Office Quarterly Statistics

Report to Convocation
September 29, 2010

Tribunals Committee

Committee Members
Mark Sandler (Co-Chair)
Linda Rothstein (Co-Chair)
Alan Gold (Vice-Chair)
Raj Anand
Jack Braithwaite
Christopher Bredt
Paul Dray
Jennifer Halajian
Tom Heintzman
Heather Ross
Paul Schabas
Beth Symes
Bonnie Tough

Purposes of Report: Information

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

COMMITTEE PROCESS

1. The Committee met on September 15, 2010. Committee members Mark Sandler (Co-Chair), Linda Rothstein (Co-Chair), Alan Gold (Vice Chair), Raj Anand, Christopher Bredt, Paul Dray, Jennifer Halajian, Tom Heintzman, Beth Symes, and Bonnie Tough attended. Staff members Sophie Gallipeau, Grace Knakowski, Lisa Mallia, Denise McCourtie, and Sophia Sperdakos also attended.

INFORMATION

TRIBUNALS OFFICE QUARTERLY STATISTICS

2. The Tribunals Office's Second Quarter Report for the period April 1, 2010 – June 30, 2010 is set out Appendix 1.

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

Copy of the Tribunals Office's Second Quarter Report for the period April 1, 2010 – June 30, 2010.

(Appendix 1, pages 4 – 24)

CONVOCATION ROSE AT 11:45 A.M.

Confirmed in Convocation this 28th day of October, 2010.

Treasurer