

MINUTES OF CONVOCATION

Thursday, 22nd January, 2004
9:00 a.m.

PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Aaron, Alexander, Backhouse, Banack, Bourque, Boyd, The Honourable Michael Bryant, Campion, Carpenter-Gunn, Caskey, Cass, Chahbar, Cherniak, Copeland, Curtis, Dickson, Doyle, Dray, Ducharme, Eber, Elliott, Fillion, Finkelstein, Finlayson, Furlong, Gotlib, Gottlieb, Harris, Heintzman, Hunter (by telephone), Krishna, Lawrence, Legge, MacKenzie, Manes, Millar, Murray, O'Brien, Pattillo, Pawlitza, Porter, Potter, Robins, Ross, Ruby, St. Lewis, Silverstein, Simpson, Swaye, Symes, Wardlaw, Warkentin and Wright.

.....

Secretary: Katherine Corrick

The reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

LAWPRO has been granted an A-rating by A. M. Best Company affirming LAWPRO's financial strength.

The Honourable James K. Bartleman, Lieutenant Governor of Ontario has launched a province-wide campaign to collect books for school libraries serving First Nations in northern communities. The Treasurer promised the Lieutenant Governor's office that the Law Society will fully support this project. The Law Society will be posting further details about this program on its website.

On February 26, 2004 the Law Society will hold an event in honour of Black History Month.

Earl Beecher Menzies, a well-respected senior member of the legal profession, died on January 17, 2004. Mr. Menzies was called in September 1954 and practised his entire career in Clinton, Ontario, specializing in real estate law. The Treasurer extended condolences to Mr. Menzies' wife, Peggy.

MOTION – DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Wright, seconded by Ms. Potter that the Draft Minutes of Convocation of November 27 and December 5, 2003 be confirmed.

Carried

MOTION – LAW SOCIETY MEDAL COMMITTEE APPOINTMENTS

It was moved by Mr. Wright, seconded by Ms. Potter that the following Benchers be appointed to the Law Society Medal Committee: John Campion, Laurie Pawlitza, William Simpson and Bonnie Warkentin.

Carried

FEINSTEIN/HEINTZMAN NOTICE OF MOTION

THAT the Law Society appoint a task force to recommend to Convocation a pilot project whereby Convocation, with the assistance of the Finance Committee, will review two programs to evaluate them against the Role Statement and their benefit to the public and the profession.

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCETO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Professional Development and Competence asks leave to report:

B. _____

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

- B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 22nd, 2004:

Geoffrey Scott Allen	Bar Admissions Course
Tara Lindsey Anderson	Bar Admissions Course
Bradley Joseph Roger Bechard	Bar Admissions Course
Michael Jonathan Tuthill Best	Bar Admissions Course
Ruth Johanna Blom	Bar Admissions Course
Mikael Dalimonte	Bar Admissions Course
Brian Joseph Doucette	Bar Admissions Course
Mounir El Malih	Bar Admissions Course
Aron Halpern	Bar Admissions Course
Jolene Marie Harvey	Bar Admissions Course
Frances Ann Hints	Bar Admissions Course
Joanne Lagoudis	Bar Admissions Course
Joseph Maurice François Landry	Bar Admissions Course
Kevin Stephen Gawen Chan Mark	Bar Admissions Course
Joyce Anne Melbourne	Bar Admissions Course
Barry Allan Miller	Bar Admissions Course
Maryse Nassar	Bar Admissions Course
Anthonia Olufeyikemi Ogunmefun	Bar Admissions Course
Dennis Tien-Yew Pao	Bar Admissions Course
Natacha Reis Leite	Bar Admissions Course
Lucia Fadia Shatat	Bar Admissions Course
France Marina Tenaille	Bar Admissions Course

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

- B.1.4. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 22nd, 2004:

Lisa Kathleen Garety	Province of British Columbia
Kristen Marie Goodwin	Province of British Columbia
Harold Richard Huber	Province of Alberta
Lyle Stephen Roy Kanee	Province of Alberta
Malcolm Philippe MacPherson	Province of British Columbia
Christopher John Mainella	Province of Manitoba
Dvara Grace Malkin	Province of British Columbia
Jeinis Suryakant Patel	Province of British Columbia
Samantha Tracy Solomon	Province of Alberta
Christine Ria Van Cauwenberghe	Province of Manitoba
Barbara Anne White	Province of Alberta
Peter James Zibarras	Province of British Columbia

ALL OF WHICH is respectfully submitted

DATED this the 22nd day of January, 2004

It was moved by Mr. Ruby, seconded by Ms. Ross that the Report of the Director of Professional Development & Competence, setting out the candidates for Call to the Bar, be approved.

CarriedCALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Mr. Swaye then presented them to Mr. Justice Gerald F. Day to sign the rolls and take the necessary oaths.

Geoffrey Scott Allen	Bar Admission Course
Tara Lindsey Anderson	Bar Admission Course
Bradley Joseph Roger Bechard	Bar Admission Course
Michael Jonathan Tuthill Best	Bar Admission Course
Ruth Johanna Blom	Bar Admission Course
Mikael Dalimonte	Bar Admission Course
Brian Joseph Doucette	Bar Admission Course
Mounir El Malih	Bar Admission Course
Aron Halpern	Bar Admission Course
Jolene Marie Harvey	Bar Admission Course
Frances Ann Hints	Bar Admission Course
Joanne Lagoudis	Bar Admission Course
Joseph Maurice Francois Landry	Bar Admission Course
Kevin Stephen Gawen Chan Mark	Bar Admission Course
Joyce Anne Melbourne	Bar Admission Course
Barry Allan Miller	Bar Admission Course
Maryse Nassar	Bar Admission Course
Anthonia Olufeyikemi Ogunmefun	Bar Admission Course
Dennis Tien-Yew Pao	Bar Admission Course
Natacha Reis Leite	Bar Admission Course
Lucia Fadia Shatat	Bar Admission Course
France Marina Tenaille	Bar Admission Course
Lisa Kathleen Garety	Transfer, Province of British Columbia
Kristen Marie Goodwin	Transfer, Province of British Columbia
Harold Richard Huber	Transfer, Province of Alberta
Lyle Stephen Roy Kanee	Transfer, Province of Alberta
Malcolm Philippe MacPherson	Transfer, Province of British Columbia
Christopher John Mainella	Transfer, Province of Manitoba
Dvara Grace Malkin	Transfer, Province of British Columbia
Jeinis Suryakant Patel	Transfer, Province of British Columbia
Samantha Tracy Solomon	Transfer, Province of Alberta
Christine Ria Van Cauwenberghe	Transfer, Province of Manitoba
Barbara Anne White	Transfer, Province of Alberta
Peter James Zibarras	Transfer, Province of British Columbia

The Treasurer welcomed the Attorney General, The Honourable Michael Bryant to Convocation.

REPORT OF THE GOVERNMENT RELATIONS COMMITTEERe: Paralegal Regulation

Mr. Caskey introduced the motion on the regulation of paralegals and Mr. Simpson gave an overview of the issue.

The Attorney General then addressed Convocation.

Government Relations Committee
January 22nd, 2004

Report to Convocation

Purpose of Report: Decision
 Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

OVERVIEW OF ISSUE

REGULATION OF PARALEGALS

Request to Convocation

1. That Convocation authorize the Treasurer to reply to the letter from the Attorney General, indicating that the Law Society of Upper Canada agrees in principle to regulate paralegals in Ontario, subject to Convocation's approval of a detailed proposal.
2. That the Treasurer establish a working group to develop a detailed proposal with the Ministry of the Attorney General.

Summary of the Issue

3. The Attorney General of Ontario has written to the Treasurer indicating an interest in proceeding with a scheme for the regulation of paralegals by the Law Society of Upper Canada, provided that the Law Society indicates that it is prepared to take on this new responsibility.

OVERVIEW OF ISSUE

APPOINTMENTS TO THE BOARD OF LEGAL AID ONTARIO

Request to Convocation

4. That Convocation approve the list of nominees to the board of Legal Aid Ontario.

Summary of the Issue

5. The *Legal Services Act* provides that five members of the board of Legal Aid Ontario are to be selected by the Attorney General from a list submitted by the Law Society of Upper Canada. The terms of all five appointees have now expired.

THE REPORT

Terms of Reference/Committee Process

6. The Committee met on January 7, 2004. Committee members in attendance were: James Caskey and Julian Porter (Co-Chairs), Andrea Alexander, Marion Boyd, Abdul Chahbar, Paul Copeland, Anne Marie

Doyle, Dr. Sy Eber, Allan Lawrence, Daniel Murphy, Heather Ross, William Simpson and Brad Wright. Staff in attendance were Malcolm Heins, Katherine Corrick, Elliot Spears, Sheena Weir and Julia Bass.

7. The Committee is reporting on the following matters:

For Decision

- Regulation of Paralegals
- Appointments to the board of Legal Aid Ontario

Information

- Federal Regulation of Immigration Consultants

REGULATION OF PARALEGALS

Background

8. The profession, the government and paralegals have been negotiating for more than 15 years to identify a workable regulatory framework for paralegal practice in Ontario. Consensus on an agreed approach has proved elusive. Meanwhile, it has become apparent that paralegals have become a permanent feature of the Ontario landscape.
9. The absence of regulation has become increasingly unacceptable. In August 1999 the Ontario Court of Appeal commented in the case of *R. v. Romanowicz*:
- “A person who decides to sell t-shirts on the sidewalk needs a licence and is subject to government regulation. That same person can, however, without any form of government regulation, represent a person in a complicated criminal case where that person may be sentenced to up to 18 months imprisonment. Unregulated representation by agents who are not required to have any particular training or ability in complex and difficult criminal proceedings where a person’s liberty and livelihood are at stake invites miscarriages of justice. Nor are de facto attempts to regulate the appearance of agents on a case-by-case basis likely to prevent miscarriages of justice”.
10. Unfortunately, certain members of the public are particularly vulnerable to abuse by unscrupulous unregulated paralegals, for example recent immigrants whose first language is not English.
11. At the same time, many reputable paralegals welcome some form of regulation with the concomitant establishment of appropriate standards.
12. In the absence of a proper regulatory scheme, some stopgap measures have been introduced in an attempt to protect the public:
- a. The Financial Services Commission of Ontario (FSCO) has adopted regulations to place certain conditions on paralegals representing parties claiming automobile insurance benefits. However, this does not represent a complete regulatory scheme. Issues have been raised in the media about the list of paralegals that FSCO has compiled, some of whom have been found to have criminal records.
 - b. The federal department of citizenship and immigration has circulated draft regulations requiring paralegals appearing on immigration and refugee cases to be members of a new incorporated body, the Canadian Society of Immigration Consultants (CSIC). However, this is a private corporation lacking a public interest mandate, raising doubts as to whether it could be an effective regulator.
13. On April 25, 2003, Convocation authorized the Government Relations Committee to participate in discussions with the Attorney General of Ontario concerning the regulation of paralegals.

14. On December 22, 2003, the new Attorney General wrote to the Treasurer indicating support for the Law Society of Upper Canada as regulator of legal services, including paralegal services. His letter is attached at Appendix 1. It is now apparent that the government proposes to introduce a scheme for the regulation of paralegals, with the only remaining issue being the form that it will take.

The Committee's Deliberations

15. The Committee was of the opinion that time is of the essence in responding to the Attorney General's letter.

Regulatory Models

16. The most likely forms of regulation would involve either the Law Society, or a new independent regulatory body specifically for paralegals. The latter model has a number of drawbacks. The experience with the accountants and the health professions in Ontario has indicated that it can lead to unproductive jurisdictional disputes between the various bodies, ultimately leading to the imposition of a 'super-regulator'.
17. When a separate body to regulate paralegals was set up in England and Wales (partly because the Law Society of England and Wales did not express an interest in regulating non-lawyers) it contributed to what the government there has referred to as the "regulatory maze." This means that, in the government's view, there are too many regulatory bodies in the legal profession, including the Bar, the Law Society and the paralegal organization. This was one of the factors referred to by the government in introducing proposals for a single regulator to oversee all existing regulators, including the Law Society.
18. The Law Society of Upper Canada is already experienced in regulating legal services and has a mandate to govern in the public interest while lawyers in many cases work with paralegals. This makes the Law Society well placed to set standards for all legal services including paralegal services.

Design of the regulatory scheme

19. Developing a regulatory scheme will require further detailed work, including:
 - a. further analysis of the cost implications; the Law Society has maintained that the proposals should be revenue neutral for the Law Society, and
 - b. the preparation of amendments to the Law Society Act. At present, the act empowers the Law Society to regulate "members". This would need to be replaced by a wider authority to regulate "legal services" (as is the case in several other provinces). This will require the development of a definition of the "practice of law".
20. The Attorney General's letter makes specific reference to the Consultation Document prepared in April 2002 (attached at Appendix 2). This document represents a broadly supported consensus developed during a lengthy consultation process. Many of its provisions were endorsed by the Ontario Bar Association, the Advocates Society, the County and District Law Presidents' Association, the Ontario Trial Lawyers Association and the Metropolitan Toronto Lawyers' Association, and were supported by some prominent paralegals, although the principal paralegal organizations chose not to endorse it. It represents a logical point of departure for detailed discussions with the government, although the model may vary in some details when fully developed.
21. The Consultation Document includes the principal features required in a regulatory scheme, including:
 - a. Standards and accreditation procedures;
 - b. Scope of practice;
 - c. Code of conduct and good character requirements;
 - d. Mandatory insurance and compensation fund;
 - e. Disciplinary procedures, and
 - f. Governance (the Consultation Document would see Convocation remain in its current form).

22. Approval by Convocation will not guarantee implementation of Law Society regulation, as the Attorney General has indicated that the legislative amendments would be the subject of a free vote in the House. As well, the legislative agenda is also expected to be very full, making it significant that this issue be proceeded with early in the government's term.

Next Steps

23. Convocation's approval in principle would permit the Law Society to begin work with government officials on development of detailed implementation proposals. Such proposals would then be submitted for Convocation's approval later in the year.

APPOINTMENTS TO THE BOARD OF LEGAL AID ONTARIO

24. Government Relations Committee submits, for Convocation's approval, a list of names for the consideration of the Attorney General for appointment to the board of Legal Aid Ontario.
25. The Law Society previously submitted a list of names for the then Attorney General's consideration in January of this year. However, no appointments were made from that list.
26. The appointments of all five persons nominated by the Law Society have now expired (as have the terms of office of the government-appointed members and the chair of the board).
27. These appointments are made under the Legal Services Act, 1998. The relevant provisions of the Act are attached at Appendix 3.
28. Subsection 6 (2) of the Act provides that, in the absence of new appointments, the existing appointees continue to sit. The current composition of the board is attached at Appendix 4.
29. The Act sets out the composition of the board as follows:
- a. Five members are to be selected by the Attorney General from a list submitted by the Law Society;
 - b. Five persons are to be selected by the Attorney General;
 - c. The majority of the members of the board shall be non-lawyers;
 - d. No more than three members shall be benchers of the Law Society; and
 - e. Members may hold office for a term of two or three years. This staggering of expiry dates is designed to help provide continuity to the board.
30. The Government Relations Committee established a Selection Committee with the following members: James Caskey, Marion Boyd, William Simpson and Michelle Strom and placed advertisements in the Ontario Reports soliciting applications. (The text of the advertisements is attached at Appendix 5).
31. The selection committee met on December 3rd, 2003 to consider the 115 resumes submitted. (In addition to the advertisement, the Law Society invited those who had applied last year to re-apply, and a large number did so).
32. As required by the *Legal Aid Services Act*, the Selection Committee reviewed the applicants on the basis of their knowledge, skills and experience, including demonstrated ability to work in a supervisory or board environment, together with considerations of regional diversity and the Law Society's equity policies.

The Selection Committee's Deliberations

33. The Selection Committee was overwhelmed by the level of interest and experience expressed by applicants from across the Province. The number of applicants and the breadth of their qualifications made the Selection Committee's task extremely difficult. Therefore, in assessing the qualifications for Board membership set out in the Act, the Selection Committee considered the following:

- a. The Selection Committee agreed that it would recommend at least two candidates for each of the five vacancies, to enable the Attorney General to make a selection from a list of candidates, all of whom are qualified by experience, education, interest and community involvement.
 - b. Given that the Law Society has advertised primarily to lawyers and that the Attorney General has broad access across Ontario to both lawyers and lay people through the public appointments office, and given the restriction in the number of lawyers allowed on the board under the Act, the Selection Committee decided to restrict its recommendations to lawyer applicants.
 - c. The Selection Committee took into account the desirability of a mix of board members from different regions of the Province and areas of legal practice and expertise, as well as other diversity concerns included in the equity policies of the Law Society, decided to recommend candidates who will offer the widest possible diversity for the Attorney General to choose among.
34. As a result of the discussions, a list of nominees was compiled. The Attorney General will select five members from the list forwarded to him.
35. The Government Relations Committee unanimously endorsed the list of nominees selected by the Selection Committee.
36. The list of applicants and the list of selected nominees are not attached and will be distributed under separate cover while Convocation is in camera.

FOR INFORMATION

FEDERAL REGULATION OF IMMIGRATION CONSULTANTS

37. The federal government released draft regulations to amend the regulations under the *Immigration and Refugee Protection Act* on December 13th, 2003 (the draft regulations are attached at Appendix 6). Comments were requested within 30 days. The Law Society requested an extension of this deadline so that the matter could be considered by Convocation, but was unsuccessful.
38. In the absence of approval by Convocation, it was considered nevertheless important that a response from the Law Society be sent, as the regulations do not appear to follow the recommendations of the recent Report of the Advisory Committee on the Immigration Consulting Industry (the 'Trister Report') and raise some difficult issues. Accordingly, the attached letter was developed and sent by the CEO, after consultation with the Government Relations Committee (see Appendix 7).

Appendix 2

A CONSULTATION DOCUMENT ON A PROPOSED REGULATORY FRAMEWORK

April 23, 2002

Background

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

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

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

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

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

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

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

Proposed Framework

I. Statement of Principle

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

II. Funding

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

III. Scope of Regulation

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

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

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

IV. Governance

- A. There should be one body responsible for regulating the provision of all legal services and the Law Society should be the appropriate body.
- B. There should be a Standing Committee of the Law Society with the mandate to deal with issues respecting governing and regulating paralegals.
- C. The Standing Committee should be composed of an equal number of paralegals and elected benchers, plus two or more lay benchers, e.g. 5 paralegals, 5 elected benchers and 3 lay benchers. The Attorney General would appoint the first 5 paralegals to the Standing Committee, with recommendations from the paralegals.
- D. At all times, a paralegal would either be the chair or the vice-chair of the Standing Committee. An elected bencher would also be either the chair or the vice-chair of the Standing Committee. Both the chair and vice-chair have the right to attend Convocation and address Convocation on Standing Committee matters.
- E. Decisions made by the Standing Committee would be ratified by Convocation. Convocation would not be authorized to substitute its decision for a decision of the Standing Committee but could send a matter back to Standing Committee for reconsideration on the first hearing of the matter. On the subsequent hearing of the matter, Convocation may substitute its decision for that of the Standing Committee.
- F. The general criteria for becoming an accredited licensed paralegal are:
 - 1. Accreditation
 - 2. Grandparenting
 - 3. Licensing and Appeal Processes

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

1. Accreditation

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

- a. Completing, at a minimum, a two-year accredited community college paralegal diploma or degree program or equivalent; and
 - b. Completing six months mentoring under a lawyer or Accredited Licensed Paralegal, each having a minimum of 5 years experience. If mentoring is not possible for an individual seeking a license as an Accredited Licensed Paralegal (Advocacy), then 6 months of observing procedures and matters before an appropriate court, agency, board or tribunal, with its consent; and
 - c. Passing specialized exams in the areas of preferred practice and accreditation. (Individual tribunals should have input into the content of the examination process); and
 - d. Meeting good character requirements.
- ##### 2. Grandparenting

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

Applicants for grandparenting must meet all of the following qualifications:

- a. All applicants for accreditation must pass the specialized certification examinations for their preferred area or areas of work regardless of their prior education or experience.
- b. All applicants for grandparenting must meet the good character requirements.
- c. Only individuals are eligible for grandparenting and not corporations or franchised entities.
- d. Any application for grandparenting must be made by applicants within two years of the legislation coming into force, or such other time as may be set by the Standing Committee.

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

- e. Any applicant for grandparenting as an Accredited Licensed Paralegal (Advocacy) must meet the following minimum conditions:
 - i. the individual has appeared before the particular court or board for which accreditation is sought on a regular basis for a minimum of 5 of the last 7 years from the date of legislation coming into force; and
 - ii. the individual provides an affidavit proving same.
- f. Any applicant for accreditation pursuant to section VI(B) below may apply for grandparenting upon providing proof of completion of the four segments of the “associate level law clerk” course under The Institute of Law Clerks of Ontario (ILCO) or the equivalent.
- g. Any applicant for accreditation pursuant to section VI (B) below may apply for grandparenting in that particular area on satisfaction of the following conditions:
 - i. the applicant was employed by and worked under the supervision of a lawyer for a minimum of 5 of the last 7 years from the date of legislation coming into force; or
 - ii. the applicant was an independent contractor (e.g. corporate law clerk or conveyancer) and worked under the supervision of a lawyer for a minimum of 5 of the last 7 years from the date of legislation coming into force; and
 - iii. the applicant provides an affidavit from the supervising lawyer or lawyers establishing that the applicant has the requisite knowledge and has achieved the requisite level of competence to permit the applicant to work as an Accredited Licensed Paralegal (Non-Advocacy) without further experience or education.

3. Licensing and Appeals Processes

- a. Accredited Licensed Paralegals would be described as licensed “pursuant to the laws of the Province of Ontario” and the Law Society, under the mandate of the Standing Committee, would determine if paralegals met the licensing qualifications.
- b. Accredited Licensed Paralegals would become Commissioners of Oaths within their designated areas.
- c. Since Accredited Licensed Paralegals will be privy to confidential client information, the *Law Society Act* should be amended to ensure that an Accredited Licensed Paralegal cannot be required

to divulge confidential information, unless a judge of the Ontario Court of Justice or Superior Court of Justice finds that, in the interest of the due administration of justice, it must be disclosed.

- d. The requirements of good character for Accredited Licensed Paralegals should be the same as those established for lawyers under the *Law Society Act*.
- e. A paralegal license can only be granted to an individual, e.g. a license cannot be franchised.
- f. Sections 27 and 49.32 of the *Law Society Act* would apply with necessary modifications to applications for grandparenting and licensing and to decisions on the sufficiency of fulfilling the requirements for accreditation.
- G. The mandate of the Standing Committee would also include, among other matters, policy decisions on the following:
 - 1. Code of conduct
 - 2. Regulatory fees
 - 3. Rules of incorporation
 - 4. Trust accounts
 - 5. Discipline and Appeal Processes
 - 6. Insurance
 - 7. Compensation fund
 - 8. Continuing education

1. Code of Conduct

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

2. Regulatory Fees

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

3. Rules of Incorporation

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

4. Trust Accounts

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

5. Discipline and Appeal Processes

- a. The committee hearing cases of paralegal misconduct at the first instance (Hearing Panel) will be composed of a lawyer bench, an Accredited Licensed Paralegal and a lay bench. There will be an appeal process for paralegals similar to that for lawyers. Representation before a Hearing Panel may be by counsel or by Accredited Licensed Paralegals (Advocacy).
- b. Accredited Licensed Paralegals would be governed by a code of conduct and subject to the same disciplinary processes and penalties as those applying to lawyers, with necessary modifications.

6. Insurance

Accredited Licensed Paralegals will have mandatory errors and omissions insurance.

7. Compensation Fund

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

8. Continuing Education

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

V. Prosecutions

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

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

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

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

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

VI. Areas and Scope of Work

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

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

A. Accredited Licensed Paralegals (Advocacy)

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

1. Small Claims Court – An Accredited Licensed Paralegal (Advocacy) would be authorized to handle all matters in Small Claims Court and be recognized by the Court for the purposes of costs. [Paralegals would like to see a process created whereby Accredited Licensed Paralegals (Advocacy) could continue to appear on behalf of their clients on the appeal of a Small Claims Court matter. The legal organizations do not share this view.]
2. The Ontario Court of Justice with respect to all matters under the *Provincial Offences Act*.
3. Tribunals [other than the Financial Services Commission of Ontario (FSCO)] – An Accredited Licensed Paralegal (Advocacy) could appear in all matters before provincial boards, agencies and tribunals that allow for appearances by agents/paralegals. If a board has specific requirements, those should be incorporated into the licensing exam. It is anticipated that certain boards will require additional levels of education, training and expertise. Regarding FSCO, there was no consensus between the lawyers and the paralegals with respect to whether paralegals could appear, with or without the involvement of a lawyer, on matters before FSCO. It is understood by lawyers and paralegals that this matter is currently under review by the Ministry of Finance.
4. Appeals under the *Provincial Offences Act* – Currently, section 109 of the *Provincial Offences Act* authorizes agents to appear on appeals.

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

1. General Provisions

- a. Any work conducted by an Accredited Licensed Paralegal (Non-Advocacy) will be performed pursuant to an affiliation agreement between a lawyer and the Accredited Licensed Paralegal (Non-Advocacy). The affiliation agreement will be registered with the Law Society and must meet the criteria of the Standing Committee before being accepted for registration.
- b. The Standing Committee will define the nature of the business arrangements between lawyers and Accredited Licensed Paralegals (Non-Advocacy) and determine the content of the affiliation agreement, including the level of supervision required to ensure that the work performed by the Accredited Licensed Paralegal (Non-Advocacy) falls within the criteria set out in section VI(B)(2) below and that the work accomplishes the purpose of the joint retainer (see paragraph (c) below).
- c. Where an Accredited Licensed Paralegal (Non-Advocacy) performs work described in section VI(B)(2) below, the Accredited Licensed Paralegal (Non-Advocacy) and affiliated lawyer must enter into a written joint retainer agreement as among the lawyer, the Accredited Licensed Paralegal (Non-Advocacy) and the client. This joint retainer will set out the respective roles and responsibilities of the lawyer and the Accredited Licensed Paralegal (Non-Advocacy) and the fees to be charged by each. The Standing Committee will determine the criteria required for the content of the joint retainer agreement.

2. Functions

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

- a. Basic wills;
- b. Basic incorporations;
- c. Powers of Attorney;
- d. Residential real estate sales on behalf of a vendor where a residential property is either clear of any mortgage encumbrances or subject to only one mortgage;

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

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

- Accredited Licensed Paralegals (Non-Advocacy) would not be permitted to advertise for work outside the defined areas.
- If such work were offered to an Accredited Licensed Paralegal (Non-Advocacy), he/she would be required to state that he/she is not authorized to do the work directly for the client.
- An Accredited Licensed Paralegal (Non-Advocacy) could refer work to a lawyer and have a referral arrangement with the lawyer. However, the joint retainer would not apply in this situation.

VII. Further Development of Regulatory Scheme

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

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

- Ensure the affiliations between lawyers and paralegals function effectively in the public interest and in compliance with the *Rules of Professional Conduct* governing lawyers and paralegals;
- Ensure that lawyer supervision meets the criteria described in section VI(B)(1)(b) and functions effectively in the public interest;
- Clarify the defined areas outlined in section VI(B)(2);
- Ensure that the joint retainer appropriately outlines the respective roles and responsibilities of the lawyer and the Accredited Licensed Paralegal (Non-Advocacy).

VIII. Federal Jurisdiction and Shared Federal-Provincial Jurisdiction

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

- Summary conviction matters – The *Criminal Code* permits agents to appear on summary conviction matters. The courts, through case law, have interpreted the extent of the role of an agent. The province's jurisdiction to deal with this matter is unclear. Under *The Constitution Act, 1867*, the province has jurisdiction over the administration of justice but the federal government has jurisdiction over criminal law.
- Federal boards and tribunals – The status of agents/paralegals appearing before federal boards and tribunals is currently left to the rules of the individual board or to the federal government.

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

IX. Next Steps

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

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

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

- (1) Copy of a letter from The Honourable Michael Bryant, Attorney General, to the Treasurer dated December 22, 2003.
(Appendix 1, page 12)
- (2) Copy of the Legal Aid Services Act, 1998 setting out the relevant provisions relating to appointments.
(Appendix 3, pages 24-26)
- (3) Copy of the current composition of the Legal Aid Ontario Board of Directors.
(Appendix 4, page 27)
- (4) Copy of the advertisement in the Ontario Reports soliciting applications for representatives on the Board of Directors.
(Appendix 5, pages 28-29)
- (5) Copy of the federal government's released draft regulations to amend the regulations under the *Immigration and Refugee Protection Act* on December 13, 2003.
(Appendix 6, pages 30-31)
- (6) Copy of a letter from Mr. Malcolm Heins, Chief Executive Officer to Mr. Alain Th  ault dated January 12, 2004.
(Appendix 7, pages 32-35)

It was moved by Mr. Caskey, seconded by Mr. Porter that Convocation authorize the Treasurer to reply to the letter from the Attorney General indicating that the Law Society of Upper Canada agrees in principle to regulate paralegals in Ontario, subject to Convocation's approval of a detailed proposal and that the Treasurer establish a working group to develop a detailed proposal with the Ministry of the Attorney General.

It was moved by Mr. Aaron, seconded by Mr. Wright and accepted as a friendly amendment that nothing in this motion implies agreement with the proposed areas of paralegal practice listed in the Cory report or the April 23, 2002 Consultation Document.

The main motion as amended was voted on and adopted.

ROLL-CALL VOTE

Aaron	For	Heintzman	For
Alexander	For	Hunter	For
Backhouse	For	Krishna	For
Banack	For	Legge	For

Bourque	Against	MacKenzie	For
Campion	For	Manes	For
Carpenter-Gunn	For	Millar	For
Caskey	For	Murray	Against
Chahbar	For	O'Brien	For
Cherniak	For	Patillo	For
Copeland	For	Pawlitza	For
Curtis	For	Porter	For
Dickson	For	Potter	Abstain
Doyle	For	Robins	For
Dray	For	Ross	For
Eber	For	Ruby	For
Elliott	For	St. Lewis	For
Filion	For	Silverstein	For
Finkelstein	For	Simpson	For
Finlayson	For	Swaye	For
Gotlib	For	Symes	For
Gottlieb	Against	Warkentin	For
Harris	For	Wright	For

Vote: 42 For, 3 Against, 1 Abstention

ITEM FOR INFORMATION

- Response to Federal Proposal on Regulation of Immigration Consultants

Convocation took its morning recess and returned in public.

The Treasurer extended condolences to the family of Mr. George Collins Williams, a former Director of the Bar Admission Course who passed away on January 20, 2004.

BICENTENNIAL REPORT WORKING GROUP

Ms. St. Lewis presented the Report of the Bicentennial Report Working Group for information.

Bicentennial Implementation Status Report and Strategy

Bicentennial Report Working Group
January 22, 2004

Report to Convocation

Purpose of Report: Information

Prepared by Equity Initiatives
(Josée Bouchard: 416-947-3984)

TABLE OF CONTENTS

Background.....	4
Executive Summary.....	6
Highlights	14
Recommendation 1: Policy Development	30
Initiatives Adopted by the Law Society.....	30
Proposed Strategy	33
Recommendation 2: Study and Research	35
Initiatives Adopted by the Law Society.....	35
Proposed Strategy	40
Recommendation 3: Equity and Diversity Audit of the Law Society Programs and Services	43
Initiatives Adopted by the Law Society.....	43
Proposed Strategy	44
Recommendation 4: Monitoring and Evaluation of.....	45
Equity and Diversity Initiatives	45
Initiatives Adopted by the Law Society.....	45
Proposed Strategy	47
Recommendation 5: Resource for the Profession	48
Initiatives Adopted by the Law Society.....	48
Proposed Strategy	55
Recommendation 6: Institutional Resources	56
Initiatives Adopted by the Law Society.....	56
Proposed Strategy	58
Recommendation 7: Participation in the Governance of the Profession.....	60
Initiatives Adopted by the Law Society.....	60
Proposed Strategy	61
Recommendation 8: Bar Admissions	64
Initiatives Adopted by the Law Society.....	64
Proposed Strategy	69
Recommendation 9: Articling.....	71
Initiatives Adopted by the Law Society.....	71
Proposed Strategy	73
Recommendation 10: Continuing Legal Education.....	75
Initiatives Adopted by the Law Society.....	75
Proposed Strategy	76
Recommendation 11: Rules of Professional Conduct.....	78
Initiatives Adopted by the Law Society.....	78
Proposed Strategy	80
Recommendation 12: Accreditation of Foreign-Trained Lawyers	82
Initiatives Adopted by the Law Society.....	82
Proposed Strategy	86
Recommendation 13: Requalification	88
Initiatives Adopted by the Law Society.....	88
Proposed Strategy	90
Recommendation 14: Fees.....	91
Initiatives Adopted by the Law Society.....	91
Proposed Strategy	94
Recommendation 15: Law Society as Employer.....	95
Initiatives Adopted by the Law Society.....	95
Proposed Strategy	99
Recommendation 16: Law Society as a Contractor for Legal Services	100
Initiatives Adopted by the Law Society.....	100
Proposed Strategy	100

Appendix 1: *Bicentennial Report (May, 1997)*

Appendix 2: EAG, Rotiio> taties and AJEFO submissions

Appendix 3: Handidactis Report

Implementation of Bicentennial Report

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, Appendix 1).¹ 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. On July 31, 2003, Convocation established the Bicentennial Report Working Group (the Working Group) to review and report on the implementation status of the recommendations contained in the Bicentennial Report. Members of the Working Group are: Joanne St. Lewis (Chair), Andrea Alexander, Constance Backhouse, Thomas G. Heintzman, W.A. Derry Millar and Beth Symes.
3. Senior staff of the Law Society prepared a status report on the implementation of each of the recommendations in the Bicentennial Report. The Working Group wishes to thank the staff of the Law Society for providing answers to its many questions.
4. The Working Group also consulted with Professor Fiona Kay of Queen's University, the author of a longitudinal study of women and men called to the Bar in Ontario from 1976 to 1990. The Working Group reviewed the limited number of studies and research on the status of Aboriginal and racialized lawyers as well as lawyers with disabilities.
5. Although the time limitations were very tight, the Working Group sought and received the views of the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG), the Association des juristes d'expression française de l'Ontario (AJEFO)² and Rotiio> taties Aboriginal Advisory Group (Rotiio> taties)³ (letters of invitation and submissions – Appendix 2) regarding their view on the following questions:
 - a. What recommendations has the Law Society not implemented?
 - b. What Law Society policies and initiatives have had a positive or negative impact on the legal profession and why?

¹ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997)

² Founded in 1980, the Association of French Speaking Jurists of Ontario (AJEFO) speaks for lawyers, judges, personnel of the administration of justice, law professors, law students and others who work at the promotion of access to justice in French and English, the official languages of the courts of Ontario. The Legislative Assembly of Ontario adopts all public statutes in both official languages, and both versions are equally valid. The AJEFO wishes to ensure equal access to justice, without penalty, delay, obstruction or hesitation to the use of either official languages by the judiciary, members of the Bar and the citizens of Ontario.

³ Rotiio> taties is an Aboriginal non-profit volunteer organization comprised of Aboriginal lawyers, legal academics, law students and community members advising various bodies in Ontario on Aboriginal issues as they arise in law and the legal profession. The main table of Rotiio> taties meets bi-monthly. There are four working subcommittees that report to the main table, and meet as needed: education, residential school issues, access to justice and fundraising.

- c. What can the Law Society do to enhance the recommendations of the Bicentennial Report and equality in general?
- 6. This report details the programs, services and policies created by the Law Society as a result of the recommendations of the Bicentennial Report, analyzes the implementation status of each recommendation and proposes strategies to be examined and further implemented.
- 7. The Working Group presents this report to Convocation for information. It has referred this report to the Equity and Aboriginal Issues Committee for its consideration, as it is the standing committee of Convocation mandated to develop policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to members of equality-seeking, Aboriginal and Francophone communities.⁴

Executive Summary

- 8. The Bicentennial Report was adopted to recognize the Law Society's commitment to the promotion of equity and diversity and its responsibility to regulate and provide services to an increasingly diverse legal profession and population. In 1997, members of equality-seeking, Francophone and Aboriginal communities identified a range of issues affecting their ability to perform to their maximum potential and barriers in entering and remaining in the profession.
- 9. It is not surprising, with the membership of the legal profession growing at a rate of approximately 1,200 annually, that the profession is different and more diverse than it was 7 years ago. Although more women, persons from racialized communities, Aboriginal peoples, gays, lesbians, bisexuals, transgender and transsexual persons, persons with disabilities and Francophones are entering the profession⁵, a significant number of members from these communities are also leaving the legal profession. This phenomenon appears to be occurring at all stages of the career path, from the Bar Admission Course where a number of students from Aboriginal and racialized communities choose not to enter the legal profession⁶, to the more advanced stages of a legal career. Studies have shown, for example, that women often leave the legal profession before becoming partners. The Working Group urges the Law Society to undertake studies to identify factors that may constitute barriers to entering, remaining in and re-entering the profession for members from equality-seeking, Francophone and Aboriginal communities.
- 10. The Working Group was not mandated to critically review the recommendations of the Bicentennial Report, but to present a report card on the implementation status of the recommendations, and to propose areas upon which the Law Society might wish to build. During its deliberations, the Working Group considered the new challenges faced by the legal profession and by the Law Society, as regulator of the profession in the interest of the public.
- 11. The Working Group has chosen to highlight the following areas that merit particular attention:
 - a. Accountability of the Law Society
 - b. Career paths
 - c. New and pressing areas of research
 - d. Financial barriers
 - e. Contract compliance

a. Accountability of the Law Society

⁴ Section 16.1 of By-law 9 – Committees.

⁵ In 2003, 53% of students who entered the Bar Admission Course (BAC) were women and 16.0% of students self-identified as racialized, 5.6% as Francophone, 1.6% as Aboriginal, 1.4% as gay or lesbian and 1.9% as students with disabilities. See *Placement Report 2002/2003 of Students Enrolled in the 45th BAC 2002* (Toronto: Law Society of Upper Canada, July 2003).

⁶ Rotiio>taties noted, for example, that “there is a disproportionate representation of Aboriginal people who choose to either not enter practice or to leave practice after only a few years of entering the profession.” See Appendix 2.

12. Advancing equality requires effective tools of measurement and analysis. The Law Society has an impressive array of initiatives but no coherent standards by which to measure their effectiveness and mark their progress. It is for this reason that the Working Group has highlighted the need for an equity template that would include definitions of the terms “equity” and “diversity”. Staff, benchers committee and Convocation would use the template to analyze the impact of policies on persons from equality-seeking, Aboriginal and Francophone communities. An equity template is also needed to perform audits of Law Society programs and services, as stipulated under Recommendation 3 – Equity and Diversity Audit of the Law Society Programs and Services, and to develop and effectively implement Recommendation 4 – Monitoring and Evaluation of Equity and Diversity Initiatives. The Working Group is of the view that the Law Society made substantial efforts to implement these recommendations. However, there are no criteria in place that enable the Law Society to judge the success of its equity initiatives.
13. The integration of equity and diversity must also reach the level of governance. The success of the implementation of Recommendation 7 – Participation in the Governance of the Profession may be a matter of controversy. Ultimately, equitable representation or diversity at Convocation is the greatest safeguard of the public interest and the Law Society recognizes the importance and value of representation of equality-seeking, Francophone and Aboriginal members in the governance of the profession. The Working Group believes that a significant step to increasing the participation of these communities in the governance of the profession is to amend Law Society by-laws so that the Equity Advisory Group, AJEFO and Rotiio> tates each have a voting representative on the Equity and Aboriginal Issues Committee. Other strategies should be developed to increase the participation of non-benchers in the work of the Law Society.

b. Career paths

14. The profession is only as diverse as its participating members. The Working Group believes that barriers to entering and establishing a practice continue to exist for individuals from equality-seeking, Francophone and Aboriginal communities, that women continue to leave the profession in significant numbers at mid-career and that there continue to be barriers to re-entry.⁷ These matters require particular attention. The Working Group suggests that the Law Society conduct research into those who leave the profession whether at the Bar Admission, articling or lawyering phase of their careers to determine the barriers faced by equity seekers, Aboriginals and Francophone (Recommendation 2 – Study and Research).
15. These issues are also relevant to the implementation of a number of recommendations of the Bicentennial Report. For example, the issue of access to the legal profession is addressed in Recommendation 9 – Articling. The Law Society has made progress in implementing this recommendation. It has increased its placement initiatives and support programs for articling students by doing outreach initiatives, developing a mentoring program and offering education and career development programs. However, students from equality-seeking, Francophone and Aboriginal communities remain over represented in the group of students that have difficulty finding articles. The Law Society should seek information as to why students who have successfully completed their Bar Admission Course are no longer actively seeking articling positions. The current articling structure should be assessed to identify whether equality-seeking, Aboriginal and Francophone students face barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers.

⁷ Irene Taylor and Stephanie Willson, “Carpe Diem” (September, 2003) Lexpert 69.

Law schools have been graduating 50% to 60% women and that for the past 15 years the major law firms have been hiring 50% women. Yet women comprise only 15% to 20% of the equity partners at major law firms. The majority of women lawyers exit the partnership track. Many move into government and in-house positions.

Prof. Jean McKenzie Leiper presented a paper in October 2002 entitled “Work Time and Leisure Time: Dynamics and Cnvergence in Changing Contexts” in which she notes that women still hold out impossible ideals to women. In spite of the fact that their working hours are longer than average, the lawyers still should the responsibility for their children’s lives. Scheduling extends into every corner of family time; when women are fatigued from work, they are still expected to attend soccer games and violin lessons or organize family celebrations. Until these pressures are removed, women like the ones in this study will continue their race against the clock.

c. *New and pressing areas of research*

16. Recommendation 2 recognizes that research is an essential tool of policy-making. The Working Group is very impressed with the array of research that has been undertaken by the Law Society. However, there is very limited information about Aboriginal law students and lawyers, and law students and lawyers with disabilities in Ontario.⁸ Rectifying this gap is important.

d. *Financial barriers to participation in the profession*

17. The Working Group acknowledges the inextricable connection between financial capacity and full participation in the legal profession. The most significant financial barriers faced by members of equality-seeking, Francophone and Aboriginal communities include:
- a. The increasing debt load of BAC students (from \$31,000 in 2000 to \$40,000 in 2003).
 - b. The reduction in the number of applications for funding and the number of BAC students receiving funds under the Repayable Loans Program and the fact that the funds flowed in 2003 were just over 50 percent of the funds flowed in 2002. The Working Group encourages the Law Society to assess these programs and adopt strategies, if appropriate, to improve their effectiveness.
 - c. Fees and LawPRO rates for members (Recommendation 14: Fees): The Working Group notes that some groups still face barriers due to the current fees and insurance structures.⁹ The Working Group encourages the Law Society to consider strategies to establish a reduced fee structure for those who practice part-time and have a low income.
 - d. The cost of CLE: The Working Group is of the view that the Law Society should expand the CLE bursary program and aggressively advertise it to those who cannot afford CLE.

e. *Contract compliance*

18. The Law Society is both an employer and contractor for services. The Working Group believes that the Law Society should lead by example in the area of equality in the workplace. The Law Society has already taken significant steps to implement Recommendation 15 – Law Society as Employer, for example by adopting workplace policies that address equity and diversity issues, encouraging applications from persons from equality-seeking, Francophone and Aboriginal communities and offering training programs to promote equity and diversity in the workplace. The Working Group notes that the Law Society has been successful in hiring and promoting women. However, it requires statistical information about the demography of its workforce to assist in the development of programs that promote equality in the workplace.
19. The Working Group also notes that the Law Society has an underutilized opportunity to stimulate diversity initiatives within the profession through the implementation of an effective Contract Compliance program, as provided in Recommendation 16 – Law Society as a Contractor for Legal Services. The Working Group is of the view that the Law Society should take steps to implement a contract compliance program, before

⁸ In 2001, the Law Society of British Columbia published a study entitled *Lawyers with Disabilities, Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001). The research project was undertaken to identify and discuss barriers to persons with disabilities entering and practicing in the legal profession. The report reveals that lawyers with disabilities face discrimination, prejudice and access barriers that make it very difficult to practice law. Discriminatory practices prevent career advancements and produce such stress that a frequent result is overwork, burn out and failure in private firms and government. Lawyers with disabilities are often not kept on after articling and finding employment is very difficult. Employers believe that accommodating lawyers with disabilities is expensive, and if a disability appears to interfere with the economic bottom line, the lawyer is likely to be let go. Disclosure of disability may lead to discrimination and there is a tendency for lawyers to hide their disabilities.

⁹ For example, Rotiio>taties observed that fees continue to be a barrier for many Aboriginal lawyers in private practice. Studies undertaken by the Canadian Bar Association (CBA), such as *Touchstones for Change* (Ottawa: Canadian Bar Association, 1983), and Professor Kay (Fiona Kay, *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the Bar Between 1975 and 1990* (Toronto: Law Society of Upper Canada, 1991) and Fiona Kay, Nancy Dautovich and Chantelle Marlbor, *Barriers and Opportunities within Law, Women in a Changing Legal Profession, 1990-1996* (Toronto: Law Society of Upper Canada, 1996) indicate that fees are a barrier for women lawyers, for example for those who wish to re-enter the practice of law on a part-time basis.

the end of 2004, for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession. The Working Group also proposes that law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession and that suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.

Implementation status of other recommendations

20. The Working Group was impressed by the wide-ranging initiatives the Law Society has undertaken to implement the Bicentennial Report. Many of the initiatives have made the Law Society the role model to be emulated by the profession. For example, the Working Group is of the view that the Law Society has made substantial progress in implementing the following recommendations:
 - a. Recommendation 2 – Study and Research: The Working Group commends the Law Society for its research activities and studies to date concerning equity and diversity in the legal profession, including studies on the impact of gender in the legal profession¹⁰ and the demographic analysis of the legal profession.¹¹ The Working Group proposes that the Law Society strengthen its leadership role in this area by developing a strategic research plan in cooperation with equality-seeking, Francophone and Aboriginal communities.
 - b. Recommendation 5 – Resource to the Profession: The Law Society has provided tools to function as a resource to the profession and works in partnership with legal associations to develop programs based on the needs of the legal profession. The Working Group recognizes the value of such programs and encourages the Law Society to continue to lead by example.
 - c. The Law Society has begun implementing Recommendation 6 - Institutional Resources by committing the appropriate human and financial resources to advance equality within the Law Society and the legal profession. The Working Group recognizes the pivotal role played by the Equity Initiatives Department in promoting equity and diversity and encourages the Law Society to maintain the department's leadership within the organization.
 - d. Recommendation 8 – Bar Admissions: The Law Society has made substantial efforts to administer the BAC program so that its demands do not impact disproportionately on those from equality-seeking, Francophone and Aboriginal communities. The Working Group notes that the real challenge will be to integrate these efforts into the revised BAC model adopted by Convocation on December 5, 2003 (the new BAC). It encourages the Law Society to involve members from equality-seeking, Francophone and Aboriginal communities in the design and delivery of the new BAC. The Working Group also recommends that the new BAC continue to be offered in both official languages.
 - e. Recommendation 10 - Continuing Legal Education: The Law Society is to be commended for making its programs affordable and more accessible to members of the profession, including members from equality-seeking, Aboriginal and Francophone communities. It has considerably increased its CLE programming in the area of equity and diversity, including the launch in 2004 of CLE programming in French, and has increased access to its CLE programs to members in remote areas. The Working Group encourages the Law Society to continue the exceptional work it has undertaken in this area, and to invite members of equality-seeking, Francophone and Aboriginal communities to participate as CLE faculty.
 - f. Recommendation 11 – Rules of Professional Conduct: The recommendation requests the Law Society to effectively meet its responsibilities as a regulator in addressing discrimination and harassment in the legal profession. The Law Society has created an effective and confidential Discrimination and Harassment program to assist anyone who may have experienced discrimination or harassment by a lawyer or within a law firm. The Law Society also ensures that staff members with expertise handle complaints of harassment and discrimination. The Working Group proposes that the Law Society determine the effectiveness of its existing programs and, if appropriate, develop strategies for improvement.
 - g. Recommendation 12 – Accreditation of Foreign-Trained Lawyers: Foreign-trained lawyers often face formidable barriers in entering the Ontario legal profession. For example, although qualified

¹⁰ See *Transitions* report, *ibid.* and *Barriers and Opportunities* report, *ibid.* Available in French and English.

¹¹ See Michael Ornstein, *Lawyers in Ontario: Evidence from the 1996 Census* (Toronto: Law Society of Upper Canada, 2001).

to practise in other jurisdictions, foreign-trained lawyers typically have to return to law school to be educated in Canadian laws, they often feel alienated while in law school and they encounter appreciably more difficulty in securing articling positions. The Working Group is of the view that strategies should be developed to facilitate the participation of foreign-trained lawyers to the profession.

- h. Recommendation 13 – Requalification: The Law Society has substantially implemented recommendation 13 by adopting a self-study program for those who temporarily leave the practice of law. The Working Group notes, however, that women and members from equality-seeking, Francophone and Aboriginal communities still face barriers, often unrelated to requirements established by the Law Society, when re-entering the practice of law. The Working Group encourages the Law Society to study and develop strategies to promote equal opportunities for these groups when they return to the practice of law.
21. The following section provides highlights of the progress made by the Law Society in implementing the Bicentennial Report and the strategies proposed by the Working Group to the Equity and Aboriginal Issues Committee.

Highlights

Recommendation 1 Policy Development

The Law Society should ensure that the policies it adopts:

- a) Actively promote the achievement of equity and diversity within the profession; and
- b) Do not have a discriminatory impact.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> 1. Policy-development process includes the preparation of a background paper outlining equity considerations. 2. The Equity Advisor and/or the Equity and Aboriginal Issues Committee review proposed policies. 3. The Equity Advisor participates in monthly Policy Secretariat briefings. 4. Members of Francophone, Aboriginal and equality-seeking communities regularly participate in consultation processes. 5. By-law 9-Committees provides that the Equity and Aboriginal Issues Committee will consult with the Equity Advisory Group (EAG), the Association des juristes d'expression française de l'Ontario (AJEFO) and Rotio>taties Aboriginal Advisory Group (Rotio>taties) in the development of policy options. 6. Policies are regularly adopted to further the achievement of equity and diversity within the profession. 	<ol style="list-style-type: none"> 1. A definition of "equity and diversity" should be developed and an equity decision-making template formulated to guide the Law Society in its policy development activities. 2. A process should be created by which all policy development activities undertaken by staff, committees (including working groups, task forces and sub-committees) and Convocation are judged against the equity template. Reports should contain a specific section to indicate how equity principles were considered. 3. Guidelines should be developed to provide direction and a consultation framework to committees and staff on issues that require input from equality-seeking, Francophone and Aboriginal communities.

Recommendation 2 Study and Research

To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the

profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> 1. Studies on the impact of gender in the legal profession have been valuable to determine whether the status of women lawyers is improving. 2. Demographic analysis of the legal profession based on Canada Census provides valuable information about the legal profession and representation of members based on race, ethnicity, language and gender. 3. The Law Society regularly publishes reports of its equity initiatives and programs. 4. The Law Society continues to promote and support research initiatives in the area of equity and diversity. 	<ol style="list-style-type: none"> 1. Guidelines should be developed to ensure that an equity analysis, including an intersectionality analysis that identifies heightened vulnerabilities to discrimination, is integrated within studies. 2. A strategic research plan should be developed in consultation with EAG, AJEFO and Rotio> taties. The research plan should, on a biennial basis, identify issues facing members of equality-seeking, Aboriginal and Francophone communities. The Plan should recommend a budget for Convocation's consideration. 3. The following three research areas merit particular and urgent attention and should be identified as priorities: <ol style="list-style-type: none"> i. Studies on barriers faced by students and members with disabilities ii. Studies on barriers faced by Aboriginal students and members of the profession; iii. Studies to identify the factors that may constitute barriers to entering, remaining and re-entering the profession for members from equality-seeking, Francophone and Aboriginal communities. 4. The Equity Advisor should be responsible for monitoring the implementation of the research plan.

Recommendation 3 Equity and Diversity Audit of the Law Society Programs and Services

The Law Society should evaluate its programs and services on an ongoing basis to ensure that they operate so as to promote the achievement of equity and diversity within the legal profession.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> 1. The Law Society performed an equity and diversity audit of its programs and services through the development of equity and diversity action plans. 2. In 2002, the Law Society recognized equity as one of the four strategic corporate areas: professional regulation, professional development and competence, policy development and equity initiatives/access to justice. 3. One of the Law Society's organizational goals is to integrate equity and diversity/access to justice initiatives within operational departments of the Law Society programs, products and services. 4. The Law Society has implemented initiatives that increase access for persons with disabilities to the legal profession, legal services and the Law Society. 	<ol style="list-style-type: none"> 1. The Equity and Aboriginal Issues Committee should report annually to Convocation on whether the Law Society's programs and initiatives are promoting equity and diversity.

*Recommendation 4 Monitoring and Evaluation of
Equity and Diversity Initiatives*

The Law Society should formally monitor and evaluate the effectiveness of current and future equity and diversity initiatives.

<i>Outline of Progress</i>	<i>Proposed strategy for the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> 1. The Law Society monitors and evaluates the effectiveness of current and future equity and diversity initiatives on an ongoing basis. 2. The CEO presents semi-annual operational reports to Convocation that include a review of corporate and departmental programs, services and policies in support of the Law Society's mandate. The CEO's Reports to Convocation outline equity and diversity initiatives undertaken by the Law Society and its departments. 3. Senior Managers are responsible for evaluating their programs, including equity and diversity programs. 4. Programs are evaluated by using formal evaluations, analysis of statistical information and impact on financial and human resources. 	<ol style="list-style-type: none"> 1. The Equity and Aboriginal Issues Committee should report annually to Convocation on the effectiveness of its equity initiatives.

Recommendation 5 Resource for the Profession

In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> 1. The Equity Advisor and other staff members provide support and assistance to law firms and legal organizations to assess their programs. 2. The Law Society provides custom-designed equity and diversity training programs to law firms. 3. Information relating to Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the Rules of Professional Conduct is readily available to the profession. 4. Equity and diversity CLE and public education programs are ongoing. 5. The Law Society works in partnership with legal associations and communities to promote education and discussion on the challenges and opportunities for Aboriginal, Francophone and equality-seeking communities in the legal profession. 6. Model programs and policies are developed on an ongoing basis and are widely circulated to the legal profession. 7. A structured mentoring program is in place for 	<ol style="list-style-type: none"> 1. The Law Society should continue to effectively implement this recommendation.

high school and university students, students-at-law and recent calls to the bar.	
---	--

Recommendation 6 Institutional Resources

In order to facilitate and further the advancement of equity and diversity goals, the Law Society must dedicate appropriate human and financial resources specifically to those goals.

<i>Outline of Progress</i>	<i>Proposed strategy for the Equity and Aboriginal Issues Committee</i>
<p>1. Standing committees of Convocation address equity and diversity issues faced by the legal profession, including the Equity and Aboriginal Issues Committee.</p> <p>2. The Equity Advisor supports the Equity and Aboriginal Issues Committee.</p> <p>3. The Equity Advisory Group advises the Law Society. It is a group of volunteer lawyers with experience in areas of employment equity, access to the legal system, human rights, anti racism, anti oppression training, and social justice issues.</p> <p>4. The committee structure and the human and financial resources allocated to equity and diversity initiatives have ensured that actions that relate to equity and diversity are consistently taken.</p> <p>5. Permanent full-time equity and diversity positions are in place, including the Equity Advisor, the Aboriginal Issues Coordinator, the Equity Community and Policy Advisor, the Counsel, Equity Initiatives and the Equity Program Administrator</p> <p>6. Financial resources are in place to support the Equity Initiatives Department, the Discrimination and Harassment Counsel Program and equity and diversity initiatives.</p>	<p>1. The effectiveness of the current structure of the Equity Initiatives Department should be re-evaluated in December 2006. At a minimum, an effective equity initiatives unit should be maintained, and fully staffed, with the following elements:</p> <p>a. The Equity Advisor's direct reporting relationship to the CEO;</p> <p>b. The Equity Advisor's membership on the senior management team;</p> <p>c. Current staffing level and budget.</p> <p>2. The Law Society services should be delivered to French and English speaking members and the public in a manner consistent with the intent of the <i>French Language Services Act</i>.</p>

Recommendation 7 Participation in the Governance of the Profession

In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession:

- (a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28 [now Rule 5.04]; and
- (b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<p>1. EAG advises the Equity and Aboriginal Issues Committee, and other committees, on issues affecting Aboriginal peoples, Francophones and equality-seeking communities.</p>	<p>1. An equity analysis should be undertaken to determine whether there are any barriers within the current electoral process that limit the full participation and election of women and members from equality-</p>

<p>2. The Equity and Aboriginal Issues Committee regularly invites representatives of EAG, AJEFO and Rotiio> taties to attend and participate in the affairs of the committee. This increases the representation of members from equality-seeking, Aboriginal and Francophone communities as participants in the policy development process.</p> <p>3. Initiatives to encourage members from equality-seeking, Francophone and Aboriginal communities to run for election have been undertaken.</p>	<p>seeking, Francophone and Aboriginal communities.</p> <p>2. A report and strategic plan should be presented to Convocation by June 2006 to address the following:</p> <p>a. the burden of committee time placed on benchers which may be a barrier to suitable candidates standing for bencher election; and</p> <p>b. non-bencher participation in bencher committees.</p> <p>3. By-law 9, Committees, should be amended so that EAG, AJEFO and Rotiio> taties each have a voting representative on the Equity and Aboriginal Issues Committee.</p>
--	---

Recommendation 8 Bar Admissions

The Law Society should continue to ensure that Bar Admissions:

- (a) Includes material designed to increase the profession's understanding of diversity/equity issues;
- (b) Encourages the participation of equality-seeking groups in its design, development, and presentation;
- (c) Uses material that is gender neutral;
- (d) Uses audio visual material that includes the faces and voices of equality-seeking groups;
- (e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee and the Professional Development, Competence and Admission Committee and/or the Continuum of Legal Education Task Force</i>
<p>1. BAC materials include information designed to increase the profession's understanding of diversity/equity issues.</p> <p>2. All instructors and BAC staff attend training sessions on equity and diversity implications to their work.</p> <p>3. The BAC program is offered in both official languages.</p> <p>4. The e-learning web site provides students with a flexible and accessible learning support system.</p> <p>5. The Education Support Services Centre offers students a range of supports, services and accommodation to students.</p> <p>6. The Mentoring Program is available to BAC students.</p> <p>7. The Elders' Program provides Aboriginal and non-Aboriginal students in the BAC and Aboriginal members of the Bar with various teachings and counseling services.</p> <p>8. Financial assistance is available to those in the BAC who demonstrate need to meet their educational and living expenses during the course.</p>	<p>1. Members from equality-seeking, Francophone and Aboriginal communities should be involved in the design and delivery of the new BAC.</p> <p>2. BAC students should be informed of the role of the Discrimination and Harassment Counsel (DHC) and options available to students and lawyers who experience harassment and/or discrimination.</p> <p>3. The new BAC should continue to be offered in both official languages</p> <p>4. The effectiveness of the Repayable Allowance Program should be assessed and improved if required.</p>

Recommendation 9 Articling

The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee and by the Professional Development, Competence and Admission Committee and/or the Continuum of Legal Education Task Force</i>
<ol style="list-style-type: none"> 1. The Law Society promotes initiatives that allow students options and flexibility in completing all the necessary requirements of articling. For example, non-traditional articling placements and articling abridgments. 2. The Associate Registrar coordinates the articling program and provides support to students 3. The Aboriginal Issues Coordinator provides support to Aboriginal students in the BAC and during the articling process. 4. Placement initiatives provide assistance to students-at-law by offering job search skills workshops and counselling services. 5. Articling positions are posted on the Law Society's web site. 6. The Mentoring Program is available to articling students. 7. The Registrar and Associate Registrar attend annually at all law schools to provide students with information about the BAC and the articling program and opportunities. 	<ol style="list-style-type: none"> 1. The current articling structure should be assessed to determine whether equality-seeking, Aboriginal and Francophone students face systemic barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers. 2. Research should be undertaken to determine why some students who have successfully completed the BAC do not seek or cease to seek articling positions. Strategies should be developed to address this issue. 3. The CEO or delegate should provide annual reports to the Equity and Aboriginal Issues Committee about strategies and progress on addressing the needs of equality-seeking, Aboriginal and Francophone students for suitable articles. 4. Services and learning supports to assist students and principals throughout the articling process should be maintained and enhanced based on needs.

Recommendation 10 Continuing Legal Education

The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:

- (a) Includes material designed to increase the profession's understanding of diversity/equity issues;
- (b) Encourages the participation of equality-seeking groups in its design, development, presentation, and attendance;
- (c) Uses material that is gender neutral;
- (d) Uses audio visual material that includes the faces and voices of equality-seeking groups;
- (e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

<i>Outline of Progress</i>	<i>Proposed strategy for the Professional Development, Competence and Admission Committee</i>
<ol style="list-style-type: none"> 1. The Law Society offers affordable, accessible and relevant continuing legal education programs through various initiatives that include its Public Education Program, Equity and Diversity Training Program and equity and diversity CLE programs. 2. Public education events are usually open to the public and are free of charge. 3. The Interactive Learning Network enables lawyers to attend live programs without incurring the 	<ol style="list-style-type: none"> 1. The bursary program for CLE should be expanded and aggressively promoted to those who cannot afford CLE. 2. Education programs should be tailored to meet the needs of: <ol style="list-style-type: none"> a. Foreign-trained lawyers. b. Members re-entering the profession. c. Members from equality-seeking, Aboriginal and Francophone communities.

costs associated with absence from the office and long distance travel.	3. There should be representation of members from equality-seeking, Aboriginal and Francophone communities within the CLE Faculty, including “core” CLE programs.
---	---

Recommendation 11 Rules of Professional Conduct

The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<p>1. Rule 5.03 of the Rules of Professional Conduct prohibits sexual harassment and Rule 5.04 prohibits discrimination.</p> <p>2. Rule 1 of the Rules of Professional Conduct includes a commentary that provides that “a lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter.”</p> <p>3. The Discrimination and Harassment Counsel Program (DHC) is a permanent program of the Law Society established to confidentially assist those who may have experienced discrimination or harassment by a lawyer or within a law firm.</p> <p>4. A process is in place to ensure that cases of harassment and discrimination are appropriately handled at all levels, including by the Client Service Centre, Investigations Unit and Discipline Unit.</p> <p>5. An education program is delivered to hearing panel benchers on topics such as harassment and discrimination, credibility of witnesses, the duty to accommodate and identifying bias and stereotypes.</p>	<p>1. The Equity and Aboriginal Issues Committee should work with the CEO or delegate, and the Discrimination and Harassment Counsel where appropriate, to determine the effectiveness of programs aimed at eliminating harassment and discrimination within the legal profession and discuss strategies for improvement if appropriate.</p>

Recommendation 12 Accreditation of Foreign-Trained Lawyers

The Law Society should facilitate the participation of minority groups in the legal profession by liaising with other groups to ensure that the accreditation requirements for foreign-trained lawyers or Quebec non-common law trained lawyers to practise in Ontario do not represent an unreasonable barrier.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<p>1. A report of the system in place through the National Committee on Accreditation (NCA) for the accreditation of lawyers who have received their legal education and training outside Canada was presented to Convocation.</p> <p>2. Convocation adopted the report's recommendations and made recommendations to the Federation of Law Societies for improvements to the process.</p> <p>3. The Federation, the NCA and the Law Society</p>	<p>1. A joint initiative should be developed with the Professional Development, Competence and Admission Committee and the Access to Justice Committee to develop strategies to assist foreign-trained lawyers to qualify as lawyers in Ontario.</p> <p>2. Information should be gathered about the success rate of NCA candidates in the BAC and in articling placements and strategies should be developed to address unfair elements, if any.</p> <p>3. NCA students or recently called foreign-trained</p>

have considered and addressed all issues raised in the report.	lawyers should be invited to provide input into the development and implementation process of the new BAC.
--	--

Recommendation 13 Requalification

In implementing its requalification policy the Law Society should continue to develop a process that is fair and equitable to all members of the profession.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
1. The Law Society has replaced its requalification policy by a Private Practice Refresher Program that requires lawyers not in private practice for five years or more to undergo a refresher program prior to entering private practice. Members are not asked to requalify. Members complete a self-study program that reflects gaps in their experience.	1. The effectiveness of the Private Practice Refresher Program and its impact on members of equality-seeking, Francophone and Aboriginal communities should be examined after five years of implementation. 2. Strategies should be developed to ensure truly equal opportunities for women returning to the practice of law and for members of equality-seeking, Francophone and Aboriginal communities.

Recommendation 14 Fees

The Law Society should examine the impact of and the barriers presented by its current annual fee structure and consider options for revising its fee structure, if warranted.

<i>Outline of Progress</i>	<i>Proposed strategy for the Equity and Aboriginal Issues Committee</i>
1. The Law Society has examined and revised its fee structure to determine the impact on members from equality-seeking, Francophone and Aboriginal communities. 2. Studies indicate that the current fee structure remains a barrier to some members of Aboriginal, Francophone and equality-seeking communities.	1. Convocation should establish a working group and/or task force composed of members of the Equity and Aboriginal Issues Committee, the Finance Committee and other members as determined by Convocation, to review the impact of the fee structure on members who practice part-time or have a low income, or who work in public interest areas.

Recommendation 15 Law Society as Employer

The Law Society should continue to set and monitor equity standards for its own staff that will make it a model for the profession as an employer.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
1. The Law Society adopted processes and policies that promote equity and diversity within the workplace. For example, the Law Society's recruitment practices proactively encourage applications from	1. The CEO should compile data on the diversity of the workforce of the Law Society and develop strategies to promote equality in the workplace. 2. The CEO or designate should provide an in

<p>individuals from equality-seeking, Aboriginal and Francophone communities.</p> <p>2. The Law Society revised all its internal policies and guidelines to ensure that they are not discriminatory and that they encourage an inclusive workplace environment.</p> <p>3. The Law Society developed a successful training program for its workforce, including workshops about addressing harassment and discrimination, the duty to accommodate and providing a positive workplace environment.</p> <p>4. The Law Society has been successful in hiring and promoting women.</p>	<p>person annual report to the Equity and Aboriginal Issues Committee regarding the implementation status of equality in the workplace initiatives.</p>
---	---

Recommendation 16 Law Society as a Contractor for Legal Services

The Law Society should:

- a) Develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession; and
- b) Examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<p>1. The Law Society's Purchasing Policy includes an Equity Compliance Program to provide access to services to Francophone, Aboriginal and equality-seeking communities.</p> <p>2. The Law Society is committed to initiating supplier development activities leading to increased representation of Francophone, Aboriginal and equality-seeking communities as suppliers. This is to be done without sacrificing operational requirements, best value, prudence, and sound contracting management.</p> <p>3. The Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society cite as one of the conditions of retainer that all outside counsel retained by the Law Society pursuant to the guidelines "shall be in compliance with the Law Society's contract compliance policy as in force from time to time."</p>	<p>1. The CEO should report to Convocation by the end of 2004 with respect to:</p> <ol style="list-style-type: none"> a. The implementation of a contract compliance program for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession. b. A provision by which law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession. c. A provision by which suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.

Core Areas

The Working Group identified five core areas that merit particular attention by the Equity and Aboriginal Issues Committee:

Core Areas	Recommendation	Proposed Strategy
Accountability of the Law Society	1 – Policy development	A definition of "equity and diversity" should be developed and an equity decision-making template

		formulated to guide the Law Society in its policy development activities.
	3 – Equity and Diversity Audit of the Law Society Programs and Services	An annual report should be presented to Convocation on whether the Law Society's programs and initiatives are promoting equity and diversity
	4 - Monitoring and Evaluation of Equity and Diversity Initiatives	An annual report should be presented to Convocation on the effectiveness of equity and diversity initiatives.
	6 - Institutional Resources	Human and financial resources for the advancement of equality and the leadership role played by the Equity Initiatives Department should be maintained. The effectiveness of the Equity Initiatives Department's new structure should be evaluated in December 2006.
	7 – Participation in the Governance of the Profession	Law Society by-laws should be amended so that the EAG, AJEFO and Rotio> taties each have a voting representative on the Equity and Aboriginal Issues Committee. A determination should be made as to whether there are barriers that limit the full participation of women and members from equality-seeking, Francophone and Aboriginal communities in the election process.
Career paths	2 – Study and Research	Research should be conducted into those who leave the profession whether at the Bar Admission, articling or lawyering phase of their careers.
	9 – Articling	The current articling structure should be assessed to identify whether equality-seeking, Aboriginal and Francophone students face barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers.
New and pressing areas of research	2 – Research	Research should be undertaken on

		the barriers faced by Aboriginal law students and lawyers, and law students and lawyers with disabilities in Ontario.
Financial barriers	<p>The most significant financial barriers faced by members of equality-seeking, Francophone and Aboriginal communities include:</p> <ul style="list-style-type: none"> · The increasing debt load of law students. · The reduction in the number of BAC students applying and receiving funds under the Repayable Loans Program and in the amount of funding provided to students. · Fees and LawPRO rates for members. · The cost of CLE. 	A task force or working group should be established, composed of members of the Equity and Aboriginal Issues Committee, the Finance Committee and other members as determined by Convocation, to review the impact of the fee structure on members who practice part-time or have a low income, or who work in public interest areas.
Contract compliance	15 – Law Society as Employer	Data should be compiled on the diversity of the workforce of the Law Society and strategies should be developed to promote equality in the workplace.
	16 – Law Society as a Contractor for Legal Services	<p>The CEO should report to Convocation, by the by the end of 2004, with respect to:</p> <ul style="list-style-type: none"> · The implementation of a contract compliance program for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession. · A provision by which law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession. · A provision by which suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.

Recommendation 1: Policy Development

The Law Society should ensure that the policies it adopts:

- (a) Actively promote the achievement of equity and diversity within the profession; and
- (b) Do not have a discriminatory impact.

Initiatives Adopted by the Law Society

Policy Development Process

23. The measures undertaken to implement Recommendation 1 include the adoption of a policy development process. The Policy Secretariat, created in 1996, coordinates and supports the work of Convocation and its committees and task forces and ensures consistency of approaches. Policy development involves a number of steps. Prior to a full discussion of an issue by a committee, a policy advisor prepares a background paper for the committee's consideration. The paper typically includes the history of the issue, financial consideration, equity and diversity considerations, impact on staff and other resources, relevance to other committees and experience with the issue in other jurisdictions. Proposed policies that raise issues of equity and diversity are reviewed by the Equity Advisor and/or the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Equity and Aboriginal Issues Committee), a standing committee of Convocation. The Equity and Aboriginal Issues Committee may seek the advice of the Equity Advisory Group (mandate described below) and other stakeholders.
24. The Equity Advisor participates in monthly Policy Secretariat briefings with other Law Society policy staff to ensure that principles of equity and diversity are integrated in policy development.
25. Convocation, task forces, committees and working groups carry out consultations when such process is deemed appropriate and consultation processes are tailored to the policy matter. Members of equality-seeking, Francophone and Aboriginal communities are often invited to participate in consultation processes.¹²

Equity and Aboriginal Issues Committees

26. The Law Society has a standing committee of Convocation mandated to address equity issues in policy development, and an equity advisory group to provide expert advice to standing committees on such issues.
27. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones is mandated to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to members of the equality-seeking, Aboriginal and Francophone communities, and to consult with the EAG, Rotiio>taties, AJEFO, women and equality-seeking communities in the development of such policy options.¹³
28. The Law Society also established the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG), a group of 15 to 19 members from across Ontario, with direct experience or commitment to equity and diversity. Members of EAG have experience in areas of employment equity, access to the legal system, human rights, anti racism, anti oppression and social justice issues. The mandate of EAG is to assist the Equity and Aboriginal Issues Committee in the development of policy options for the promotion of equity and diversity in the legal profession.
29. By-law 9-Committees, provides that the Equity and Aboriginal Issues Committee will consult with EAG, AJEFO and Rotiio>taties in the development of policy options, and these groups have played a significant role in advising the Law Society.
30. Other standing committees of Convocation are mandated to address equity and diversity related issues. For example, the Access to Justice Committee develops, for Convocation's approval, policy options for promoting access to justice throughout Ontario, and the Emerging Issues Committee monitors emerging policy issues affecting the Society and the legal profession, undertakes and directs research into such policy issues and develops strategic plans relating to such policy issues. Issues of equity and diversity are also an integral component of the work of committees such as the Professional Regulation Committee¹⁴ and the Professional Development, Competence and Admission.¹⁵

¹² For example, the Law Society invited groups such as the EAG, Rotiio>taties and AJEFO to provide submissions on the report of the Task Force on the Continuum of Legal Education, the proposed para-legal framework and the Private Practice Refresher Program modules, to name a few.

¹³ Section 16.1 of By-law 9 – Committees.

¹⁴ The mandate of the Professional Regulation Committee is to develop for Convocation's approval,

31. Equity and diversity policy initiatives, and other policy options developed by committees, are identified through various sources, including Law Society staff members, EAG, benchers and stakeholders.

Adopted Policies

32. The Law Society has adopted a series of policies that further the achievement of equity and diversity within the profession, and the work in that area is ongoing.¹⁶ Policies are made readily available to members and the public, through the Law Society and the Discrimination & Harassment Counsel web sites and are available in hard copies. They are also provided to law firms on demand and are used as resource materials for equity and diversity training and education programs. Model policies are available in French and English.
33. Adopted policies include:
- a. *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements (Model Policy on Accommodations)*.¹⁷
 - b. *Preventing and Responding to Harassment and Discrimination in the Workplace: A Guide to Developing a Policy for Law Firms (Model Policy on Harassment and Discrimination)*.¹⁸
 - c. *Guide to Developing a Policy Regarding Workplace Equity in Law Firms (Model Policy on Workplace Equity)*.¹⁹
 - d. *Guide to Developing a Policy Regarding Flexible Work Arrangements (Model Policy on Flexible Work)*.²⁰
 - e. Rule 5.03 of the *Rules of Professional Conduct*²¹ prohibits sexual harassment and Rule 5.04 prohibits harassment based on the grounds other than sex and discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, same-sex partnership status, age, record of offences, marital status, family status and/or disability.
 - f. Rule 1 of the *Rules of Professional Conduct*²² includes a commentary that “a lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter”.

(a) policy options on all matters relating to regulation of the profession in the areas of professional conduct and fitness to practice; and

(b) policies and guidelines for the prosecution of unauthorized practice.

¹⁵ The mandate of the Professional Development, Competence and Admissions Committee is to develop for Convocation's approval,

(a) policy options on all matters relating to the professional competence of members;

(b) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;

(c) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;

(d) policies to govern the transfer to the Society of persons qualified to practice law in any province or territory of Canada; and

(e) policies respecting the Bar Admission Course.

¹⁶ For example, the Law Society is drafting a model policy on same-sex benefits.

¹⁷ *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, March 2001) available on Law Society web site at: <http://www.lsuc.on.ca/equity/publications.jsp>. Available in French and English

¹⁸ *Preventing and Responding to Harassment and Discrimination in the Workplace: A Guide to Developing a Policy for Law Firms* (Toronto: Law Society of Upper Canada, March 2002), available on Law Society web site, *ibid*. Available in French and English.

¹⁹ *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, March 2003) available on Law Society web site, *supra* note 17. Available in French and English

²⁰ *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, March 2003), available on Law Society web site, *Supra* note 17. Available in French and English

²¹ *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, November 2000), available on LSUC web site: www.lsuc.on.ca. Available in French and English.

²² *Ibid*.

Proposed Strategy

34. The Law Society has begun to implement Recommendation 1 but the process is by no means complete.
35. The Law Society has adopted a policy development process that identifies equity issues, analyzes the impact of policies on equality and integrates equity considerations into background papers. The Equity Initiatives Department and the Equity and Aboriginal Issues Committee are included in this process.
36. A consistent equity and diversity analysis would make the decision-making process of the Law Society more effective. The terms “equity and diversity” have not been defined, nor have the criteria to analyze the impact of policies on equality-seeking, Aboriginal and Francophone communities and members been developed. Both should be agreed upon so that staff members, bench committees and Convocation engage in consistent analyses of the equity implications in their work and therefore promote diversity.
37. In an ideal world, Convocation should always be representative of the diversity of the profession. Elected bodies cannot guarantee that they exactly duplicate the elements of their constituency, and should make efforts to include within their consultative process the society they represent. Accordingly, the Law Society should formalize its consultation with organizations representing equality-seeking, Aboriginal and Francophone communities to assist in the review of proposed policies and programs and an overview of the impact of their implementation.
38. The Working Group recognizes the progress that the Law Society has made in developing policies that promote the achievement of equity and diversity within the legal profession.
39. The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
 - a. A definition of “equity and diversity” should be developed and an equity decision-making template formulated to guide the Law Society in its policy development activities.
 - b. A process should be created by which all policy development activities undertaken by staff, committees (including working groups, task forces and sub-committees) and Convocation are judged against the equity template. Reports should contain a specific section to indicate how equity principles were considered.
 - c. Guidelines should be developed to provide direction and a consultation framework to committees and staff on issues that require input from equality-seeking, Francophone and Aboriginal communities.

Recommendation 2: Study and Research

To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence.

Initiatives Adopted by the Law Society

Institutional Resources

40. The Law Society allocates financial and human resources to the conduct of research on the legal profession, and research activities are ongoing.²³

²³ Each department is responsible for undertaking research activities relevant to its operations. The following departments have allocated human and financial resources to undertake research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence: Policy Secretariat including Equity Initiatives, Communications Department, Profession Development and Competence Department, Professional Regulation, Human Resources and Client Services Centre.

Research Undertaken Prior to the Bicentennial Report

41. The Bicentennial Report refers to research activities undertaken prior to 1997 relating to women and equality-seeking communities, Aboriginal peoples and Francophones in the legal profession, including:
- a. In 1989, the Law Society examined the employment experience and demographic makeup of its membership.²⁴ The examination revealed differences between the career experiences of women and men in the legal profession, but provided only limited explanations for the differences.
 - b. In 1990, the Law Society published *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the Bar Between 1975 and 1990 (the Transitions Report)*²⁵, that outlined the findings of a large-scale survey of members of the Ontario legal profession. The survey gathered information about relationships between gender and work variations in the profession of law, including transitions across fields of law, entries to and exits from private practice, changes across and within various work settings and motives for leaving the practice of law.
 - c. Among the recommendations in the *Transitions Report* was one calling for further research to be undertaken. As a result, in 1996, the Law Society conducted the follow-up study entitled *Barriers and Opportunities within Law, Women in a Changing Legal Profession, 1990-1996*.²⁶ The report shows that new issues were emerging, such as issues of managing dual careers, family responsibilities and workplace commitments.
 - d. In 1992, the Law Society sponsored the *Survey of Black Law Students, Black Articling Students, and Recently Called Black Lawyers, July – August 1992*²⁷ that presents information about the experience and perceptions of African-Canadians who have pursued a career in the Ontario legal profession.

Research Activities since the Bicentennial Report

42. The Law Society has, since the adoption of the Bicentennial Report, continued to allocate human and financial resources to research on the demographics of the legal profession. The following studies were undertaken by the Law Society:
- a. The *Report on Equity Initiatives and Resources in the Legal Profession*²⁸ outlines equity and diversity initiatives undertaken by legal organizations and identifies measures to be undertaken by organizations to foster access to the legal profession.²⁹

²⁴ *Bicentennial Report*, *supra* note 1 at 6.

²⁵ *Transitions* report, *supra* note 9.

²⁶ *Barriers and Opportunities* report, *supra* note 9. Available in French and English.

²⁷ Felix N. Weekes and A. Elliot Apears, *Survey of Black Law Students, Black Articling Students, and Recently Called Black Lawyers* (Toronto: Law Society of Upper Canada, July-August 1992)

²⁸ *Report on Equity Initiatives and Resources in the Legal Profession* (Toronto: Law Society of Upper Canada with the financial contribution of the Department of Canadian Heritage, January 2003). Available in French and English on the Law Society web site at www.lsuc.on.ca.

²⁹ Prepared with the financial support of the Department of Canadian Heritage. The following organizations participated in the consultation process: Aboriginal Legal Services of Toronto; Akitsirag Law School Program – a Partnership between the Akitsirag Law School Society, University of Victoria Faculty of Law and Nunavut Arctic College; ARCH: A Legal Resource Center for Persons with Disabilities; Association des juristes d'expression française de l'Ontario; Association des juristes d'expression française du Nouveau-Brunswick; Association of Chinese Canadian Lawyers of Ontario; Barreau du Québec; Black Law Students' Association of Canada; Canadian Association of Provincial Court Judges; Canadian Bar Association; Carleton University; Chambre des Notaires du Québec; Council of Canadian Law Deans; Department of Justice Canada / Ministère de la justice Canada; Indigenous Bar Association; Indigenous Black and Mi'kmaq Programme, Dalhousie University; Law Society of Alberta; Law Society of British Columbia; Law Society of Manitoba; Law Society of New Brunswick; Law Society of Saskatchewan; Law Society of Upper Canada; Law Society of Upper Canada – Discrimination and Harassment Counsel Program; Ministry of the Attorney General, Ontario / Ministère du Procureur général; National Association of Women and the Law / Association nationale de la femme et du droit; National Judicial Institute / Institut national de la magistrature; Native Law Center of Canada; New Brunswick Human Rights Commission; Newfoundland Human Rights Commission; Nova Scotia Barristers' Society; Nova Scotia Human Rights Commission; Ontario Bar Association; Ontario Human Rights Commission; Queen's University Faculty of Law Education Equity Program;

- b. *The Lawyers in Ontario: Evidence from the 1996 Census (the Ornstein Report)*³⁰ report analyses the 1996 Canadian Census and determines the representation, work situations and income of lawyers in Ontario. The report focuses on Aboriginal peoples, racialized persons, Francophones and women and includes comparisons of the legal profession to the population and to other professions.
 - c. *Achieving Equity for Women in Law Firms: A Report on Policies and Practices for Change*³¹ provides tools, ideas, and sources for law firms trying to advance equality for women in the legal profession in Ontario.
 - d. *Equity and Diversity for Law Firms: A Literature Review and Bibliographical Essay*³² is a literature review of written and audio-visual documentation on the issues of diversity and equality in law firms.
 - e. *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices*³³ provides an overview of legal developments and best practices on the duty to accommodate religious beliefs and practices, gender related practices and disabilities.
 - f. *The Discrimination and Harassment Counsel (DHC) Semi-Annual Reports*³⁴ provide an overview of frequency and method of contact with the DHC program, the types of inquiries and complaints, and statistics relating to the complainants and respondents.
 - g. *A Response to the Canadian Bar Association's Report and Recommendations on Racial Equality in the Legal Profession*³⁵ contains the Law Society's response to the Canadian Bar Association's report on racial equality in the Canadian legal profession and identifies developments within the legal profession.³⁶
43. The Law Society also regularly publishes reports of its initiatives and programs, including the following:
- a. *The Articling Placement Reports*,³⁷ published annually, provide placement statistics for students enrolled in the Bar Admission Course (BAC), describes programs and initiatives in place to assist students with their articling job search and includes placement rates for self-identified students (Aboriginal, Francophone, gay, lesbian, mature and racialized students and students with disabilities).
 - b. *The Articling Interview Survey Report*³⁸ evaluated the frequency with which firms asked inappropriate questions during recruitment for the 2001-2002 articling term. The Law

Rotiio>taties; University of Ottawa, Faculty of Law, Common Law Section / Section de common law; Urban Alliance on Race Relations; Women's Law Association of Ontario; Women's Legal Education and Action Fund.

³⁰ Michael Ornstein, *Lawyers in Ontario*, *supra* note 11.

³¹ Jane Allan and Laura Heller, *Achieving Equity for Women in Law Firms: A Report on Policies and Practices for Change* (Toronto: March 2002) prepared for the Law Society of Upper Canada.

³² Laura Heller, *Equity and Diversity for Law Firms: A Literature Review and Bibliographical Essay* (Toronto: March 2001). Prepared for the Law Society of Upper Canada.

³³ *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities, Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001).

³⁴ *Discrimination and Harassment Counsel Semi-Annual Reports* (Toronto: Law Society of Upper Canada). The first semi-annual report was published for the period beginning in September 1999 and ending in December 1999. Reports are available semi-annually following the first report.

³⁵ *A Response to the Canadian Bar Association's Report and Recommendations on Racial Equality in the Legal Profession* (Toronto: Law Society of Upper Canada, 2000).

³⁶ Convocation approved a number of recommendations regarding the CBA report and has implemented all its recommendations. See Working Group on Racial Equality in the Legal Profession, *The Challenges of Racial Equality: Putting Principles into Practice* (Ottawa: Canadian Bar Association, 1999).

³⁷ The Law Society publishes the *Articling Placement Report* annually and maintains ongoing statistical information about articling placements. The *Articling Placement Report 200*, *supra* note 5, is available on the Law Society Web Site at www.lsuc.on.ca.

³⁸ *Articling Interview Survey Report* (Toronto: Law Society of Upper Canada, 2001), available on the Law Society Web Site at www.lsuc.on.ca.

Society publishes twice a year, in the Ontario Reports, a bilingual summary of Student Hiring Practice Guidelines.

- c. The BAC maintains information about students enrolled in the distance learning option to complete the BAC and students enrolled in the BAC course, including information about students who voluntarily self-identify. The BAC also maintains information about requests for accommodations made by students.
- d. The Professional Regulation Division Quarterly Reports include file management and statistical information on complaints resolution, complaints review, investigations, and discipline and trustee services. The reports outline statistical information on case types, including sexual misconduct, harassment and/or discrimination.³⁹
- e. The Law Society maintains a database on members in the legal profession. The information, collected through the Member's Annual Report, assists in identifying trends in the legal profession, such as the percentage of women and men, year of call, type of practice and practice area, languages spoken, age and ability to represent clients in the French language.

Ongoing Initiatives

- 44. As mentioned above, the Law Society continues to promote and support research initiatives in the area of equity and diversity. Research currently underway includes:
 - a. Professor Kay's follow-up study to the *Transitions Report*⁴⁰ and the *Barriers and Opportunities Report*⁴¹ will determine changes in legal practices for men and women, including promotions, income, areas and types of practice and departures and re-entries to practice.
 - b. Professor Kay's study of contemporary law practices focuses on the content of legal work and changing dimensions of law practice. The study also looks into legal training and early career development of lawyers from equality-seeking, Francophone and Aboriginal communities.
 - c. The Small Firm and Sole Practitioner Task Force of the Law Society will examine the ongoing survival of small law firms and sole practices. The Task Force will study means to assure access to legal services in small communities and to address the financial viability of small firms and sole practices. It will also include specific attention to the experience of lawyers from equality-seeking, Francophone and Aboriginal communities practicing in small firms.
 - d. Professor Ornstein's analysis of the 2001 Canada Census data will provide a demographic analysis of the legal profession based on gender and race.
 - e. In 2003, the Law Society adopted guidelines for lawyers acting in Aboriginal residential school litigation cases and is developing resources related to the guidelines.
 - f. In 2003, Convocation approved a \$100,000 contribution to a study being conducted by law schools in Ontario (with the exception of the University of Toronto) on the effects of rising tuition fees on the accessibility of legal education.

Proposed Strategy

- 45. The Law Society has made significant progress in implementing Recommendation 2. The Working Group commends the Law Society for the research activities and studies undertaken to date. Such research facilitates the development of policies, programs, and services that further the achievement of equity and diversity within the profession.
- 46. Studies on the impact of gender in the legal profession, such as *Transitions and Barriers and Opportunities* have been valuable in helping the Law Society identify issues women face in the profession. Demographic analysis of the legal profession based on the Canada Census data has also provided valuable information

³⁹ *Professional Regulation Division Quarterly Report* (Toronto: Law Society of Upper Canada, March 2003) presented to Convocation for information on April 25, 2003.

⁴⁰ *Supra* note 9.

⁴¹ *Supra* note 9.

about the legal profession and representation of members based on race, language and gender.⁴² Such qualitative and quantitative studies should continue to be commissioned by the Law Society on a regular basis.

47. The changing demographics of the legal profession mandates that future studies address the intersecting realities⁴³ of gender, race, culture and language, sexual identity, disability and Aboriginality on the lives of lawyers. Systemic barriers faced by racialized men and women and members of other equality-seeking communities in the legal profession have not been the subject of studies. The Law Society should undertake and maintain such research initiatives.
48. The Law Society has not undertaken any research on barriers faced by law students and lawyers with disabilities within the legal profession. In 2001, the Law Society of British Columbia published a qualitative study.⁴⁴ We propose that in consultation with the disability community, research in Ontario be carried out that will build on this study to enable the Law Society to develop policies to address disability issues.
49. We also propose that, in consultation with Rotiio> taties, research on the barriers faced by Aboriginal students and lawyers be undertaken so that policies can be developed to address the issues identified.
50. Women, Aboriginal peoples, racialized persons and persons with disabilities often leave the profession after law school or the Bar Admission course, and within the first ten years of practice in numbers that far exceed non-equality seekers. We propose that the Law Society undertake research to determine what influences their decisions to leave, the barriers they encountered and what changes would be necessary to have enabled them to remain in or return to the profession.
51. The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
 - a. Guidelines should be developed to ensure that an equity analysis, including an Intersectionality analysis that identifies heightened vulnerabilities to discrimination, is integrated within studies.
 - b. A strategic research plan⁴⁵ should be developed in consultation with EAG, AJEFO and Rotiio> taties. The research plan should, on a biennial basis, identify issues facing

⁴² EAG proposes that the Law Society collect information about its membership. For example, members could be asked to self-identify on the Member's Annual Report (See Appendix 2).

⁴³ The concept of intersectionality has been defined as intersectional oppression that arises out of the combination of various oppressions that, together, produce something unique and distinct from any one form or discrimination standing alone. An intersectional approach takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant grounds. See *An Intersecitonal Approach to Discrimination Addressing Multiple Grounds in Human Rights Claims* (Toronto: Ontario Human Rights Commission, October 2001).

⁴⁴ *Lawyers with Disabilities*, *supra* note 8.

⁴⁵ The plan should include adequate resources for:

- The longitudinal study of the analysis of gender within the legal profession, to be repeated with the same cohort every six years.
- The analysis of Canadian Census data to be undertaken within a reasonable period of time following each release of the data by Statistics Canada.
- Studies on the barriers faced by members with disabilities and members of the public with disabilities in accessing legal services.
- Studies on the barriers faced by Aboriginal law students and lawyers.
- Studies to identify the factors that may constitute barriers to entering, remaining and re-entering the profession for members from equality-seeking communities.

- members of equality-seeking, Aboriginal and Francophone communities. The Plan should recommend a budget for Convocation's consideration.⁴⁶
- c. The following three research areas merit particular and urgent attention and should be identified as priorities:
 - i. Studies on barriers faced by students and members with disabilities;
 - ii. Studies on barriers faced by Aboriginal students and members of the profession;
 - iii. Studies to identify the factors that may constitute barriers to entering, remaining and re-entering the profession for members from equality-seeking, Francophone and Aboriginal communities.
 - d. The Equity Advisor should be responsible for monitoring the implementation of the research plan.

Recommendation 3: Equity and Diversity Audit of the Law Society Programs and Services

The Law Society should evaluate its programs and services on an ongoing basis to ensure that they operate so as to promote the achievement of equity and diversity within the legal profession.

Initiatives Adopted by the Law Society

Corporate and Departmental Review Process

- 52. In 2002, the Law Society strengthened its commitment to integrating equity and diversity within its operations. It recognized equity and access to justice as one of four core strategic areas with professional development and competence, professional regulation and policy and legal affairs. A key focus for the Law Society is now to integrate equity and diversity principles within all operational departments and the programs, products and services they provide.
- 53. Every department has the responsibility of integrating principles of equity and diversity within its goals, strategic directions and operations. Each department regularly review goals, strategic directions and operations, including integrated equity and diversity initiatives.⁴⁷ The Law Society relies on the criteria identified in the recommendations set out in the Bicentennial Report to identify gaps, and plans were made to address those gaps.

Accessibility Audit of the Law Society's Services and Programs

- 54. In 2000, as a result of the recommendations outlined in the Bicentennial Report, Handidactis Inc. completed a physical accessibility audit of the Law Society's Toronto facilities. The report provided a blueprint for improvements to the Toronto building to increase access for persons with disabilities. Such accommodations were identified by as priorities in all office and building renovations (See Appendix 3). For example, the Law Society installed a fire and security system designed to accommodate persons with disabilities, increased the number of door buttons and operators, installed strobe light warnings and audible fire alarms, modified fire pull stations and elevator control panels to be at an accessible height for persons in wheelchairs, improved signage and modified the main reception and Client Service Centre reception areas to accommodate persons in wheelchairs.
- 55. The Law Society also made the following changes:
 - a. It provides materials in formats that may be read by recognition/playback software;
 - b. The web site may be accessed in text format;

⁴⁶ EAG recommends that the Law Society expand its research and studies to include intersectional analysis of the equality grounds including gender, race, disability and sexual orientation (see Appendix 2). Rotiio>taties recommends that the Law Society commission a demographic analysis of the Aboriginal lawyers in Ontario and across Canada. It also recommends that the Law Society commission a longitudinal study of students from equality-seeking communities to determine the pattern of participation in the profession from law school, to obtaining articles, to bar admission examination, to practice and longevity in the profession (see Appendix 2).

⁴⁷ The Chief Executive Officer provides Convocation with semi-annual Operational Reports and annual Financial Statements. Each department, and the Law Society, review on an on-going basis goals, strategic directions and action plans.

- c. It provides information technology for distance learning and wireless communication;
- d. It has an AT & T language telephone line and translation services for clients of the Client Service Centre; and
- e. It has a TTY telephone line for persons with hearing impairments.

Proposed Strategy

- 56. The Working Group finds that the Law Society has made substantial efforts to implement this recommendation and encourages it to proceed further in its efforts to do so.
- 57. The management of the Law Society recognized equity as a strategic corporate area and management has made efforts to integrate equity and diversity within the operational departments. Examples of initiatives to meet these goals include publications by the Law Society in languages other than English and French, and the establishment of an Education Support Services Centre to provide support to students-at-law. The Law Society has also made its services, facilities and programs more accessible to members and clients with disabilities.
- 58. The Working Group proposes that the Equity and Aboriginal Issues Committee report annually to Convocation on whether the Law Society's programs and initiatives are promoting equity and diversity.

Recommendation 4: Monitoring and Evaluation of Equity and Diversity Initiatives

The Law Society should formally monitor and evaluate the effectiveness of current and future equity and diversity initiatives.

Initiatives Adopted by the Law Society

Formal Monitoring and Evaluation Process

- 59. The Law Society monitors and evaluates the effectiveness of current and future equity and diversity initiatives on an ongoing basis. The Chief Executive Officer (CEO) presents semi-annual operational reports to Convocation⁴⁸ that include a review of corporate and departmental programs in support of the Law Society's mandate to govern the profession in the public interest. The CEO's Reports to Convocation outline Law Society equity and diversity initiatives.
- 60. Senior Managers are responsible for evaluating and monitoring their programs, including equity and diversity initiatives. Programs are evaluated by using formal processes and indicators. Evaluation processes include formal evaluations, analysis of statistical information and impact on financial and human resources.
- 61. The following evaluation and monitoring processes are in place:
 - a. Participants at public education events formally evaluate the programs. Other indicators of effectiveness include the consolidation of partnerships with stakeholders, the number of participants, the quality of programs and the materials and resources developed for the program
 - b. The DHC reports semi-annually to Convocation about the number of calls received, the types of calls and the resolution. Participants in the program may formally evaluate the services by completing an evaluation form.
 - c. The BAC monitors and evaluates programs through formal evaluation processes. BAC students evaluate instructors, courses and programs. The success of the program is also assessed by considering indicators such as pass/fail statistics, attendance rate at lectures and feedback from instructors. The BAC also maintains statistics on the number of students and success rates of those registered in the distance-learning option.
 - d. Articling programs are evaluated programs through formal processes, including surveys, studies and statistical analysis.

⁴⁸ Last CEO's Operational Report to Convocation, June 26, 2003.

- e. The Education Support Services Centre monitors and evaluates programs through formal processes, such as statistical analysis and feedback from participants.
- f. The Mentoring Program is monitored through formal processes, such as evaluations, regular contacts with participants and statistical analysis.
- g. The student outreach initiatives and the Elder's Program are monitored by using success indicators such as the number of partners and participants in programs, formal evaluations, and number of events.
- h. The Equity and Diversity Training Program is monitored through formal processes, including evaluation forms, number of participants and number of programs offered. Other success indicators include follow-up requests for assistance in developing equity initiatives within law firms.⁴⁹
- i. The Client Service Centre has developed monitoring and evaluation processes for all its programs, including statistical information and call monitoring.
- j. Communications initiatives are monitored through formal and informal processes. Success indicators include number of press releases on equity issues, coverage of Law Society initiatives by community press and the ethnic media.⁵⁰

Proposed Strategy

- 62. The Law Society has made substantial efforts to implement this recommendation. However, there are no criteria in place that enable the Law Society to judge the success of its initiatives.
- 63. Current equity initiatives are numerous and vary in their conception, content and implementation. There is no consistency in evaluation methods, reporting mechanisms and success indicators. The diverse formats and types of initiatives pose challenges to the development of a universal evaluation process. However, there is value in establishing an evaluation process template to guide staff and benchers in this process.
- 64. Since 1997, the Law Society has actively promoted many equity initiatives. The Working Group observes that there should be an analysis of whether these initiatives have been effective.
- 65. Therefore, the Working Group proposes that the Equity and Aboriginal Issues Committee report annually to Convocation on the effectiveness of its equity initiatives.

Recommendation 5: Resource for the Profession

In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.

Initiatives Adopted by the Law Society

Initiatives that Maintain the Tools to Function as a Resource to the Profession

⁴⁹ Since its inception in 2000, the Equity and Diversity Program has designed and delivered workshops on harassment, discrimination and other equity issues to associates, partners, para-legals and staff of large, medium and small law firms and other legal organizations. The workshops are custom designed to address the needs of the specific law firms or legal organization. Workshops have been offered to more than 3000 lawyers, law clerks, students-at-law, managers and staff of legal organizations. Participants formally evaluate the workshops and evaluations have shown that the program is very successful. Lawyers and non-lawyers have offered the workshops.

⁵⁰ Indicators of success include the promotion of the honorary degree ceremony for the Governor General in February 2003. The Law Society succeeded in having 21 media outlets attend the event, including every Chinese print and electronic outlet from Toronto to Ottawa. Also, media coverage for the 2003 Call to the Bar Ceremonies included coverage in London, Ottawa, Toronto and nationally about Chief Roberta Jamieson's honorary degree, students with disabilities who were called to the Bar, the diversity of the student population called to the bar, Chinese students who were prize winners. Strong working relationships have also been established with members of the Aboriginal press throughout Ontario and nationally. For example, newspapers such as Tansi and the Aboriginal Times are just two newspapers that are beginning to cover Law Society news and events and promoted the 2003 Bench Election.

66. The *Bicentennial Report* provides examples of the kind of initiatives that may assist in achieving diversity and equity within the legal profession,⁵¹ such as:
- a. Studying initiatives taken by other organizations;
 - b. Undertaking consultations with stakeholders and law firms to determine if they have conducted organizational assessments;
 - c. Providing assistance to law firms and legal organizations;
 - d. Continuing to make available information relating to Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct*;⁵²
 - e. Continuing to provide ongoing training for the legal profession;
 - f. Continuing to develop and distribute to law firms model programs and policies; and
 - g. Establishing structured mentoring programs.
67. All the initiatives provided as examples in Recommendation 5 of the *Bicentennial Report* have been developed and are operational. Such initiatives are outlined below.

Studying Initiatives taken by other Organizations

68. The Law Society funded the publication *Achieving Equity for Women in Law Firms: A Report on Policies and Practices for Change*⁵³ that outlines tools and resources to advance equality for women lawyers. It also provided funding and human resources to develop the report entitled *Equity and Diversity for Law Firms: A Literature Review and Bibliographical Essay*⁵⁴ that analyzes written and audio-visual documentation on the issues of diversity and equality in law firms.

Consulting to Determine Whether Stakeholders Conduct Organizational Assessments

69. In November 2002, the Law Society undertook a national consultation with legal organizations to share information about initiatives and to encourage the development of collaborative strategies amongst stakeholders. The report entitled *Report on Equity Initiatives and Resources in the Legal Profession*⁵⁵ outlines equity initiatives and resources of over sixty organizations across Canada, including provincial law societies, the judiciary, law students' associations, law schools, government, community groups, human rights commissions and associations of lawyers.

Assistance to Stakeholders to Undertake Assessments of Programs

70. The Equity Advisor and other staff members provide support and assistance to law firms and legal organizations to assess their programs, and offers custom-designed training programs to law firms.

Making Available Information about the Rules of Professional Conduct

71. The Law Society continues to publish information relating to Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct* in its BAC materials,⁵⁶ articling materials,⁵⁷ training materials for new instructors of the BAC,⁵⁸ training materials for lawyers and law firms,⁵⁹ model policies

⁵¹ *Bicentennial Report*, *supra* note 1 Appendix B at 41.

⁵² *Rules of Professional Conduct*, *supra* note 21.

⁵³ *Achieving Equity for Women in Law Firms*, *supra* note 31.

⁵⁴ *Equity and Diversity for Law Firms*, *supra* note 32.

⁵⁵ *Report on Equity Initiatives and Resources in the Legal Profession*, *supra* note 28.

⁵⁶ The Professional Responsibility BAC course includes materials and formal instructions on Rules 5.03 and 5.04 of the *Rules of Professional Conduct*.

⁵⁷ The *Articling Handbook 2003* (Toronto: Law Society of Upper Canada, 2003) includes a chapter on harassment and discrimination and the *Rules of Professional Conduct*.

⁵⁸ New instructors receive materials on inclusive pedagogy. The materials include references to Rules 5.03 and 5.04 of the *Rules of Professional Conduct*.

⁵⁹ Custom-designed training programs for law firms on preventing and addressing harassment and discrimination include materials and power point presentation on the Rules 5.03 and 5.04 of the *Rules of Professional Conduct* and an analysis of legal development in that area.

on harassment and discrimination,⁶⁰ DHC program semi-annual reports, on the web site and other documentation provided to members of the profession.

Providing Ongoing Training to the Legal Profession

72. The Equity and Diversity Training Program offers custom-designed equity and diversity training programs to the legal profession. Each session is tailored to the specific needs of the law firm. Programs are delivered in many formats, such as seminars, workshops and informal education sessions and resource materials are provided, such as model policies, best practices, case studies and case law, checklists and referrals to other sources. Topics include:
 - a. Creating an inclusive and positive workplace environment;
 - b. The duty to accommodate creed, gender, and disabilities;
 - c. Preventing and responding to harassment and discrimination;
 - d. Workshop for advisors appointed to handle complaints of harassment and discrimination;
 - e. Diversifying and expanding the firm's client base;
 - f. Bias free hiring;
 - g. Relevance of gender, race, sexual orientation, class and disability in the practice of law;
 - h. Meeting your legal responsibilities when serving clients with disabilities;
 - i. Providing legal services to persons with mental health disabilities; and
 - j. Drafting and implementing equity and diversity policies for law firms.
73. CLE and public education programs include information about the current demographics of the legal profession, barriers experienced by lawyers, impact of these barriers on organizations, the responsibilities of individuals to ensure that barriers do not exist and/or are addressed.
74. The Law Society works in partnership with legal associations and communities to educate members of the public and the profession on equity and diversity issues. Each year, it hosts and participates in a number of public education events, such as:
 - a. Louis Riel Day event;
 - b. United Nations Human Rights Day event;
 - c. Black History Month event;
 - d. International Women's Day event;
 - e. Law Week Proclamation Ceremony ;
 - f. National Aboriginal Day event;
 - g. Lesbian and Gay Pride event;
 - h. Access Awareness Week.
75. The Public Education Program is ongoing and partners have included: Pro Bono Law Ontario, Association des juristes d'expression française de l'Ontario (AJEFO), Rotiio > taties, Aboriginal Legal Services of Ontario, Metis National of Ontario, Association for Native Development and the Performing and Visual Arts, City of Toronto, Sexual Orientation and Gender Identity Committee of the Ontario Bar Association (OBA), Feminist Legal Analysis Committee of the OBA, A Legal Advocacy Resource Centre for Persons with Disabilities, South Asian Lawyers Association, Canadian Association of Black Lawyers, Chinese Canadian National Council, the Urban Alliance on Race Relations, Women's Legal Education Action Fund, Black Law Students Association of Canada, African Canadian Legal Clinic, HIV/AIDS Legal Network, the Multicultural History Society of Ontario and many others.
76. The Law Society also supports, provides office space, and coordinates educational activities with other organizations mandated to promote equity, such as the Ontario Justice Education Network (OJEN)⁶¹ and Pro Bono Law Ontario.⁶²

⁶⁰ All Law Society model equity policies include an analysis of Rules 5.03 and 5.04 and legal developments in the area of harassment and discrimination. Available on Law Society web site at: www.lsuc.on.ca.

⁶¹ OJEN brings together leading institutions and individuals from the legal, educational and other sectors to work on initiatives designed to foster the public's understanding of our justice system.

⁶² Pro Bono Law Ontario is a *pro bono* resource centre that provides a coordinated approach to the delivery of *pro bono* legal services in Ontario.

Development of Model Programs and Policies

77. Model programs and policies are developed on an ongoing basis and are widely circulated to the legal profession.⁶³

Mentoring Program

78. The Law Society has created a structured mentoring program⁶⁴ for high school and university students, students-at-law and recent calls to the bar.⁶⁵
79. Staff members also coordinate student outreach initiatives to promote law as a career. Equity Initiatives staff work with school boards from across the province, make presentations to high school and university students and participate in career fairs and community events. Examples of events include:
- a. Presentations to students at Jarvis Collegiate;
 - b. Louis Riel Day Public Education Event for High School Students;
 - c. Women's Remembrance Day Public Education Event for High School Students;
 - d. Black History Month Event for High School Students;
 - e. International Women's Day Public Education Event for High School Students;
 - f. Women's History Month Event for High School Students; and
 - g. Francophone Public Education Event for High School Students.

⁶³ The Law Society adopted the *Model Policy on Harassment and Discrimination*, *supra* note 18, the *Model Policy on Accommodations*, *supra* note 17, the *Model Policy on Workplace Equity*, *supra* note 19 and the *Model Policy on Flexible Work*, *supra* note 20. All policies are updated on a regular basis.

⁶⁴ Since the initiative was established by the Equity Initiatives Department in 2000, over 150 lawyers have volunteered as mentors. Mentors come from various backgrounds, different areas of practice, and numerous firms and organizations. Currently, there are over 50 volunteer mentors who are available to mentor. Mentors come from small and large firms, and provincial and federal governments. Some are employed as in-house counsel in organizations and companies, and a handful are sole practitioners. Mentors have indicated their experiences in the following areas of practice: corporate and commercial law, criminal law, securities law, real estate law, civil litigation, employment law, constitutional law, administrative law, human rights, Aboriginal issues, tax law and family law. Approximately one-third have self-identified as members of equality-seeking communities and members of lawyers' associations that promote equity and diversity in the legal profession.

Approximately 95% of participants are high school students and 5% are students-at-law and new lawyers. Almost all who have applied in the program have self-identified as members of equality-seeking communities. An overwhelming majority have indicated being members of a racialized community.

The initiative began in the Toronto area and has expanded to Ottawa. There are efforts underway to promote the initiative in other centres (Kingston, London, Windsor, Sudbury, Thunder Bay). Efforts include targeted mailing to high schools and universities to raise awareness for the program. The initiative is being promoted to over 300 high schools across Ontario, with a potential reach of over 245,000 students. In addition, close to 1,500 teachers who are guidance/career counselors are being informed about the initiative. The initiative also targets students in universities, law schools, students-at-law, and new calls to the Bar. University career centres and student associations are being contacted to inform them about the initiative.

There are many opportunities that have been identified to expand the initiative and build its awareness. More schools, firms and organizations will be contacted to let them know the initiative exists and how they can participate. Through marketing and communication efforts, the list of mentors is expected to grow as more members find out about the initiative. We are going to expand our marketing and communication efforts to more members in more parts of the province. The different types of mentoring relationships that can be formed allow for greater flexibility in matching a mentor and a mentee who have different types of needs when forming a mentoring relationship. In addition to matching mentors and mentees, visiting high schools and giving presentations to students has been a very successful activity in reaching out to more students from diverse communities. This activity will continue to be offered to more schools.

⁶⁵ Information available on Law Society web site at www.lsuc.on.ca

Other Initiatives

80. Other programs have been created to implement Recommendation 5 of the Bicentennial Report. Such programs are outlined below.

Discrimination and Harassment Counsel Program

81. In June 2001, the Law Society adopted the 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.⁶⁶ Since its creation, the person who has held the position of DHC has been bilingual (French and English).

Making the Tools and Resources Available

82. The Law Society's web site is regularly updated to enhance access to available tools and resources. In 2003, the web site was made more accessible to persons with visual impairment.
83. The French Language Services Advisor ensures that core publications of the Law Society, along with regulatory materials such as by-laws and regulations, are translated into the French language. The French Language Services Advisor has been actively involved in the development of the Law Society's French web site.
84. The Ontario Lawyers Gazette publishes useful tools and resources in French and English, including news about equity and diversity initiatives.⁶⁷
85. The Law Society created a comprehensive bilingual web site for the DHC program that provides valuable information about the program, frequently asked questions, links to publications and other helpful resources.⁶⁸

The Client Service Centre and Membership Services

86. The Client Service Centre is the front line, one-stop access point to the Law Society. Staff members effectively deal with a range of requests from both the public and the legal profession. In 2002, the Centre handled 432,000 transactions from members and the public, via letters, e-mails, faxes, calls and in-person inquiries.
87. The call centre of the Client Service Centre functions in French and English and offers services in a number of other languages.
88. Other services are also offered to members in French and English, such as the Member's Annual Report, by-laws and regulations.
89. In 2002, the Member's Annual Report was modified to include the following questions:
- a. Do you communicate with your clients and provide legal advice to them in the French language?
 - b. Do you communicate with your clients, provide legal advice to them, and represent them in French?

⁶⁶ Minutes of Convocation, June 22, 2001.

⁶⁷ The Law Society has undertaken quantitative research into what members want to read about and their overall impressions of the Gazette. This research, which asked over 200 members more than 60 questions, was conducted in 2000 and formed the basis of the improvements we have made and the editorial line-ups we have created over the past three years. The Law Society is now preparing to go back into the field with a sample student of more than 400 members to determine whether we are on the right track and to see what members want out of the Gazette. The Law Society will incorporate questions about equity and diversity.

In developing the editorial line-up for each issue, significant efforts have been made to include articles that incorporate equity and diversity. In fact, several focus sections of the OLG are dedicated to issues of equity and diversity including full coverage of the conference last November. There has been a significant increase in the Law Society's coverage of equity and diversity since 2000.

⁶⁸ See web site at www.dhcounsel.on.ca

90. Answers to those questions assist the Law Society in maintaining statistical information about the legal profession and the provision of services to the Francophone community.

Lawyer Referral Service

91. The Lawyer Referral Service is a service that has been offered for more than 30 years. The program supports the Law Society's role in governing in the public interest by promoting greater access to legal services. By December 2002, 2,085 lawyers were subscribers to the Lawyer Referral Service. Clients may request the Law Society to refer them to a lawyer that speaks a language other than English.
92. Callers who are in a crisis, such as domestic abuse situations, are incarcerated or are under the age of 18 may use the toll-free crisis line. In 2002, the Lawyer Referral Service received 24,698 calls (33% of calls received) on the toll-free line.

Proposed Strategy

93. The Law Society has provided tools to function as a resource to the profession and works in partnership with legal associations to develop programs based on the needs of the legal profession. The Working Group recognizes the value of such programs and encourages the Law Society to continue to lead by example.
94. The Working Group finds that the Law Society should continue to effectively implement this recommendation.

Recommendation 6: Institutional Resources

In order to facilitate and further the advancement of equity and diversity goals, the Law Society must dedicate appropriate human and financial resources specifically to those goals.

Initiatives Adopted by the Law Society

Financial and Human Resources Allocated to Committees

95. Since 1997, the Law Society has established a number of committees to address equity and diversity issues faced by the legal profession, such as the Equity and Aboriginal Issues Committee, the Access to Justice Committee, the Emerging Issues Committee, the Professional Development, Competence and Admissions Committee and the Professional Regulation Committee. Full time staff members of the Policy Secretariat provide support for committees of Convocation.
96. The Equity Advisory Group was also created to advise committees and staff members on equity and diversity initiatives.
97. The committee structure of the Law Society and the human and financial resources allocated to equity and diversity policy making and implementation initiatives have ensured that actions that relate to equity and diversity are consistently taken.

Financial and Human Resources Allocated to Equity

98. The Law Society provides permanent human and financial resources to support the profession in its pursuit of equity and diversity goals, to develop and maintain the tools to function as a resource, and to ensure that programs are ongoing.
99. Since 1997, the Law Society has established the Equity Initiatives Department, a department that has grown from a unit of 2 employees (the Equity Advisor and the Program Administrator) to 5 permanent full-time positions. In 2003, the Equity Department became part of the Policy Secretariat, increasing its influence. It is now fully included within the operations of the Law Society and is part of an influential department. It has the same status and approximately the same number of staff as Legal Affairs, another highly respected unit of the Policy Secretariat. The new structure has the potential to strengthen the influence of the Equity Initiatives Department and to increase its visibility.

100. The Equity Advisor is responsible for ensuring that policies and initiatives of the Law Society promote equity and diversity principles. The position of the Equity Advisor has direct access and a reporting relationship to the CEO and is a full member of the Senior Management Team.
101. The Aboriginal Issues Coordinator is responsible for strengthening the Law Society's relationship with Aboriginal peoples and for providing support to Aboriginal students. The Equity Community and Policy Advisor is responsible for reaching out to the community and ensuring that communication strategies promote equity and diversity principles. The French Language Services Advisor provides French language services to members of the profession and to the Law Society.
102. The Working Group notes that it has received concerns about the new structure and the vacancies within the Equity Initiatives Department. The Working Group is pleased that the CEO is committed to ensuring that positions within the department are staffed and that the Equity Advisor will continue to report to the CEO and be a member of the Senior Management Team.
103. Although not specifically dedicated to the promotion of equity and diversity, other positions have the responsibility to address issues of equity and diversity principles. Those include the CEO and Senior Managers; the Registrar, the Associate Registrar and the Office Assistant for Education Support Services; bilingual (French/English) staff members in the BAC, Spot Audit, Client Service Centre and other departments; staff trained to handle harassment and discrimination cases in the Client Service Centre and the Professional Regulations Division.
104. The Equity Initiatives Department and the Discrimination and Harassment Program have operational budget and financial resources have been allocated to equity and diversity initiatives undertaken by other departments.

Proposed Strategy

105. The Law Society has begun to implement Recommendation 6.
106. The Law Society has dedicated resources to promote diversity and equity, including the creation of a full-time Equity Advisor position with direct access and a reporting relationship to the CEO and membership on the Senior Management Team.
107. The current structure has been in place for approximately two months. The effectiveness of the transfer of the equity unit to form part of the Policy Secretariat would be best assessed after three years of operations.⁶⁹ The Working Group encourages the Law Society to maintain an effective equity initiatives unit with the following elements:
 - i. The Equity Advisor's direct reporting relationship to the CEO;
 - ii. The Equity Advisor's membership on the senior management team;
 - iii. At a minimum, current staffing level and budget.
108. The Law Society has also adopted a French Language Services Policy that states its commitment to providing services in the French language to its own members and to the public. The Law Society is

⁶⁹ Rotiio>taties raised concerns about the new structure of the Equity Initiatives Department and the reporting relationship. The Working Group is of the view that this new structure will strengthen the influence of the department and increase its visibility. The Working Group recommends that the effectiveness of the new structure be assessed at the end of 2006.

AJEFO notes that the presence of bilingual staff within the Equity Initiatives Department is an asset. The mandate of the Equity Initiatives department is to promote equality and diversity within the legal profession, including promoting Francophone rights. AJEFO believes that it is important to ensure that the department maintains the capacity to offer services in both official languages and to promote the rights of Francophone members. (See Appendix 2)

encouraged to ensure that all operational units implement the policy and deliver services in a manner consistent with the French Language Services Act.⁷⁰

109. The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
- a. The effectiveness of the current structure of the Equity Initiatives Department should be re-evaluated in December 2006. At a minimum, an effective equity initiatives unit should be maintained, and fully staffed, with the following elements:
 - i. The Equity Advisor's direct reporting relationship to the CEO;
 - ii. The Equity Advisor's membership on the senior management team;
 - iii. Current staffing level and budget.
 - b. The Law Society services should be delivered to French and English speaking members and the public in a manner consistent with the intent of the French Language Services Act.

Recommendation 7: Participation in the Governance of the Profession

In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession:

(a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28 [now Rule 5.04]; and

(b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession.

Initiatives Adopted by the Law Society

110. A number of initiatives were adopted by the Law Society to increase the representation of equality-seeking, Francophone and Aboriginal members in the governance of the profession. For example, it created EAG to advise the Law Society's Equity and Aboriginal Issues Committee, and other committees, on issues affecting Aboriginal peoples, Francophones and equality-seeking communities. EAG is composed of lawyers from across Ontario with expertise in various areas of law and legal analysis.
111. The Equity and Aboriginal Issues Committee regularly invites representatives of EAG, AJEFO and Rotiio> taties to attend and participate in its affairs.
112. In 2003, the Law Society encouraged members from equality-seeking communities, Francophone and Aboriginal members to run for election. During the 2003 Bencher Election process, an information session for members of equality-seeking, Francophone and Aboriginal communities was held. There was wide publication of the election process including the development of a web site solely for the bencher election. Every member of the profession was encouraged to run through a letter written by the Treasurer.
113. Representation of members from equality-seeking and Aboriginal communities has increased over the years. However, some communities, such as the Francophone community, remain unrepresented at Convocation.⁷¹

⁷⁰ AJEFO congratulates the Law Society for offering services to its members and to the public in both official languages and encourages the Law Society to continue to offer services in a manner consistent with the intent of the *French Language Services Act*. (See Appendix 2).

⁷¹ In 2004, 12 women, 2 Aboriginal lawyers, 1 Black lawyer and 1 lawyer with disabilities were elected members of Convocation. There are no Francophone or out gays or lesbians elected at Convocation (Candidates and members do not self-identify. Consequently, the information provided above is tentative).

114. It could be argued that a higher voter turn out would lead to a Convocation that is more representative of its members. Statistics indicate a dramatic decrease in voter turnout between 1987 and 2003.⁷² Female voter turnout has decreased even further, from 44.04% in 1987 to 32.55% in 2003.⁷³
115. Some initiatives have been undertaken to alleviate demands on benchers. For example, the Policy Secretariat was created to provide support to committees, task forces and Convocation and the Law Society Act was amended to eliminate the requirement to hold Discipline Convocations. Prior to 2000, this accounted for 8 days per year of bencher time. Benchers may now attend Convocation and committee meetings by teleconference or videoconference. Compensation is also provided for childcare expenses.

Proposed Strategy

116. The success of the implementation of Recommendation 7 may be a matter of controversy. Some may see the composition of the present Convocation as more reflective of the profession than previous Convocations, and therefore a start toward success in this area. Others may not.
117. Ultimately, equitable representation or diversity at Convocation is the greatest safeguard of the public interest and the Law Society recognizes the importance and value of representation of equality-seeking, Francophone and Aboriginal members in the governance of the profession. The Working Group proposes that research be undertaken to determine whether there are barriers within the current electoral process that limit the full participation and election of women and members from equality-seeking, Francophone and Aboriginal communities.
118. The Working Group is of the view that strategies to increase diversity in the governance of the profession should include ways to increase the participation of non-benchers in the work of the Law Society. This could be partially achieved with by-law amendments to allow the Equity Advisory Group, AJEFO and Rotiio>taties to each have a voting representative on the Equity and Aboriginal Issues Committee.⁷⁴
119. The Working Group notes that the time commitment placed on benchers is a significant problem that should be addressed by the Law Society. A number of other issues within the current governance process may also create a heightened vulnerability for members of equality-seeking, Francophone and Aboriginal communities. The Law Society should develop strategies to identify and address barriers that prevent members of equality-seeking, Francophone and Aboriginal communities from participating in the Law Society's affairs.
120. The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
- a. An equity analysis should be undertaken to determine whether there are any barriers within the current electoral process that limit the full participation and election of women and members from equality-seeking, Francophone and Aboriginal communities.⁷⁵

⁷² The following are statistics on vote turnout:

	1987	1991	1995	1999	2003
Total eligible Voters	56%	53%	43.72%	42.02%	36.77%
Women eligible voters	44.04%	51.10%	42.30%	37.95%	32.55%
Men eligible Voters	58.40%	53.00%	44.24%	43.78%	38.88%

⁷³ The Law Society does not maintain statistical information about voter turnout based on other personal characteristics (except age).

⁷⁴ Rotiio>taties, AJEFO and EAG have suggested that their groups be represented as members of the Equity and Aboriginal Issues Committee. (See Appendix 2).

⁷⁵ The study should be placed in the context of other electoral reform projects

- b. A report and strategic plan should be presented to Convocation by June 2006 to address the following:
 - i. the burden of committee time placed on benchers which may be a barrier to suitable candidates standing for bencher election; and
 - ii. non-bencher participation in bencher committees.
- c. By-law 9, Committees, should be amended so that EAG, AJEFO and Rotio> taties each have a voting representative on the Equity and Aboriginal Issues Committee.

Recommendation 8: Bar Admissions

The Law Society should continue to ensure that Bar Admissions:

- (a) Includes material designed to increase the profession's understanding of diversity/equity issues;
- (b) Encourages the participation of equality-seeking groups in its design, development, and presentation;
- (c) Uses material that is gender neutral;
- (d) Uses audio visual material that includes the faces and voices of equality-seeking groups;
- (e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

Initiatives Adopted by the Law Society

Operational Process

- 121. Since the adoption of the Bicentennial Report, the Law Society has enhanced its initiatives to promote equality for students.⁷⁶
- 122. The BAC materials include information designed to increase the profession's understanding of equity and diversity issues. The Equity Initiatives Department participates in the review process to update the BAC materials. BAC topics include Aboriginal law, addressing harassment and discrimination, the duty to accommodate persons with disabilities, religious beliefs and practices and family responsibilities and providing legal services to clients with disabilities. The materials, exams and other resources have been revised to ensure the use of gender-neutral language and audiovisual materials include the faces and voices of equality-seeking communities. Students provide input on materials through student course evaluations.⁷⁷
- 123. All instructors attend a workshop on effective teaching methodologies, including inclusive pedagogy. The workshop includes a discussion on the meaning of harassment and discrimination, methods of inclusive teaching methodologies and resources available to instructors and students.
- 124. BAC staff members attend training programs on the use of appropriate language in materials and classrooms, the duty to accommodate and equity and diversity principles. When an issue is raised about inappropriate behaviour in the classroom, the issue is reported to a Faculty, the Head of BAC, the Registrar, the Equity Advisor or the Director of the Department. Depending on the magnitude of the problem, the issue is dealt with by the person who receives the complaint or by the Director of the Department. The Equity Advisor is generally consulted.

Initiatives

- 125. The Professional Development and Competence Department promotes the achievement of equity and diversity in the development and delivery of its programs, initiatives and products. It provides support to

⁷⁶ One indicator of the success of the BAC is the increased diversity of the student population called to the bar. In 2003, 53% of students called to the bar were women, 16.0% were racialized, 5.6% were Francophones, 1.6% were Aboriginal, 1.4% were gay or lesbian and 1.9% were students with disabilities.

⁷⁷ The BAC maintains statistical data on student numbers and success rates for some of the student equity groups such as Aboriginal students, Francophones and students with disabilities or those requiring accommodations. During the delivery of the BAC, students at large provide evaluations on the course, the course materials, instructors and skills assessments. The evaluations are not specifically based on equity issues or concerns. They focus on evaluation of the content, the teaching and the value of attendance.

students in the Bar Admission Course and during the articling term. The following provides an overview of programs, initiatives and products that focus on the promotion of equity and diversity in the BAC.

BAC in French and English

126. The BAC is offered in both official languages, including reference materials, instruction and exams.

E-Learning Web Site

127. In 2002, the Law Society created its e-learning web site. The web site provides students with a flexible, accessible and user-friendly learning support system. Recognizing the realities of student schedules and life demands, this system allows students to access the reference materials on-line, some lectures, supplemental video presentations, supplemental material to support study efforts, including checklists, legislative summaries and fact situations.

Education Support Services Centre

128. The Education Support Services Centre offers students a range of supports and services that improve the learning environment for all students and offers accommodation for students in the BAC.⁷⁸ Accommodations include exams in alternative forms such as audiotape, Braille and text-to-speech and special equipment for persons with visual and auditory impairments. In 2003, 70 students accessed the services available through the Education Support Services Centre, including laptops, special software to assist the visibly and hearing impaired, private rooms, additional exam time, one-on-one American sign language interpretation and real-time captioning during exams.
129. The Education Support Services Centre also offers tutoring. Upon request, the Education Support Services Centre provides assistance to students that have difficulties with exams or assessments. There is no cost to the student for the first five hours of tutoring and where financial difficulty exists further tutoring is arranged at no cost. In 2003, 22 students received tutoring assistance.

Mentoring Program

130. The Mentoring Program is available to students in the BAC. The program provides matches for students-at-law with members of the bar, and offers a range of supports, from academic and career advice to job shadowing opportunities. The Mentoring Program is provided free of charge.

Elders' Program

131. The Elders' Program is an innovative program, that provides Aboriginal and non-Aboriginal students in the BAC with various teachings and counseling services. The program provides opening prayers, cleansing ceremonies, traditional teachings, talking circles, meditations and pipe ceremonies, and is also available for one-on-one time with students in need of assistance. The program was launched in the fall of 2000 and is offered at Osgoode Hall on a weekly basis during the BAC.

⁷⁸ The Law Society adopted a *Policy and Procedures for Accommodations for Students-at-Law in the Bar Admission Course* (Toronto: Law Society of Upper Canada, February 2001). Ongoing accommodations provided to BAC students include:

- For students with a visual impairment: Optical Character Recognition software for scanning documents; Information made available in alternate formats and alternate fonts; software such as ZoomXtra 7.0 and Dragon Speaking Software.
- For students with a hearing impairment: real time captioning and sign language assistants.
- For students with learning disabilities; extra time to hand in assignments and read materials and tutors for assistance and additional access to faculty.
- For French students: access to a bilingual assessor when doing assessments; pairing of French students to do the presentations in French; French markers provided to mark exams.

Additional examinations accommodations include invigilation services for distance learners, computers with adaptive technology, extra time for writing the examinations, tape-recording of exam answers, height adjustable desks, ergonomic chairs and supervised breaks.

Partnerships with Aboriginal Bar

132. The Law Society works with members of Rotiio> taties and others in the Aboriginal Bar to support Aboriginal students in their legal education, foster a sense of community among the students and the Aboriginal Bar, and develop mentoring relationships, professional development and articling opportunities.

Self-Directed Study Arrangements

133. The Law Society provides opportunities for students who do not have access to the exam BAC locations by allowing students to take the courses, write the exams and to complete the BAC through self-directed study arrangements. In 2003, 60 students completed sections of the course through distance learning at various sites across Ontario, Canada and outside of Canada. In 2001, 2002 and 2003, 148 students chose the distance learning option to complete their BAC exams. The number of self-identified students as Aboriginal, Francophone, mature, persons with disabilities or racialized students is increasing as a percentage of the total, starting with 28% self-identified in 2001 up to 48% self-identified in current 2003 distance-learning programs. Of the students who self-identified, 16 out of 18 (89%) completed the process and passed. Two out of 18 have yet to complete the process (have not yet written the exams). Not one self-identified student failed the process or pulled out. Twenty-five self-identified students are currently enrolled (2003) and have not yet been through a term. Of the other 105 students, 66 have completed the process and passed. Not one student failed and pulled out. Three students have yet to complete the process (have not written exams) and 35 are currently enrolled in the program (2003).

Repayable Allowance Program

134. The average debt load of BAC students is over \$40,000 in 2003, representing an increase of approximately \$7,000 since 2000. The Law Society has attempted to assist students that have financial needs by offering financial assistance through its Repayable Allowance Program. Those in the BAC who demonstrate need to meet their educational and living expenses during the course may apply for a loan.
135. In 2001, there were 61 applications for this assistance and a total of \$170,700 was approved to assist 47 students.⁷⁹ In 2002, 68 applications were received, 57 students received funding and \$213,395 was awarded to students. In 2003, 38 students received funding for a total of \$117,176. The Working Group is concerned that although the debt load of students has increased, the numbers of persons receiving loans and the amounts awarded have dramatically decreased. Therefore, the Working Group proposes that the effectiveness of the RAP be reviewed.
136. The J. Shirley Denison Fund was established by a 1951 bequest to the Law Society for the relief of impoverished or indigent members of the Law Society, their wives, widows and children. The class of beneficiaries was widened to include BAC students. The J. Shirley Denison Fund is administered by the Finance Department and is advertised in the Ontario Lawyer's Gazette, the Ontario Reports, the Law Society web site, the Ontario Bar Assistance Program (OBAP) and the call centre staff members provide information about the fund. A recommendation was adopted in 2001 to disburse \$11,000 of the grant money annually, and the Law Society has followed the recommendation. The Law Society rarely denies applications for funding from the Shirley Dennison Fund.

Success of the BAC Initiatives

137. The initiatives undertaken by the Law Society to provide support to BAC students have been successful. With membership of the legal profession growing at a rate of approximately 1,200 annually, the increasing diversity of the profession is evident. More women, persons of colour, Aboriginal peoples, gays, lesbians, persons with disabilities and Francophones are entering the profession. For example:
- a. 53% of students who entered the BAC in 2003 were women compared to 48.7% in 1998.
 - b. 16.0% of students in the 2003 BAC self-identified as racialized compared to 14.9% in 1998. In comparison, 17.5% of the population is made up of persons from racialized communities, according to the 1996 Canadian Census.

⁷⁹ Allowances are made up to a maximum of \$5,000 per calendar year. Full program details are available on the Law Society's web site at http://www.lsuc.on.ca/services/bac_financial.jsp. The program's effectiveness has not been assessed.

- c. 1.6% of students in the 2003 BAC were Aboriginal compared to 1.3% in 1998. In comparison, 1.4% of the population is Aboriginal (1996 Canadian Census).

Proposed Strategy

- 138. The Law Society has made substantial efforts to implement this recommendation and the real challenge will be to integrate these efforts into the new BAC.
- 139. Since the adoption of the Bicentennial Report, the Law Society has developed additional support resources, such as the e-learning web site, to assist students in the BAC. The Law Society should ensure that these resources are regularly revised and integrate an equity and diversity analysis.
- 140. The Law Society has adopted an appropriate language policy that applies to BAC resources and materials, as recommended by the Bicentennial Report. The policy, applicable to communications in French and English, not only encourages the use of gender-neutral language but also of inclusive language.
- 141. The Law Society administers its programs so that its demands do not impact disproportionately on the basis of personal characteristics. For example, the Law Society, provides loans to students in need, accommodates special needs of students, provides tutoring support, maintains an e-learning web site and delivers the Elders' Program. Such initiatives have been beneficial and should be maintained and enhanced where appropriate to meet the needs of students.
- 142. The Law Society has integrated within the BAC curriculum, materials and examinations information designed to increase the profession's understanding of diversity and equity issues. Also, all materials and examinations are available in French and English.⁸⁰
- 143. On December 5, 2003, Convocation adopted the recommendations of the Task Force on the Continuum of Legal Education that will lead to significant changes to the current BAC model. Therefore, the Law Society should consider strategies to address the needs of equality-seeking, Francophone and Aboriginal students under the new BAC and should invite members from equality-seeking, Francophone and Aboriginal communities to participate in the design and implementation of the new BAC.
- 144. The Working Group proposes that the Equity and Aboriginal Issues Committee examine, with the Professional Development, Competence and Admission Committee and/or the Task Force on the Continuum of Legal Education, the following strategies, and if required, make recommendations to Convocation:
 - a. Members from equality-seeking, Francophone and Aboriginal communities should be involved in the design and delivery of the BAC program, including the model adopted by Convocation on December 5, 2003 (the new BAC).
 - b. BAC students should be informed of the role of the Discrimination and Harassment Counsel (DHC) and options available to students and lawyers who experience harassment and/or discrimination.
 - c. The new BAC should continue to be offered in both official languages.⁸¹
 - d. The effectiveness of the Repayable Allowance Program should be assessed and improved if required.

⁸⁰ Rotiio>taties indicates concerns with the BAC instructions and the general inability instructors to address Aboriginal content. Rotiio>taties is also concerned about moving to an electronic BAC format because many Aboriginal students do not have access to that format. As the BAC moves towards a new licensing model as the sole method of evaluation, Rotiio>taties is concerned of the impact of that method of evaluation on Aboriginal students. Rotiio>taties recommends that the Discrimination and Harassment Counsel be featured during the BAC to make students aware of the Law Society's resources to address discrimination complaints. (See Appendix 2)

⁸¹ AJEFO made such recommendation in their submission to the Bicentennial Report Working Group (See Appendix 2).

Recommendation 9: Articling

The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

Initiatives Adopted by the Law Society

145. The Law Society has created the position of Associate Registrar to coordinate the articling program and provide support to students, and the position of Aboriginal Issues Coordinator to provide support to Aboriginal students in the BAC and during the articling process.
146. Since the adoption of the Bicentennial Report, the Law Society has increased its efforts to provide support to students during the articling term. Students have options and flexibility in competing all the necessary requirements of articling. For example, students may apply to complete a non-traditional articling placement (any articling placement other than full-time Ontario articles and includes joint, part-time, national and international articling experiences) or for articling abridgments (a reduction of the traditional articling term) based on compassionate or non-compassionate grounds.⁸²
147. Placement initiatives provide assistance to students-at-law by offering job search skills workshops and counselling services. The job search skills workshops include topics such as how to do electronic job searches, winning interviews, creating impressive resumes, writing compelling covering letters, building useful contact lists and finding opportunities.
148. Articling position postings are advertised on the Law Society's web site. In 2002, two workshops were held on job search skills and 115 articling placement opportunities posted on the web site. Also, 49 BAC students were matched with lawyers for career mentoring and 64 biographical summaries were distributed to articling principals to assist unplaced students in securing articling positions.
149. The Mentoring Program is available to articling students. The program matches articling students with mentors and offers a range of supports, from academic and career advice to job shadowing opportunities or co-op placements. The Mentoring Program is provided free of charge.
150. The Law Society works with members of Rotiio>taties and others in the Aboriginal Bar to support Aboriginal articling students and to develop articling opportunities.
151. The Registrar and Associate Registrar attend annually at all law schools to provide students with information about the BAC and the articling program and opportunities.
152. Notwithstanding the efforts mentioned above, the Articling Placement Report 2003⁸³ indicates that although a high percentage of students are placed when entering the BAC, students from equality-seeking, Francophone and Aboriginal communities remain over represented in the group of students that have difficulty finding articles.⁸⁴ By the end of the usual articling term, all students from equality-seeking communities, with the exception of Francophone students, experienced greater than 90% placement rate.

⁸² Abridgment and Non-Traditional Articling Policies, adopted by Convocation, February 21, 2001. The Law Society does not have demographic data on who benefits from non-traditional articles. Approximately 5% to 10% of students opt for non-traditional articling placements. The Law Society is improving its data base to track the demographics in more detail.

⁸³ *Articling Placement Report 2003*, *supra* note 5, available on the Law Society Web site at www.lsuc.on.ca.

⁸⁴ Rotiio>taties notes that articling continues to be a stumbling block for many Aboriginal students. For some students, the failure to find an articling position eventually causes them to withdraw from law altogether. While ultimately most Aboriginal students find placements, there are some who do not. The Indigenous Bar Association is engaged in a new initiative to support Aboriginal students and recent calls to find articles and employment. Rotiio>taties recommends that the Law Society work with the IBA to develop meaningful strategies to identify and address the barriers faced by Aboriginal students and lawyers. (See Appendix 2)

Francophone students experienced a placement rate of 88.4%. Almost 95% of all students who entered the 45th Bar Admission Course in 2002 and who were actively looking for an articling position were placed within six months of the usual start of articling.⁸⁵

153. Each year a number of students who have successfully completed the BAC either do not find articling positions or are deemed not to be actively looking for a position. Based on the submissions received, the Working Group is concerned that these may include Aboriginal and racialized students as well as those from other equality-seeking communities. It is for this reason that the Working Group proposes that the Law Society conduct research on those who drop out of the legal profession at this and other stages of their legal career.
154. *The Articling Interview Survey Report*⁸⁶ also shows that a relatively high percentage of students felt that their membership or association with a group affected the questions they were asked during interviews. In 2001, 33% of incoming BAC students were surveyed about the nature of the questions asked by members during the articling interview process. 30% of students felt that their personal characteristics affected the questions they were asked. The Law Society addresses this issue by publishing in the Ontario Reports a bilingual summary of Student Hiring Practice Guidelines. It also offers training programs for law firms on effective interviewing techniques.

Proposed Strategy

155. The Law Society has made progress in implementing Recommendation 9. It has considerably increased its placement initiatives and support programs for articling students by doing outreach initiatives, developing a mentoring program and offering education and career development programs. The Working Group is of the view that these initiatives should be maintained.
156. However, students from equality-seeking, Francophone and Aboriginal communities remain over represented in the group of students that have difficulty finding articles. There is also insufficient information to assess the quality of articling experience of students from equality-seeking, Francophone and Aboriginal communities. The Working Group indicates that most students article in large and medium size law firms, whereas a high percentage of Ontario lawyers practice in small law firms or as sole practitioners.⁸⁷ This would suggest that the articling term might not adequately train students to enter the legal profession and practice in small firm settings or as sole practitioners. Areas of practice in large and medium-size law firms in urban areas are generally different than areas of practice in small non-urban centers, where lawyers often set up general practices in criminal, family and residential real estate law.
157. The Working Group proposes that strategies be developed to address barriers faced by equality-seeking, Aboriginal and Francophone students and to enhance the articling experience. There are many opportunities for the Law Society to assist articling students and articling principals to achieve a highly satisfactory articling term. One of these is to provide a variety of enhanced services and learning supports to assist in supplementing articles. Enhanced support during articling might be particularly important now that the Law Society has adopted the new BAC.
158. The Working Group also notes that members of the profession still frequently ask inappropriate interview questions. Training programs on interviewing techniques have not been offered on a regular basis and the Law Society might consider using a proactive strategy to promote these programs.
159. The Working Group proposes that the Equity and Aboriginal Issues Committee and the Professional Development, Competence and Admission Committee and/or the Task Force on the Continuum of Legal Education examine the following strategies and, if required, make recommendations to Convocation:
 - a. The current articling structure should be assessed to determine whether equality-seeking, Aboriginal and Francophone students face systemic barriers in finding quality articling

⁸⁵ *Placement Report 2002/2003 of Students Enrolled in the 45th BAC 200*, *supra* note 5.

⁸⁶ *Articling Interview Survey Report*, *supra* note 38, available on the Law Society Web Site at www.lsuc.on.ca.

⁸⁷ It is also noteworthy that 93.4% of students article in large urban centers and 90% in medium and large firms, including government (firms of 5 lawyers or more).

- positions and alternative structures should be identified to eliminate the most significant barriers.
- b. Research should be undertaken to determine why some students who have successfully completed the BAC do not seek or cease to seek articling positions. Strategies should be developed to address this issue.
- c. The CEO or delegate should provide annual reports to the Equity and Aboriginal Issues Committee about strategies and progress on addressing the needs of equality-seeking, Aboriginal and Francophone students for suitable articles.
- d. Services and learning supports to assist students and principals throughout the articling process should be maintained and enhanced based on needs.

Recommendation 10: Continuing Legal Education

The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:

- (a) Includes material designed to increase the profession's understanding of diversity/equity issues;
- (b) Encourages the participation of equality-seeking groups in its design, development, presentation, and attendance;
- (c) Uses material that is gender neutral;
- (d) Uses audio visual material that includes the faces and voices of equality-seeking groups;
- (e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

Initiatives Adopted by the Law Society

- 160. Since 1997, the Law Society has developed affordable, accessible and relevant continuing legal education programs through various initiatives that include its Public Education Program, Equity and Diversity Training Program and CLE programs on human rights and harassment and discrimination. Public education events are usually open to the public and are free of charge. Other CLE programs are offered on a cost recovery basis and are affordable. The Law Society tries to attract a broad audience by offering CLE programs in core practice areas that integrate equity and diversity principles.
- 161. Each year, the Law Society hosts and participates in 10 to 15 public education events. A number of those events include a continuing legal education component.⁸⁸
- 162. The Professional Development and Competence Department also offers CLE programs to meet the needs of lawyers. In 2003, CLE programs were offered in a variety of formats and delivery methods to improve accessibility and assist lawyers in meeting their professional development goals. It is anticipated that in

⁸⁸ Such as: Louis Riel Day Panel Discussion "Re-Awakening the Nation", November 2001; United Nations Human Rights Day Seminar, December 2001; Black History Month Event, February 2002; International Women's Day Event/Launch of "In the Face of Justice Video", March 2002; Law Week Proclamation Ceremony 2002: Celebrating the 20th Anniversary of the Charter and Launching the Ontario Justice Education Network, April, 2002; National Aboriginal Day event "Urban Aboriginal Governance", June, 2002; South Asian Professional Development Workshop 2002, "Providing Legal Services to the Marginalized South Asian Client", July 2002; Lesbian and Gay Pride Event, "Advocacy in Our Communities: Networking for Change", June, 2002; AJEFO convention (the Law Society assisted in organizing the convention and hosted the convention), June, 2002; "Promoting Dialogue, Creating Change: Equity and Diversity in the Legal Profession", a national conference, November 2002; Aboriginal peoples at Public Forum 2003, "Do Anti-Discrimination Laws Address Needs of Aboriginal peoples?", January, 2003; Black History Month Event 2003, "How Lawyers Can Make a Difference in the Lives of Youth", February 2003; A Celebration of National Aboriginal Day 2003, "Experiences in the Gladue (Aboriginal Persons) Court: Innovations In Implementing *R. v. Gladue*", June 2003; Pride Day Celebrations 2003, "Common Law Wrongs, Charter Rights and Remedies in a Constitutional Democracy: The Future of Equality Discourse in Canada", June 2003; Law Day/Law Week Opening Ceremony 2003, "*Freedom, Security and You*", April, 2003; Access to Justice symposium, "The Way Forward, Access to Justice Symposium", May 2003.

2004, CLE programs will be offered on addressing harassment and discrimination in the legal workplace and offering legal services to persons with disabilities.⁸⁹

163. The Professional Development and Competence Department will soon launch CLE programs in core areas of practice in the French language. Working in partnership with the AJEFO, the Law Society has surveyed its Francophone members to determine professional development needs.
164. In 2003, the Interactive Learning Network was launched. The initiative enables lawyers to attend live programs without incurring the costs associated with absence from the office and long distance travel. CLE programs are transmitted in real time to between 10 and 20 sites across the province. The sites have been chosen to allow members to travel no more than one and a half hours to attend.
165. The Professional Development and Competence Department also offers equity and diversity custom-designed training programs to assist lawyers in meeting their obligations under the Ontario Human Rights Code and in integrating equity and diversity within their legal practice and organizations. Each session is tailored to meet the specific needs of the law firm and/or practitioner and offers the programs in many formats, such as seminars, workshops, informal education sessions, continuing legal education and train-the-trainer sessions.

Proposed Strategy

166. The Law Society has taken significant steps to implement Recommendation 10. It should be commended for making its program more accessible to members of the profession, including members from equality-seeking, Aboriginal and Francophone communities.
167. CLE programming has increased considerably in the area of equity and diversity and the Law Society has facilitated access to its programs for members in remote areas by diversifying its delivery format.
168. The Law Society has been less successful in integrating an equity and diversity analysis in “core” CLE programs and does not maintain information about the representation of members from equality-seeking, Francophone and Aboriginal members as CLE faculty.⁹⁰ The Working Group also notes that foreign-trained lawyers and members who are re-entering legal practice may have distinct educational needs. The Law Society is encouraged to tailor education programs to the needs of those groups.
169. The Working Group proposes that the Professional Development, Competence and Admission Committee examine the following strategies and, if required, make recommendations to Convocation:
 - a. The bursary program for CLE should be expanded and aggressively advertised to those who cannot afford CLE.
 - b. Education programs should be tailored to meet the needs of:
 - i. Foreign-trained lawyers.
 - ii. Members re-entering the profession.
 - iii. Members from equality-seeking, Aboriginal and Francophone communities.
 - c. There should be representation of members from equality-seeking, Aboriginal and Francophone communities within the CLE Faculty, including “core” CLE programs.

Recommendation 11: Rules of Professional Conduct

The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession.

Initiatives Adopted by the Law Society

⁸⁹ Organized with Pro Bono Law Ontario and the Advocacy Resource Centre for Persons with Disabilities

⁹⁰ Although there appears to be gender parity in the pool of Faculty, there is insufficient information to determine whether faculty members are representative of members of equality-seeking, Aboriginal and Francophone communities.

Rules of Professional Conduct

170. In 1992, Convocation adopted a new *Rule of Professional Conduct* dealing with Sexual Harassment (Rule 27), and in 1994, Rule 28 on Non-discrimination. On November 1, 2000, new *Rules of Professional Conduct* came into force and Rules 27 and 28 were revised and amended. Rule 5.03 prohibits sexual harassment and Rule 5.04 prohibits discrimination based on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, same-sex partnership status, age, record of offences, marital status, family status and disability. The duty not to discriminate applies with respect to professional employment and in professional dealings. Rule 5.04 also prohibits harassment based on grounds other than sex.
171. Rule 1 of the *Rules of Professional Conduct* was amended in 2001 to include a commentary that provides that “a lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter.”

Discrimination and Harassment Counsel Program

172. The Discrimination and Harassment Counsel Program (DHC) was established in 1999 as a pilot project, and in 2001 as a permanent program, to confidentially assist anyone who may have experienced discrimination or harassment by a lawyer or within a law firm. This service, funded by the Law Society, operates at arms-length, and is available free-of-charge to the Ontario public and lawyers. Between November 2002 and June 2003, 110 individuals made contact with the DHC Program, with 60% relating to matters within the mandate of the DHC Program. Forty-four individuals contacted the Program because they had a complaint of discrimination or harassment by a lawyer or against a law firm in Ontario. Fifty-nine percent came from members of the public, with the remaining coming from members of the profession. Complaints from the public were almost evenly from men and women.
173. One third of the complaints reported to the DHC Program involved sexual harassment (including two complaints of sexual assault). The second most voluminous category of complaints were racial discrimination and discrimination based on disability, which together comprised another third of the total complaints. Five additional grounds of discrimination and harassment were raised, namely sexual orientation, religion, age, sex and family status. Overall, 18 harassment complaints and 26 discrimination complaints were received. The following reflects what complainants told the DHC they intended to do after being advised of their options: 16 would report to the Law Society, 6 to a human rights commission, 1 to the police, 1 would file an internal workplace grievance, 6 would seek legal advice to commence legal proceedings, 5 would take no action and 4 would request mediation by the DHC.
174. During the reporting period outlined above, 40 surveys were conducted with individuals with discrimination and harassment complaints. The surveys indicate the following demographics of those who contacted the program: 25 females and 15 males; 35 heterosexual, 3 lesbian/gay and 2 bisexual; 4 Aboriginal, 2 Arab, 5 Black, 2 Chinese, 1 Korean, 1 Latin American, 1 Southeast Asian, 1 South Asian and 23 White/Caucasian; 31 English speaking, 3 French, 2 Cantonese, 1 Greek, 1 Korean, 1 Malay and 1 Hindi.
175. The Professional Regulation Division's Quarterly Reports for the periods of January to March 2003 and April to June 2003 indicate that 23 cases of sexual misconduct and discrimination were selected for investigation.

Professional Regulation Division: Complaints of Harassment and Discrimination

176. The Law Society established a process to ensure that cases of harassment and discrimination are appropriately handled. In the event that a call received by the Client Service Centre may be a complaint of harassment or discrimination by a member of the profession, the call is referred to a counsel who has the expertise to handle such cases. The counsel discusses options with the caller, including the investigations process and the DHC program. If the complainant wishes to proceed to the investigation stage, the call is forwarded to an investigation counsel team with expertise to handle cases of harassment or discrimination. If a case of harassment or discrimination proceeds before a discipline panel, a Discipline Counsel with expertise in the area handles the case.

177. The Law Society has designed an education curriculum for benchers who sit on hearing panels. The delivery of the training program began with the newly elected bench in 2003 and will be ongoing. The education program includes topics such as legal development in harassment and discrimination, assessing the credibility of a witness, the duty to accommodate and identifying bias and stereotypes.

Proposed Strategy

178. The Law Society has mostly implemented Recommendation 11. However, the effectiveness of the complaints process to address issues of harassment and discrimination has not been assessed.
179. The Law Society is addressing the issue of discriminatory practices in the legal profession by:
- a. Adopting rules of professional conduct prohibiting such behaviour;
 - b. Creating a Discrimination and Harassment Counsel Program to provide confidential advice on harassment or discrimination;
 - c. Structuring a complaint, investigation and discipline process involving staff members with the requisite expertise to handle those cases;
 - d. Providing, with the Discrimination and Harassment Counsel, training programs for the legal profession and law firms on the prevention of harassment and discrimination and the duty to accommodate;⁹¹
 - e. Maintaining statistical information about calls to the DHC Program and complaints to the Law Society.
180. The Working Group notes, however, that the Law Society has limited information about the effectiveness of its programs in eliminating discriminatory practices within the legal profession. There is still anecdotal evidence indicating that incidents of harassment and discrimination are unreported or are not dealt with effectively by law firms and/or the Law Society. The Working Group proposes that the Law Society evaluate the effectiveness of its processes, the extent to which harassment and discrimination are present in the legal profession, the most common grounds of harassment and discrimination, the types of unreported behaviour and the level of awareness by members of the public and the legal profession of the DHC Program and the complaint process of the Law Society.
181. The Working Group proposes that the Equity and Aboriginal Issues Committee consider working with the CEO, or delegate, and the Discrimination and Harassment Counsel where appropriate, to determine the effectiveness of programs aimed at eliminating harassment and discrimination within the legal profession and discuss strategies for improvement if appropriate.

Recommendation 12: Accreditation of Foreign-Trained Lawyers

The Law Society should facilitate the participation of minority groups in the legal profession by liaising with other groups to ensure that the accreditation requirements for foreign-trained lawyers or Quebec non-common law trained lawyers to practise in Ontario do not represent an unreasonable barrier.

Initiatives Adopted by the Law Society

182. On September 14, 1995, the former Legal Education Committee appointed Gavin MacKenzie to study the system in place through the National Committee on Accreditation (the NCA) for the accreditation of lawyers who have received their legal education and training either outside of Canada or through a civil law program in the province of Quebec or the University of Ottawa; and to report back with a recommended course of action. *The Report to the Admissions and Equity and Aboriginal Issues Committee of the Law Society of Upper Canada on the Accreditation of Foreign-Educated Lawyers and Quebec Lawyers with*

⁹¹ EAG recognizes the educational function of the Discrimination and Harassment Counsel Program and suggests that it be promoted to the profession. (See Appendix 2)

Non-Common Law Legal Education (the MacKenzie Accreditation Report) was presented to Convocation on September 26, 1997.⁹²

183. The MacKenzie Accreditation Report made the following recommendations:
- a. The Law Society should continue to support the NCA.
 - b. A person with expertise in comparative education and prior learning assessment should be retained to review the NCA's guidelines and the application of those guidelines to determine how (if at all) the guidelines [...] might be amended to ensure that, to be granted advanced standing, applicants meet the necessary level of competence, and that applicants are treated equitably.
 - c. The NCA's guidelines should be amended to permit applicants who have experience working as law clerks in Canada [...] to be given appropriate credit based upon an individual assessment of the extent to which (if at all) the experience they have gained has contributed to their state of preparedness to practice law in Canada [...]
 - d. Members of the NCA should continue to be drawn from legal academia, those involved in the regulation of the profession, and the practicing bar. The committee should also, however, include a representative of the community of foreign-educated lawyers who is a member of an ethno-cultural minority group [...]
 - e. The NCA should continually endeavour to improve its communication of the basis of its assessments with a view to making the process more transparent generally.
 - f. The NCA should make applicants aware of clinical legal education opportunities available at law schools, and should reduce the number of required courses that applicants who are interested in pursuing clinical alternatives are required to take where to do so would not detract from the applicants' need to satisfy substantive law requirements.
 - g. The NCA, in conjunction with the law schools, should arrange for the development of a language test that is designed to assess candidates with specific reference to the language proficiency required to perform competently as lawyers.
 - h. Canadian citizens who obtain their legal education in other countries and who meet the requirements established by those countries for admission to the bar should continue to be assessed in accordance with the standards applicable to all NCA candidates.
 - i. [...] the Law Society should pursue discussions with the University of Toronto Law School with respect to the issues of fees and services to NCA candidates with a view to facilitating an appropriate solution of these issues.
 - j. An orientation program for NCA candidates who have been admitted to the Ontario law schools should be offered shortly before law school classes begin for the year, so the NCA candidates will have the benefit of an introduction to the study of Canadian law.
 - k. [...] The NCA, with the assistance of a counselor with [...] expertise [...] should move toward a system of individualized assessment of what each foreign-educated (and Quebec non-common law) lawyer requires to become qualified to practice law in common law jurisdictions in Canada, with the expectations that taking law school courses and writing challenge exams would be only two among a number of possible alternatives.
184. Convocation considered the report and its recommendations in the following context:
- a. The NCA is a standing committee of the Federation of Law Societies. Accordingly, policy decisions concerning the operation and requirements of the NCA are within the jurisdiction of the Federation of Law Societies (the Federation), of which the Law Society is one of thirteen members.
 - b. The Law Society has authority over the admission of lawyers to the bar of Ontario. Pursuant to the rules made under section 62(1) of the *Law Society Act*⁹³, in 1996-1997, the Admission and Equity and Aboriginal Issues Committee's mandate included

⁹² Gavin MacKenzie, *Report to the Admissions and Equity and Aboriginal Issues Committee of the Law Society of Upper Canada on the Accreditation of Foreign-Educated Lawyers and Quebec Lawyers with Non-Common Law Legal Education* (Toronto: Law Society of Upper Canada, June 3, 1997).

⁹³ R.S.O. 1990, Chapter L.8.

- developing, for Convocation's approval, "policies to ensure that the accreditation process operates in a reliable, fair, open, and equitable accreditation process."⁹⁴ Accordingly, in assessing its continuing role in the NCA, the Law Society should be satisfied that the part of the accreditation process that is governed by the NCA's requirements accord with the Law Society's own policies for a reliable, fair, open, and equitable accreditation process.
- c. Most of the recommendations proposed action for the NCA to consider. Only two recommendations (recommendations (a) and (j)) proposed action to be considered by the Law Society. Other recommendations (such as (i)) proposed action for organizations other than the Law Society or the NCA to consider.
185. On June 27, 1996, Convocation accepted the MacKenzie Accreditation Report and confirmed that the Law Society:
- a. Supports recommendation (a) (to continue to support the NCA);
 - b. Supports recommendations (b) – (h), (j) and (k) to be made to the Federation;
 - c. Supports recommendation (i) (to pursue discussions with the University of Toronto Law School with respect to the issues of fees and services to NCA candidates with a view to facilitating an appropriate solution of these issues).
186. In 1997, the Federation of Law Societies established the Accreditation Review Committee (ARC) to review the MacKenzie Accreditation Report. The ARC considered and analyzed the recommendations of the MacKenzie Accreditation Report, and other issues related to the mandate, operation and composition of the NCA. The ARC recommended some changes to the operation of the NCA. Also, it noted that the NCA had made its own changes to increase access to the legal profession in Canada's common law jurisdictions for lawyers who had acquired their legal education and qualifications elsewhere. The ARC recognized that the NCA's guidelines are objective and systematic, and consider both formal education and knowledge gained through experiential learning.
187. The ARC identified five issues for consideration by the NCA and the Federation: the decision-making process, transparency, the composition of the NCA, the competency-based assessments and Quebec applicants to the NCA.⁹⁵
188. At its annual meeting on August 28, 1998, the delegates of the Federation adopted the recommendations proposed by the ARC.
189. The Federation, the NCA, the Law Society and other organizations have considered and addressed all issues raised in the MacKenzie Accreditation Report. The ARC considered the MacKenzie Accreditation Report and, in light of that report, studied the NCA process and concluded that, "[O]ur recommendations are therefore proposed as enhancements to what we regard as a successful program."⁹⁶

⁹⁴ The revised committee structure does not include a committee with a mandate to develop "policies to ensure that the accreditation process operates in a reliable, fair, open, and equitable accreditation process". By-law 9, Committees, provides that the mandate of the Professional Development, Competence and Admissions Committee is to develop for Convocation's approval,

(a) policy options on all matters relating to the professional competence of members;

(b) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;

(c) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;

(d) policies to govern the transfer to the Society of persons qualified to practice law in any province or territory of Canada; and

(e) policies respecting the Bar Admission Course.

⁹⁵ Brian J. Wallace, Q.C., *Review of the Accreditation Process Conducted by the National Committee on Accreditation* (Federation of Law Societies of Canada, 1998).

⁹⁶ *Ibid.* at 4.

190. Members called to the Quebec bar are in a different situation than other foreign-trained lawyers. Quebec has signed the National Mobility Agreement, which describes the manner in which a lawyer called to the bar in one province may be called to the bar of another province in Canada, including Ontario. Once Quebec has adopted the necessary regulatory requirements to implement the Agreement, it will be applicable to Quebec educated and trained lawyers.

Proposed Strategy

191. The Law Society has made efforts to implement Recommendation 12. The Federation, the National Committee on Accreditation (NCA) and the Law Society have considered and addressed all issues raised in the MacKenzie Accreditation Report, approved by Convocation in 1996.
192. The Working Group regrets the lost expertise of foreign-trained lawyers as a resource to the Ontario public. It believes that there is a public value in assisting those foreign-trained lawyers to enter the Ontario legal profession.
193. Foreign-trained lawyers face formidable barriers. The MacKenzie Accreditation Report indicated that NCA students often feel alienated at law school, the number of spaces available at law school is limited and the BAC failure rate of those students is higher than that of LL.B. students. Foreign-trained lawyers also admitted that, as lawyers who are qualified to practise in other jurisdictions (and often had practiced for many years), the obligation to return to law school is neither the fairest nor the most effective way to educate them in Canadian laws. NCA students, and particularly members of racialized communities, encounter appreciably more difficulty in securing articling positions. Finally, foreign-trained lawyers who are admitted to the practice in Ontario can help to serve the needs of communities of immigrants from the same communities.⁹⁷ The Working Group is of the view that strategies should be developed to facilitate the full participation of foreign-trained lawyers to the profession.
194. Further to the MacKenzie Accreditation Report, the Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
- a. A joint initiative should be developed with the Professional Development, Competence and Admission Committee and the Access to Justice Committee to develop strategies to assist foreign-trained lawyers to qualify as lawyers in Ontario.
 - b. Information should be gathered about the success rate of NCA candidates in the BAC and in articling placements and strategies should be developed to address unfair elements, if any.
 - c. NCA students or recently called foreign-trained lawyers should be invited to provide input into the development and implementation process of the new BAC.

Recommendation 13: Requalification

In implementing its requalification policy the Law Society should continue to develop a process that is fair and equitable to all members of the profession.

Initiatives Adopted by the Law Society

195. Until the beginning of 2002, the Requalification program of the Law Society⁹⁸ provided that, if a member had not made substantial use of legal skills on a regular basis for a period of five years, the member had to meet requalification requirements described in Section 8 of By-law 28, including the completion of a self-study course, an accounting examination and one or more examinations in the areas of regulatory issues in the practice of law and/or management of a law practice, as well as the completion of 10 hours of continuing legal education.

⁹⁷ See MacKenzie report, *supra* note 92.

⁹⁸ By-law 28 – Requalification (amended in February 2002 and changed to the Private Practice Refresher Program).

196. In February 2002, Convocation approved a new program called the Private Practice Refresher Program (PPRP), which will require lawyers who have not been in private practice for five years or more to undergo a refresher program prior to entering private practice.⁹⁹ Replacing the former Requalification Program, the PPRP come into effect in early 2002, but will not affect lawyers until 2007.
197. The new program will more effectively address the goals of the original program, to ensure that those members who have been out of private practice for five years or more are provided with a refresher program in those areas in which their skills may have eroded. The focus will be on practice management and client relationships. There will be no requirement to redo the BAC, or any aspect of it.
198. The PPRP also establishes a process that is fair and equitable to all members of the profession, including women who are more likely to leave the profession temporarily to care for their children or families. The program is capable of consistent application and simple administration. The members will no longer be required to fill out a detailed qualification form in the Member's Annual Report. The Law Society will no longer track members each year or issue notices on an annual basis regarding qualification status.
199. The program can be summarized as follows:
- a. Member categories have been defined, with rights and privileges that flow under each category:
 - Category A: Any member eligible for insurance under the Law Society's insurance plan and who is required to have insurance because he or she engages in the practice of law;
 - Category B: All members who are not in Category A or C;
 - Category C: Retired members.
 - b. Members seeking to change their category status from B or C to A will be entitled to do so unless for 80 percent or more of the five years immediately preceding the date of the request the member has been a category B member or a category C member. In such a case the member will be advised which of eight practice management and client relationship modules he or she must complete. These are: time management, file management, financial management, client service and communication, technology, professional management, personal management and professional responsibility.
 - c. Upon satisfactory completion of the modules the member's category status will be changed from category B or C to category A.
200. Members will only have to complete those modules of the program that reflect gaps in their experience during the absence from private practice. The new program preserves the self-study nature of the original program. Guidelines have been developed to assist members in Category B or C to know which modules they may have to complete.
201. Members will be required to notify the Law Society when they seek to change from Category B or C to A. At that time the Law Society will determine whether they are subject to the Private Practice Refresher Program.

Proposed Strategy

202. The Law Society has substantially implemented Recommendation 13 by replacing its requalification program by a Private Practice Refresher Program that allows lawyers who have not been in private practice for five years or more to undergo a self-study program and assessment prior to re-entering private practice. The effectiveness of the program should be examined after 5 years of implementation.
203. However, the Working Group notes that women and members from equality-seeking, Francophone and Aboriginal communities still face barriers when re-entering the practice of law. These barriers are often unrelated to requirements established by the Law Society. For example, those who temporarily leave the

⁹⁹ Information on the Private Practice Refresher Program is available on the Law Society web site at www.lsuc.on.ca

practice of law often lose their professional networks, making the search for employment more challenging. Those who re-enter the practice of law after temporary absences may also have different professional goals. The Working Group encourages the Law Society to study the barriers faced by lawyers who re-enter the practice of law.

204. The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
- a. The effectiveness of the Private Practice Refresher Program and its impact on members of equality-seeking, Francophone and Aboriginal communities should be examined after five years of implementation.
 - b. Strategies should be developed to ensure truly equal opportunities for women returning to the practice of law and for members of equality-seeking, Francophone and Aboriginal communities.

Recommendation 14: Fees

The Law Society should examine the impact of and the barriers presented by its current annual fee structure and consider options for revising its fee structure, if warranted.

Initiatives Adopted by the Law Society

205. Between 1984 and 1988, the Law Society considered the issue of membership fee categories a number of times before it determined to move from one fee for all members to three main fee categories.
206. In September 1997, the Finance and Audit Committee began examining the issue of its three main fee categories and considered three options:
- a. Maintain the status quo;
 - b. Maintain 50% and 100% categories and create nominal and part-time classes;
 - c. Eliminate categories within Class 1 and charge all members the full fee and introduce a nominal fee class to create a more equitable system.
207. The Finance and Audit Committee's report was circulated to the Admissions & Equity and Aboriginal Issues Committee whose members felt that there should be a further assessment of the issue. As a result, a working group with membership from the Finance and Audit and Admissions & Equity and Aboriginal Issues Committees (the Fee Structure Working Group) was formed to consider the issues and report to the committees.
208. The Fee Structure Working Group considered the following information:
- a. One of the impetuses of the analysis was the concern that as fees have risen, there may have been an increase in the number of non-practising members who have gone into suspension or resigned primarily because they could no longer afford the fees. Many provinces have a non-active members' fee ranging from between \$100 and \$250.
 - b. LawPRO's program to permit members who practice law part-time to pay reduced fees.
 - c. In 1997, revenues were down as a result of more members than anticipated moving into lower fee categories or not paying fees at all.
 - d. There is significant pressure on the Law Society to lower the membership fee generally.
209. The Fee Structure Working Group was of the view that until the 1999 budget was determined, it was difficult to address the issue properly.
210. The Fee Structure Working Group raised concerns about the financial impact of modifying the fee structure on those least able to afford it. For example, members in the non-practising categories had been paying a percentage of the overall fee. This means that as fees increase, they would be responsible for the pro-rata share of the increases. A change in fee structure that results in a general increase in fees would have a financial impact on the members in the non-practising fee categories.

211. Various Law Society committees, including the committee responsible for equity issues, have reviewed a number of possible approaches to revising the membership fee categories and their financial impact on membership fees.
212. The Equity and Aboriginal Issues Committee considered the above-mentioned background information in 2002 and decided not to proceed with a further study of the fee structure unless otherwise instructed by Convocation.
213. The current fee structure, governed by By-law 15, Annual Fee, provides a fee reduction for those on maternity, paternity or adoption leave. The fee structure includes a 100% full fee category for those who practise law¹⁰⁰, 50% fee category for members who do not practise law¹⁰¹, a 25% fee category for members who do not engage in any remunerative work or who are full-time students and do not practise law or who are on maternity, paternity or adoption leave and does not practice law.¹⁰² It appears, however, that the 25% fee category still represents a significant burden for those who do not engage in any remunerative work.
214. Notwithstanding the review of the current fee structure by the Equity and Aboriginal Issues Committee and other committees of Convocation, the Working Group notes that studies and anecdotal evidence suggest that some groups still face barriers due to the current fee structure. For example, Rotiio>taties¹⁰³ observes that fees continue to be a barrier for many Aboriginal lawyers in private practice. Studies undertaken by the Canadian Bar Association¹⁰⁴ and by Professor Kay¹⁰⁵ indicate that fees may be a barrier for women lawyers who wish to re-enter private practice on a part-time basis. The demographic analysis of the Ontario legal profession based on 1996 Census Canada statistics indicates that women, Aboriginal and racialized lawyers still have a significantly lower income than Caucasian male lawyers.¹⁰⁶ Information about lawyers suspended for non-payment of fees also shows that a large number of those are sole-practitioners.
215. The Working Group is of the view that the Law Society should consider strategies to establish a reduced fee structure for those who practice part-time and have a low income, including those working in public interest areas. Also, the Law Society should consider establishing a process to allow members to request exemptions from fees based on compassionate grounds.

Proposed Strategy

216. The Law Society has partially implemented Recommendation 14.
217. The Working Group proposes that the Equity and Aboriginal Issues Committee consider the following strategy and, if required, make recommendations to Convocation to establish a working group and/or task force composed of members of the Equity and Aboriginal Issues Committee, the Finance Committee and

¹⁰⁰ A member practices law if the member gives any legal advice respecting the laws of Ontario or Canada or provides any legal services.

¹⁰¹ Including a member employed in education, in government or in a corporation in a position where he or she is not required to practice law.

¹⁰² The following members pay twenty-five percent of the annual fee:

1. A member who does not engage in any remunerative work, including the practice of law, in or outside of Ontario.
2. A member who is in full-time attendance at a university college or designated educational institution within the meaning of the *Income Tax Act* (Canada) and does not practice law.
3. A member who is on a maternity, paternity or adoption leave and does not practice law.

¹⁰³ Rotiio>taties observes that fees continue to be a barrier for many Aboriginal lawyers in private practice. Rotiio>taties believes that most Aboriginal lawyers are practicing in government, small firms or in sole practice. Few Aboriginal lawyers practice in firms with significant financial resources and therefore, Law society fees and insurance pose significant hardships for Aboriginal lawyers. In order to attract and retain Aboriginal lawyers, Rotiio>taties recommends that the Law Society explore a structure that would allow for reduced fees where circumstances warrant. (See Rotiio>taties's submissions at Appendix 2).

¹⁰⁴ See *Touchstones for Change* (Ottawa: Canadian Bar Association, 1993)

¹⁰⁵ See *Transitions* report, supra note 9 and *Barriers* report, supra, note 9.

¹⁰⁶ Ornstein report, supra note 11.

other members as determined by Convocation, to review the impact of the fee structure on members who practice part-time or have a low income, or who work in public interest areas.

Recommendation 15: Law Society as Employer

The Law Society should continue to set and monitor equity standards for its own staff that will make it a model for the profession as an employer.

Initiatives Adopted by the Law Society

Recruiting

218. The Law Society's job postings include a notice encouraging applications from persons from equality-seeking communities, Francophones and Aboriginal peoples. The notice typically reads:
- a. The Law Society of Upper Canada is an equal opportunity employer striving to reflect the population of Ontario. We welcome applications from women, persons with disabilities, racialized persons, Aboriginal peoples, gays, lesbians and Francophones.
 - b. All postings in French include a notice that typically reads: Le Barreau du Haut-Canada souscrit au principe de l'égalité des chances afin de représenter la diversité de notre profession et de nos communautés. Les candidatures de femmes, personnes handicapées, personnes de couleur, personnes Autochtones, gays, lesbiennes et francophones sont les bienvenues.
219. Recruitment interviews include questions that relate to the candidates awareness of equity and diversity principles.

Workforce

220. As of 2002, the Law Society's workforce of 365 employees was comprised of people from diverse backgrounds. Of the 365 employees, sixty-six per cent were women.¹⁰⁷ Women held sixty per cent of management positions. Currently, eight out of nine members on the Senior Management Team are women. A total of 32 positions are designated bilingual in French and English. In addition, a significant number of Law Society employees can communicate in a wide range of languages such as Mandarin, Cantonese, Spanish, Portuguese, German and Italian.

Workplace Policies

221. In 2002, all internal human resources policies were revised to ensure conformity to human rights obligations under the Human Rights Code and employment standards legislation.
222. Internal workplace policies and practices address equity and diversity issues, issues of harassment and discrimination and the duty of the organization to accommodate employees with special needs. These policies include:
- a. Law Society staffing policy;¹⁰⁸
 - b. Equity and diversity in recruitment and hiring practices;¹⁰⁹
 - c. French Language Services Policy and Guidelines;¹¹⁰

¹⁰⁷ The Law Society does not ask staff members to self-identify. It maintains limited information relating to representation of equality-seeking communities, Aboriginal peoples and Francophones in its workforce.

¹⁰⁸ The Law Society's Staffing Policy and Procedures, effective April 20, 2001, establishes the framework to attract, hire and retain employees that reflects the Law Society's diversity policy.

¹⁰⁹ As mentioned above, recruitment and hiring practices encourage applicants from equality-seeking communities, Aboriginal peoples and Francophones to apply for employment. The interview process includes questions about the applicants' knowledge of equity and diversity principles.

¹¹⁰ In June 1989, Convocation adopted the French Language Services Policy (also available in French) which includes the following:

- The Law Society is committed to providing services in the French language to its own members and to the public from Osgoode Hall and other Law Society offices in Toronto and from its facilities in the City of Ottawa.
- The Law Society is committed to providing instruction and materials in the French language to students pursuing the Bar Admission Course in the City of Ottawa.

- d. Translation Guidelines;¹¹¹
- e. Appropriate Language Policy and Guidelines;¹¹²
- f. Preventing and Responding to Harassment and Discrimination;¹¹³
- g. Accommodation Policy and Procedures;¹¹⁴
- h. Purchasing Agreements compliance to equity and diversity requirement;¹¹⁵
- i. Internal human resources policies allow for religious observances;¹¹⁶
- j. Flexible time arrangements;¹¹⁷
- k. Bereavement Leave Policy;¹¹⁸

-
- The Law Society is committed to providing continuing legal education programmes in the French language.
 - The Law Society is committed to reviewing its existing and future programmes with the objective of bringing these programmes into conformity with its policy on the provision of French language services.
 - The above commitments are subject to such limits as circumstances make reasonable and necessary with the goal of having the policy substantially implemented within three years.

¹¹¹The Translation Guidelines provide that under the French Language Services policy adopted by Convocation in 1989, the Law Society is committed to serving the profession and the public in English and French at its Toronto and Ottawa offices, offering the Bar Admission Course in French in Ottawa and providing CLE programmes in French. The purpose of the translation policy, pursuant to the FLS policy and in line with Ontario's legal bilingualism, is to provide uniform corporate procedures and guidelines that will assist in continuing to produce high-quality French materials in a timely and cost-effective manner in keeping with the customer service focus and the regulatory function of the Law Society.

¹¹² The Appropriate Language Policy and Guidelines provides direction to assist staff in communicating effectively and appropriately with members of the profession and the public, other staff and community and legal organizations.

¹¹³ The Workplace Harassment and Discrimination Prevention Policy and Procedures prohibits harassment and discrimination in the workplace, based on the grounds enumerated in the Ontario *Human Rights Code*. In addition, the policy is broader than the Ontario *Human Rights Code*. It also prohibits discrimination and harassment on the basis of other human characteristics such as physical appearance, socio-economic background or occupational group. It also considers unacceptable of any kind of behaviour that is physically and/or verbally abusive, demeaning or degrading of any employee.

¹¹⁴ The Law Society's Accommodation Policy and Procedures recognizes the Law Society's duty to accommodate employees and provides procedures to request and determine reasonable accommodations.

¹¹⁵ In October 2001 the Purchasing Policy was modified to include an equity compliance program (See Recommendation 16, Contract Compliance, for further information on the Law Society's Purchasing Agreement).

¹¹⁶ The Personal Days Policy, effective September 4, 2001, provides for 3 personal days per calendar year. Personal day uses include absences for religious observances, illness, injury or medical emergency of the employee, death, illness, injury or medical emergency of a listed family member and urgent matter concerning a listed family member. Family members are: employee's spouse or same-sex partner, a parent, step-parent or foster parent of parent or spouse or same-sex partner of employee; a child, step-child or foster child of the employee, employee's spouse or the employee's same-sex partner; a grandparent, step-grandparent, grandchild or step-grandchild of the employee, the employee's spouse or the employee's same-sex partner, the spouse or same-sex partner of a child of the employee, the employee's brother or sister; and a relative of the employee who is dependent on the employee for care or assistance.

The Business Dress Policy, effective September 4, 2001, states that religious and cultural observances are respected.

¹¹⁷ The Compensation for Hours of Work Policy, effective September 4, 2001, establishes standard weekly hour of work and provides a framework for part-time hours, flexible work hours, regular attendance and punctuality.

¹¹⁸ Under the Leaves of Absence and Vacation policy, effective September 4, 2001, employees shall be granted up to three days leave of absence with pay in the event of the death of a family member. Employees are granted one day leave of absence with pay to attend the funeral of any close friend or relative not defined as a family member.

Family members are: employee's spouse or same-sex partner; a parent, step-parent or foster parent of parent or spouse or same-sex partner of employee; a child, step-child or foster child of the employee, employee's spouse or the employee's same-sex partner; a grandparent, step-grandparent, grandchild or step-grandchild of the employee, the employee's spouse or the employee's same-sex partner, the spouse or same-sex partner of a child of the employee, the employee's brother or sister; and a relative of the employee who is dependent on the employee for care or assistance.

- l. Maternity Leave Policy;¹¹⁹
- m. Bencher/Staff Relations policy.¹²⁰

Advisors Appointed under the Harassment and Discrimination Policy

- 223. Advisors are appointed under the policy on preventing and responding to harassment and discrimination to assist employees by answering questions about harassment and discrimination, explaining the harassment and discrimination policy, outlining options available to employees, helping employees with the implementation of a remedy and helping employees document a complaint for investigation. The membership of the advisor group is diverse. The group is composed of employees with various levels of experience, who work in different departments and units of the Law Society and, to the extent possible, are of differing age, race, ethnic origin, family status, sexual orientation, and religion, as well as individuals with disabilities.
- 224. The advisors attend a three-day training session on how to address issues of harassment and discrimination in the workplace, and meet every two months to discuss ongoing issues. The advisors report statistical information about incidents to the Equity Advisor and the Director of Human Resources. The statistical information assists the Human Resources Department, in cooperation with the Equity Advisor to identify educational needs for employees.

Training Programs for Employees

- 225. As part of the commitment to promoting diversity and equity, all employees attend training sessions to assist them in being more culturally sensitive in dealing with each other and with persons from diverse backgrounds who need the Law Society's assistance. For example, all new employees undergo training for the prevention of harassment and discrimination, including special additional training for managers.
- 226. Staff members also receive support materials that include appropriate language guidelines policies that support the provision of French language services and tools that help them communicate more effectively with persons with disabilities.
- 227. All new employees attend an orientation session, which includes information regarding the Law Society's equity initiatives and programs and contact information from the advisors appointed under the harassment and discrimination policy.

Proposed Strategy

- 228. There is insufficient empirical evidence to demonstrate whether the Law Society has implemented Recommendation 15.
- 229. The Law Society has adopted processes and policies that promote equity and diversity within the workplace such as recruitment practices that encourage applications from equality-seeking, Aboriginal and Francophone individuals; internal policies that encourage an inclusive workplace environment; and a successful training program for its workforce.
- 230. The Law Society has been successful in hiring and promoting women. However, it does not have a program by which employees self-identify on a voluntary basis. Therefore, it does not have statistical information about the diversity of its workforce.¹²¹ This is of particular concern for an organization that strives to be a

The Policy also provides for extended leave during the grieving process.

¹¹⁹ The Maternity Leave Policy, effective July 2000, provides that female employees on maternity leave will be eligible to receive 93% of salary for seventeen weeks, subject to a 12 month period of employment before the employee qualifies for leave.

¹²⁰ The Bencher/Staff Relations Policy establishes procedures to address complaints of harassment and/or discrimination against a bencher.

¹²¹ Rotiio>taties observes that the Law Society has only one or two Aboriginal employees on its staff. It is not obvious that the Law Society has done any significant work in implementing this recommendation. There is no

leader in the promotion of equity and diversity. Statistical information is a fundamental tool in assessing whether there is equality in the workplace. Information should be consistently gathered and maintained on those employed by department and rank, and about promotion and retention of staff from Francophone, Aboriginal and equality-seeking communities. The Law Society's commitment to equality in the workplace is adversely affected by the lack of formulated strategies to promote equality.

231. The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
- a. The CEO should compile data on the diversity of the workforce of the Law Society and develop strategies to promote equality in the workplace.
 - b. The CEO or designate should provide an in person annual report to the Equity and Aboriginal Issues Committee regarding the implementation status of equality in the workplace initiatives.

Recommendation 16: Law Society as a Contractor for Legal Services

The Law Society should:

- (a) Develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession; and
- (b) Examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.

Initiatives Adopted by the Law Society

232. In October 2001, the Senior Management Team of the Law Society approved the Law Society's Purchasing Policies and Procedures (the Purchasing Policy). The Purchasing Policy was modified to include an equity compliance program. The Equity Compliance Program states that: "Convocation has undertaken that individuals and organizations representative of Francophone, Aboriginal people and equality-seeking communities have access to appropriate services, and are able to participate in the planning, development and delivery of services directly provided, purchased and contracted by the Law Society."
233. The Purchasing Policy envisions the initiation of activities leading to the development of increased representation of equality-seeking communities as suppliers, without sacrificing operational requirements, best value, prudence, and sound contracting management.
234. Notwithstanding its Purchasing Policy, the Law Society has not been successful in implementing an effective contract compliance program.

Proposed Strategy

235. The Law Society has made little progress in the implementation of this recommendation and the Working Group is of the view that it should implement a contract compliance program as described below.
236. Current procedures for the procurement of goods and services vary considerably within the organization. The flexibility has led to inconsistency, coupled with very limited adherence to equity. When suppliers are chosen directly by individual departments it becomes more difficult to identify inadvertent patterns of exclusion or missed opportunities to diversify. Heightened attention to diversity is consistent with continued concern for cost, quality of the product/services and delivery options.
237. Although the Senior Management Team has articulated an Equity Compliance Policy to guide the Law Society's purchasing practice, employees involved in the process are not always aware of the policy. The contract compliance process should be designed to respond effectively to the range of service-providers who contract with the Law Society.

information available to assess the progress made. Rotiio>taties recommends that the Law Society begin to target recruitment within the Aboriginal community for mid and senior level positions across the organization.

238. The Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society (as approved by Convocation March 22, 2001) cites as one of the conditions of retainer that all outside counsel retained by the Law Society “shall be in compliance with the Law Society’s contract compliance policy as in force from time to time.” However, a contract compliance policy is not outlined in the document. The Law Society does not maintain information about Counsel’s self-identification based on the grounds enumerated in human rights legislation.
239. Recommendation 16 notes that the Law Society should develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession. The Law Society has not developed such guidelines.
240. Recommendation 16 also provides that the Law Society should examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements. The Law Society has not examined the value of requiring firms and organizations to meet equity and diversity requirements.
241. The Equity and Aboriginal Issues Committee should examine the following strategies and, if required, make recommendations to Convocation:
- a. The CEO should report to Convocation by the end of 2004 with respect to:
 - i. The implementation of a contract compliance program for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession.
 - ii. A provision by which law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession.
 - iii. A provision by which suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.

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

- (1) Copy of the *Bicentennial Report* (May, 1997). (Appendix 1, pages 103 – 148)
- (2) Copy of EAG, Rotiio>taties and AJEFO submissions. (Appendix 2, pages 149 – 164)
- (3) Copy of the Handidactis Report. (Appendix 3, pages 165 – 168).

REPORT OF THE FINANCE & AUDIT COMMITTEE

Re: J. Shirley Denison Fund Report (in camera)

It was moved by Mr. Ruby, seconded by Mr. Chahbar that Convocation approve the payments from the J. Shirley Denison Fund.

Carried

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Disclosure of Prior Invitations to Attend to the Proceedings Authorization Committee

Mr. Cherniak presented the Report of the Professional Regulation Committee.

Professional Regulation Committee
January 22, 2004

Report to Convocation

Purposes of Report: Decision and Information

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

OVERVIEW OF POLICY ISSUE

PROPOSED AMENDMENT TO POLICY ON CONFIDENTIALITY OF PRIOR INVITATIONS TO ATTEND IN INFORMATION TO THE PROCEEDINGS AUTHORIZATION COMMITTEE

Request to Convocation

1. Convocation is requested to approve an amendment to the confidentiality policy with respect to information to the Proceedings Authorization Committee (“PAC”) about prior Invitations to Attend (“ITAs”) of members that would permit reference to a member’s history of ITAs, if any, in material submitted by staff or other investigators to the PAC. The amendment would permit reference to a member’s history of ITAs, where PAC is considering whether an ITA is appropriate.

Summary of the Issue

2. The ITA is a procedure that may be ordered by PAC at its discretion upon its review of a matter, pursuant to PAC’s authority in section 9 of By-law 21. ITAs are conducted by PAC.
3. The ITA is not a disciplinary proceeding. It does not form part of a member’s discipline record and will not be disclosed to Hearing Panels or the public. However, Law Society regulatory staff keep a record of a member’s history of ITAs.
4. On January 23, 1998, Convocation determined that reference to a member’s history of ITAs should not be included in material submitted by staff or other investigators to the PAC. The Committee, based on a request from PAC, is recommending that this policy be amended to permit Law Society staff or other investigators to advise PAC of a member’s history of ITAs.
5. The Committee agreed with PAC that the inability to receive information about past ITAs in material submitted to PAC or in material submitted to Benchers conducting an ITA impedes the ability to use the remedy of the ITA most effectively. The concern is that a member could attend a number of ITAs based upon similar complaints, demonstrating multiple situations in which the member used poor judgment. In these circumstances it is questionable whether an additional ITA is the most appropriate remedy for this member. Under the current policy, PAC may not be advised of this history when considering whether to issue an ITA, rather than taking some other action.
6. As the Law Society has a responsibility to respond appropriately to the conduct of members who repeatedly breach the Rules of Professional Conduct, even where the breaches are of a more minor nature, the Committee is requesting that the policy be amended.

THE REPORT

Terms of Reference/Committee Process

7. The Committee met on January 8, 2004. Committee members in attendance were Todd Ducharme (Chair), Carole Curtis (Vice-Chair), Mary Louise Dickson, Anne Marie Doyle, Sy Eber, Gordon Finlayson, Patrick Furlong, Allan Gotlib, Ross Murray, Tracey O'Donnell (by telephone) and Laurie Pattillo. Staff in attendance were Naomi Bussin, Lesley Cameron, Katherine Corrick, Zeynep Onen, Jim Varro and Andrea Waltman.
8. The Committee is reporting on the following matters:

For Decision

- Proposed Amendment To The Policy On Confidentiality Of Prior Invitations To Attend In Information To The Proceedings Authorization Committee

Information

- Proposed Amendments to the Rules of Professional Conduct on Conflicts of Interest Respecting a Lawyer's Sexual Relationship with a Client
- Report from the Professional Regulation Division

PROPOSED AMENDMENT TO POLICY ON CONFIDENTIALITY OF PRIOR INVITATIONS TO ATTEND IN INFORMATION TO THE PROCEEDINGS AUTHORIZATION COMMITTEE

A. INTRODUCTION

9. The Proceedings Authorization Committee ("PAC") identified a concern about the current invitation to attend ("ITA") process that it believes requires a change in policy. This concern has also been identified by Law Society staff.
10. The Convocation policy on ITAs imposes a strict blanket of confidentiality surrounding the ITA process, in that no reference to past ITAs may be made in materials submitted to PAC or in materials submitted to Benchers conducting an ITA. PAC's view, with which the Committee agrees, is that this impedes the ability to use the remedy of the ITA most effectively.
11. ITAs are generally authorized in situations where a Conduct Application is not warranted but the member has used poor judgment. The concern is that some members could attend a number of ITAs based upon similar complaints, demonstrating multiple situations in which the member used poor judgment. In these circumstances it is questionable whether an additional ITA is the most appropriate remedy for this member. Although this pattern of behaviour would be known to Law Society staff, PAC cannot be advised of this history pursuant to the current policy when considering whether to authorize an ITA, rather than taking some other action.
12. The Law Society must respond appropriately to the conduct of members who repeatedly breach the Rules of Professional Conduct, even where the breaches are of a more minor nature. For this reason, the Committee is requesting that the policy be amended.

B. THE JURISDICTION FOR AND POLICIES RELATED TO AN ITA AND THE ITA PROCESS

Legislative Authority

13. Section 36 of the Law Society Act sets out the authority for an ITA that is conducted by a Hearing Panel in the context of a Conduct Application, as follows:

- (1) If an application has been made under section 34 [Conduct Application], the Hearing Panel may invite the member or student member in respect of whom the application was made to attend before the Panel for the purpose of receiving advice from the Panel concerning his or her conduct.
 - (2) The Hearing Panel shall dismiss the application if the member or student member attends before the Panel in accordance with the invitation.
14. ITAs outside of the hearing context, such as those conducted by PAC, are authorized by By-law 21 – Proceedings Authorization Committee, Section 9, which reads as follows:

Review of matters

9. (1) After reviewing a matter, the Committee may determine that no action should be taken in respect of the matter or, subject to subsections (2) to (4), the Committee may take one or more of the following actions:

1. Approve, or give directions for, the informal resolution of the matter.
2. Authorize the Society to apply to the Hearing Panel for a determination of whether,
 - i. a member or student member has contravened section 33 of the Act,
 - ii. a member or student is or has been incapacitated, or
 - iii. a member is failing or has failed to meet standards of professional competence.
3. *Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her conduct.*
- 3.1 *Invite a member to attend before a panel of benchers to receive advice concerning his or her professional competence.*
4. Send to a member or student member a letter of advice concerning his or her conduct.
- 4.1 Send to a member a letter of advice concerning his or her professional competence.
5. Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.
6. Any other action that the Committee considers appropriate.

[Emphasis added]

Restriction on authorization of conduct proceedings

(2) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member or student member has contravened section 33 of the Act unless the Committee is satisfied that there are reasonable grounds for believing that the member or student member has contravened section 33 of the Act.

Restriction on authorization of capacity proceedings

(3) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member or student member is or has been incapacitated unless the Committee is satisfied that there are reasonable grounds for believing that the member or student member is or has been incapacitated.

Restriction on authorization of professional competence proceedings

(4) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member is failing or has failed to meet standards of professional competence unless the

Committee is satisfied that there are reasonable grounds for believing that the member is failing or has failed to meet standards of professional competence.

15. Prior the amendments to the Law Society Act, effective February 1999, the authority for the ITA was included in Regulation 708 under the Act, the relevant part of which read as follows:
 10. Where there comes to the notice of the Society, as a result of a preliminary investigation by the Secretary or otherwise, information that indicates that a member may have been guilty of a minor breach of discipline or that indicates that there is a possibility that conduct may result in a breach of discipline, the Committee or the chair or vice-chair may direct the Secretary, without any formal complaint being completed and filed, to invite the member to appear before the Committee to enable it to make an informal investigation of the matter, and the Committee, in addition to any of its other powers, may after such informal investigation advise the member with respect to the matter.

Reference to the Committee in s. 10 above is to the Discipline Committee.

Relevant Convocation Policies on ITA Confidentiality

16. Convocation has determined on a number of occasions that ITAs are strictly confidential. In summary, Convocation has determined that no reference to ITAs may be made
 - a. in the reasons of hearing panels,
 - b. by Discipline Counsel,
 - c. in material submitted to PAC, or
 - d. in material submitted to the Benchers conducting the ITA.
17. The confidentiality issue has been discussed by Convocation on three different occasions. From the transcripts of the debates at Convocation, it is clear that there were differing views on this issue:
 - a. On June 6, 1997, Convocation (sitting as a Discipline Convocation) determined that no reference to an ITA should be made in the reasons of hearing panels or by Discipline Counsel;
 - b. On June 27, 1997, Convocation debated whether the fact of an ITA should be included in the reasons of hearing panels in current discipline matters based on relevance of the issue(s) in the ITA to the current matter, in the limited case where the ITA arose from the withdrawal of a formal discipline charge at the hearing. Convocation answered the question in the negative.
 - c. On January 23, 1998, Convocation determined that reference to a previous ITA should not be included anywhere in material submitted by staff or other investigators to the discipline authorization committee (now PAC). This would also apply to materials prepared for an ITA itself. However, the current practice of staff recording the occurrence of an ITA was to be continued. Otherwise, no change was made to the June 1997 policy of Convocation respecting information about ITAs at the hearing level. At that time, Convocation rejected a suggestion that the test for including information to PAC about a prior ITA be the relevance of the issue in the prior ITA to the conduct being reviewed.

The ITA Process

18. ITAs pursuant to s. 36 of the Law Society Act, referred to above, are conducted by the Hearing Panel upon the member's acceptance of the invitation to attend. The conduct application is then dismissed. The fact of the ITA is a matter of public record as the Hearing Panel will note that the conduct application is dismissed as a result of the member's acceptance of the ITA.
19. When an ITA is authorized by PAC pursuant to By-Law 21, the following is the usual procedure:
 - The member is notified in writing of the ITA, and is invited to attend on a specific date before PAC
 - The complainant is notified in writing that the member has been invited to attend at the Law Society with respect to the issue arising from the complaint that led to the ITA, and that this will conclude the matter

- If the member accepts the invitation, the ITA is conducted by PAC and the matter is concluded
- A letter is sent to the member confirming that matter is concluded by the ITA.
- The fact of the ITA is noted on the member's record with the Society, but does not form part of the member's discipline record and is not disclosed if an inquiry is made about the member's past discipline.
- The fact of the ITA is recorded, with particulars, in a record maintained by the Regulatory Division in a designated ITA file.

20. Appendix 1 contains additional information relating to the above process, including sample letters to members and complainants advising them of the process.

C. DISCLOSURE OF ITAS TO PAC – PROS AND CONS

21. As indicated above, the Committee's view is that in order to address concerns about the conduct of members who attend multiple ITAs, PAC needs to know about them. Disclosure of this information to PAC would require a change in Convocation policy.
22. The Committee noted a number of pros and cons that informed its discussion of this issue. The pros and cons identify the competing interests of protection of the public and procedural fairness. The issue is whether PAC's need to have the information outweighs the issues of fairness involved in disclosure.

Pros

23. The pros relate to the key regulatory role of the Law Society, and its public interest governance mandate. They include the following:
- a. PAC is analogous to the complaints committees found in the structures of other regulatory bodies, and should receive all relevant information about a member before making a decision on a matter referred to it.
 - b. From the perspective of protection of the public, the fact of a prior ITA, if relevant to a subsequent fact situation involving an issue of alleged professional misconduct, is something PAC should know, before deciding if (another) ITA is the appropriate disposition.
 - c. It is reasonable and relevant to draw inferences respecting the conduct of a lawyer from the fact of prior ITAs when combined with the conduct that preceded them.
 - d. If the policy is changed, members will understand that PAC will have knowledge of prior ITAs should a matter arise in the future. This will eliminate the fairness concerns for ITAs conducted from this point forward.

Cons

24. The cons relate primarily to what may be considered issues of procedural fairness in the Law Society's administration of its discipline process. They include the following:
- a. PAC may be likened to a Justice of the Peace before whom an information based on criminal conduct is sworn. If so, it should base a decision on the merits of the case presented in the authorization memo without knowledge of the member's prior "record";
 - b. Fairness issues arise if decisions made by PAC that trigger the discipline process are based on information that is different from the information reviewed by Hearing Panels and from the information on which their decisions are based;
 - c. Fairness issues also arise as a result of the impact of the change in policy on members who have an ITA history and members who do not. The presumption is that members with an ITA history understood that this history will not form part of the information reviewed by PAC on a subsequent occasion, unlike members with no ITA history who are subject to an ITA after the change in policy, who would have notice that prior ITAs will be considered by PAC on a new matter before it.
 - d. It can be argued that no clear inferences respecting the conduct of a lawyer can be drawn from the fact of an ITA;
 - e. ITAs are not penal in nature;

- f. ITAs are not part of the discipline process and should not be regarded as prior discipline; and
- g. Each case must be weighed on its own merits. Previous ITAs are not evidence of a new offence. PAC may know about previous ITAs and authorize a Conduct Application rather than another ITA, but Discipline Counsel would not be permitted to advise the Hearing Panel of any previous ITAs. This has implications for the prosecutions of these more minor cases.

D. WEIGHING OF PROS AND CONS AND THE COMMITTEE'S POSITION

25. In the Committee's view, the cons are outweighed by the importance of the Law Society's regulatory role. The Committee believes that fairness will not be breached by amending the confidentiality policy and allowing PAC access to information about a member's prior ITAs, for the following reasons:
- a. PAC is engaged in regulatory activities that are distinct from the criminal proceedings in which a Justice of the Peace swears an information. Law Society proceedings are administrative rather than criminal or quasi-criminal proceedings.
 - b. A pattern of behaviour is important information for PAC to know, given its specific responsibilities in the regulatory process.
 - c. The fact that PAC knows of previous ITAs will not change their nature. The ITA will remain a remedy that is not penal or disciplinary. PAC will not consider past ITAs to be past discipline, but rather an indication of a pattern of behaviour that is important for PAC to know in its regulatory role.
 - d. PAC must apply the test in s. 9(2) of By-Law 21 when deciding whether to authorize a Conduct Application in respect of a member (i.e. it must be "satisfied that there are reasonable grounds for believing that the member or student member has contravened section 33 of the Act"), including a matter involving a member who has a history of several ITAs.

Summary

26. If prior ITAs are disclosed to PAC, PAC's ability to make a determination on whether a Conduct Application or some other action should be authorized based upon a pattern of similar behaviour will be enhanced, as the information will now include evidence of a pattern of conduct that resulted in a number of ITAs.
27. The amendment to the policy as described above will not affect the prosecution of subsequent offences (i.e. matters authorized as Conduct Applications) and the concurrent discipline history that will be established, as Hearing Panels cannot be advised of prior ITAs even if PAC is aware of them.
28. The ITA will continue to be a final disposition of the complaint against the member, and will not appear on a member's disciplinary record that is available to the public.

INFORMATION

PROPOSED AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT* ON CONFLICTS OF INTEREST RESPECTING A LAWYER'S SEXUAL RELATIONSHIP WITH A CLIENT

29. The Committee has approved the policy basis and the text of a new rule of professional conduct and commentary within the rules on conflicts of interest on the subject of lawyer's sexual relationship with clients. The recommendation is that there be an absolute prohibition on sexual relationships between lawyers and clients, with a limited exception for relationships that pre-date the lawyer and client relationship.
30. The Committee's policy report, which includes the proposed amendments, is provided to Convocation this month for information. The Committee, following discussions between the chair and the Treasurer, has decided to make the report available to the profession for comment. Following Convocation, the Committee will be issuing a call for input on the proposals through the Society's website and in the Ontario

Reports, and notifying the profession of the report's availability through the Law Society's website or Customer Service Centre. Responses will be requested by the end of March 2004.

31. After reviewing the responses to the call for input, the Committee will prepare a report requesting Convocation's consideration of the proposals. It is anticipated that this report will be presented to May 2004 Convocation.
32. The proposed wording of the new rule and commentary, which are located under rule 2.04 on conflicts of interest (amendments are shown in bold/strike-out), appears below, followed by the policy report.

2.04 AVOIDANCE OF CONFLICTS OF INTEREST

Definitions

2.04 (1) In this rule

a "conflict of interest" or a "conflicting interest" ~~means~~ includes an ~~interest~~

- (a) an interest that would be likely to affect adversely a lawyer's judgment on behalf of, or loyalty to, a client or prospective client, ~~or~~
- (b) an interest that a lawyer might be prompted to prefer to the interests of a client or prospective client, or
- (c) a sexual relationship between a client and a lawyer handling the client's work.

"sexual relationship" means a relationship between a lawyer and a client or prospective client where

- (a) there is sexual intercourse,
- (b) a lawyer touches the client's or prospective client's sexual or other intimate parts for the purpose of arousing or satisfying the sexual desire of the lawyer, client, or prospective client, or
- (c) a client or prospective client touches the lawyer's sexual or other intimate parts for the purpose of arousing or satisfying the sexual desire of the lawyer, client or prospective client.

Avoidance of Conflicts of Interest

- (2) A lawyer shall not advise or represent more than one side of a dispute.
- (3) A lawyer shall not act or continue to act in a matter where there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

Sexual Relationships between Lawyer and Client

- (3.1) Where there is a sexual relationship between a client and a lawyer handling the client's work, the lawyer shall not act or continue to act in a matter unless,
 - (a) the sexual relationship came before any lawyer and client relationship, and
 - (b) after disclosure adequate to make an informed decision, the client or prospective client consents.
- (3.2) A lawyer shall not have a sexual relationship with a client or prospective client unless the sexual relationship came before any lawyer and client relationship.

Commentary

A sexual relationship combined with a lawyer and client relationship is always problematic, even when the sexual relationship is consensual, loving, and caring. The lawyer's devotion and emotional involvement with the client may interfere with the lawyer's fiduciary duties, independent professional judgment, ability to provide competent legal services, and responsibilities to the courts, the public, and other lawyers. The sexual relationship creates an interest that conflicts with and potentially undermines, a lawyer's duty to provide objective, disinterested advice. (It should be noted, however, that there is no conflict of interest if another lawyer of the firm who does not have a sexual relationship with the client is the lawyer handling the client's work.) The existence of a sexual relationship may

interfere with the lawyer's obligation to hold in strict confidence all information concerning the client's business and affairs, since the sexual relationship obscures whether the information was acquired in the course of the professional relationship, which is a factor in determining whether the information is confidential and protected by lawyer and client privilege. Conversely, the existence of a lawyer and client relationship frequently creates circumstances where the lawyer may have considerable power over a client, who may be vulnerable and dependent, and these circumstances may be abused by the lawyer taking advantage of the client for the purposes of initiating or agreeing to a sexual relationship. In some circumstances, the power imbalance may undermine the client's ability to truly consent to a sexual relationship.

The definition of conflict of interest in rule 2.04 (1) and rules 2.04 (3.1) and (3.2) recognize that a sexual relationship is a type of conflict of interest. These rules regulate this conflict of interest by differentiating two situations. The first situation is where the sexual relationship is in existence before the lawyer and client relationship begins. An example of the first situation would be a retainer where a lawyer is retained by his or her spouse with whom there is a consensual sexual relationship. The lawyer may act in this situation provided that the client provides an informed consent to the lawyer acting notwithstanding the lawyer's conflict of interest.

The second situation is where there is no pre-existing sexual relationship between the lawyer and his or client. In the second situation, rule 2.04 (3.2) prohibits a lawyer from initiating or agreeing to a new sexual relationship with a client or prospective client. However, should a sexual relationship develop, then, pursuant to rule 2.04 (3.1), the lawyer handling the client's work cannot act or continue to act. It may be noted that where there is no pre-existing sexual relationship, a client cannot consent to a lawyer acting or continuing to act if a sexual relationship develops.

Where the client is an organization, which includes corporations, partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies, and sole proprietorships, the rules about sexual relationships between a client or prospective client apply as between the lawyer handling the client's work and any representative of the organization who instructs or could instruct the lawyer on behalf of the organization.

A. INTRODUCTION

33. In September 1999, the Committee struck a working group to review the professional conduct issues that arise in the context of a sexual relationship between a lawyer and a client. This working group¹ assumed responsibility for this issue from a previous working group that had completed substantial work on the subject but was unable to continue because of internal staff moves and benchers reassignments.
34. The working group prepared a discussion paper for the Committee's review, which began in the fall of 2003.
35. The question may be asked, why now? It has also been observed recently that the time has come to take a harder look at conduct which for many years has been minimized or ignored, given society's growing understanding of fiduciary relationships and expectations of professionals.² Across professions and jurisdictions, professional bodies have been forced to consider the implications of sexual relations with clients within the parameters of professional ethics.
36. There appears to be some confusion as to the appropriate boundaries to be set between lawyers and clients in their relationships. This confusion is a significant concern given the range of fundamental ethical issues raised in these relationships. It is the view of the Committee that the issues raised by relationships of this nature are important ones on which the profession requires clear direction from the Law Society. The Committee noted that two Canadian law societies have included specific reference to this subject in their rules of conduct. A number of American jurisdictions also have rules directly on point. These were compelling factors for the Committee.

¹ The working group included benchers Carole Curtis (chair), former lay benchers Stephen Bindman, Gavin MacKenzie, staff member Jim Varro, and former staff member Glenn Stuart.

² *Adams v. Law Society of Alberta*, 2000 ABCA 240, at para. 27.

37. The information reviewed by the Committee in preparing this report, including case law (other than that referred to in the body of report), literature and other background material, is summarized in Appendix 2.
38. The Committee is indebted to the former working group for commencing a wide-ranging background review that included compiling relevant cases and other information on the subject, which assisted the subsequent working group with its study. The Committee also wishes to acknowledge the work of and to thank former Law Society discipline counsel, Glenn Stuart, whose intricate analysis of the various issues related to this subject was of invaluable assistance in framing this report, and Paul Perell, who worked with the Committee in drafting the new rules and commentary.

B. DEFINING THE ISSUES

39. The issues examined by the Committee are distinguished from the broader subject of sexual misconduct by lawyers. At the risk of oversimplification, the existing rule 5.03³ regarding sexual harassment applies to a

³ The rule reads:

5.03 SEXUAL HARASSMENT

Definition

5.03(1) In this rule, sexual harassment is one incident or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

- (a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the recipient(s) of the conduct,
- (b) when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services,
- (c) when submission to such conduct is made implicitly or explicitly a condition of employment,
- (d) when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files, matters of promotion, raise in salary, job security, and benefits affecting the employee), or
- (e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

Commentary

Types of behaviour that constitute sexual harassment include, but are not limited to,

- (a) sexist jokes causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that are by their nature clearly embarrassing or offensive,
- (b) leering,
- (c) the display of sexually offensive material,
- (d) sexually degrading words used to describe a person
- (e) derogatory or degrading remarks directed towards members of one sex or one's sexual orientation,
- (f) sexually suggestive or obscene comments or gestures,
- (g) unwelcome inquiries or comments about a person's sex life,
- (h) unwelcome sexual flirtations, advances, or propositions,
- (i) persistent unwanted contact or attention after the end of a consensual relationship,
- (j) requests for sexual favours
- (k) unwanted touching,
- (l) verbal abuse or threats, and
- (m) sexual assault

Sexual harassment can occur in the form of behaviour by men towards women, between men, between women, or by women towards men.

range of conduct where it is contended that the conduct is not consensual or welcome. As will be noted below, there is an issue as to the validity of a client's consent to sexual relations within a solicitor-client relationship or certain solicitor-client relationships. However, apart from that issue, rule 5.03 would not apply to relationships or sexual activity that is ostensibly (or actually) consensual. Consequently, the Committee focussed on these relationships and the ethical issues that lawyers may face when intimately involved with clients in a relationship the lawyer will describe as "consensual".

40. Part of the concern around sexual relations between lawyers and clients arises from an increasing awareness of situations involving male lawyers exploiting the influence arising from their professional relationships with female clients to initiate sexual relations. In some circumstances, the power imbalance between male lawyers and their female clients may undermine the woman's ability to truly consent to these sexual relations. Where these circumstances exist, this conduct reinforces and perpetuates the inequality of women in our society⁴. While these situations do not exhaust the gamut of sexual relations between lawyers and clients, any rule of conduct must be cognizant that these situations do exist. Thus, it is important that any regulatory response to the issue of sexual relations between lawyers and clients be sensitive to the equality concerns which can arise in particular cases. A response which fails to address these concerns fails to exercise the regulatory function of the Law Society in accordance with its stated commitment to substantive equality for women and the values underlying s. 15 of the Charter.
41. Given the historical experience, reference will often be made in this report to lawyers involved in sexual relations as male, and clients as female. This is not to suggest that sexual relations cannot occur between female lawyers and male clients or lawyers and clients of the same gender. However, it does reflect the overwhelmingly historical experience in those cases where the relationship has been in issue.
42. The Committee examined the following questions:
 - a. Should there a rule be adopted establishing a prohibition against lawyers' intimate or sexual involvement with clients in all or some situations? In other words, should there be a rule requiring lawyers to terminate the lawyer/client relationship if they become involved in an intimate or sexual relationship with a client?
 - b. If a rule should be adopted, should it prohibit sexual relations in all lawyer/client relationships, or only certain enumerated categories of these professional relationships?
 - c. Are there circumstances where, apart from the particular nature of the lawyer/client relationship, a lawyer and client should be permitted to continue with a sexual relationship?

C. DEFINITION OF "SEXUAL RELATIONS"

43. The first issue to be addressed is what is meant by the phrases "sexual relations" and "sexual relationship". Considering the experience in other jurisdictions and similar rules, the preferred approach appears to be a definition which includes a broad range of conduct, either by general terms or extensive examples, but which is framed in neutral terms to ensure that the policy considerations underlying the rule are addressed in the rule and not in the definitions. Within this scope, there are a number of specific factors that need to be accounted for in the definition: just how much "contact" is required for sexual relations? Is physical contact even required for "sexual relations" to occur? Is there a minimum duration for which the "relations" must continue to fall within the definition? In other words, does a single, brief, incident involving the touching of another's "intimate parts" constitute sexual relations?

Prohibition on Sexual Harassment

- (2) A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.

⁴ The nexus between gender inequality and both sexual harassment (*Janzen v. Platy*, [1989] 1 S.C.R. 1252) and sexual assault (*R. v. Mills*, [1999] 3 S.C.R. 668) is now well-established in the jurisprudence of the Supreme Court of Canada. It follows that there is a similar nexus between an exploitative relationship between two individuals, one of whom is a man in a markedly more powerful position than the woman.

44. The Committee concluded that the definition of “sexual relations” adopted in North Carolina was very helpful and concluded that it would be appropriate to adopt it here. It defines “sexual relations” to include “(1) sexual intercourse; or (2) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.”

D. POLICY CONSIDERATIONS

45. The over-arching questions are whether the relationship with the client will affect to the detriment of the client how the lawyer conducts himself or herself as the legal adviser to the client and whether or not the relationship will impinge on the lawyer’s professional duties to the courts, the public and other lawyers. Several issues arise in this context.

Conflict of Interest

46. One of the clearest ethical issues which arises from sexual relations between lawyers and clients is the conflict of interest created. Rule 2.04(1) broadly defines a “conflict of interest” to mean either an interest that would be likely to affect adversely a lawyer’s judgment on behalf of, or loyalty to, a client or an interest that a lawyer might be prompted to prefer to the interests of a client. Sexual relations between lawyers and clients clearly fall within this definition. The sexual relationship creates an interest that competes with, and potentially undermines, a lawyer’s duty to provide objective, disinterested advice. This conflict arises regardless of the degree of the imbalance of power within the professional relationship or the nature of the sexual relationship.
47. Once a conflict exists, the issue becomes what consequences flow from this inherent conflict. The general principle captured in rule 2.04(3) is that the conflict is not problematic if the client consents after the lawyer makes adequate disclosure to permit an informed decision to be made. The central question is whether, on a very human level, the requisite level of objective decision-making is possible in the sexual context. To suggest that it is seems to suggest super-human behaviour from persons who have, understandably, demonstrated themselves to be subject to very human emotions. And when will this disclosure and waiver take place? Will the lawyer be reviewing the possible conflict problems, the potential impact on lawyer-client privilege and the likely impact on the lawyer’s objectivity while perched on the side of the bed?⁵ The result is untenable.
48. The existing Rules recognize that certain relationships between lawyers and clients possess dynamics that can interfere with the ability of the client to truly agree to the relationship. To this end, rule 2.06 imposes higher obligations where a lawyer is doing business with a client. These obligations culminate in a prohibition on lawyers borrowing directly from a client. The provisions which impose this requirement serve to acknowledge that the client cannot be expected to objectively and freely transact business with his or her own lawyer. That is, there is a recognition of the natural propensity of a client who places her or his trust in the lawyer to go along with the lawyer’s suggested course of action or help the lawyer out. This does not mean that the relationship is intentionally exploitative; however, it does mean that the positive features of the lawyer-client relationship -- trust and a dependence on the competent advice of the lawyer -- create an environment where a client would be disposed toward accepting the suggestion of the lawyer either in regard to financial or sexual matters.⁶
49. A strict approach to sexual relations can also be justified by a consideration of the potential consequences to a lawyer’s other duties. It is not difficult to envision a situation where a sexual relationship may operate

⁵ The issue has not escaped question by both courts and commentators. As noted by Margit Livingston in “When Libido Subverts Credo: Regulation of Attorney-Client Sexual Relations” (*Fordham Law Review*, Vol. 62, 1993) at p. 18: “One court considered the waiver possibility rather far-fetched, noted “[w]e need not concern ourselves with a bizarre hypothesis that leads to the absurd.” In other words, it is unrealistic to expect that a lawyer and a client in the thrall of sexual passion would be able to sit down and discuss the possible conflict of interest problems engendered by their sexual affair ultimately reducing the client’s waiver to writing.”

⁶ *Adams v. Law Society of Alberta*, 2000 ABCA 240, at para. 26.

to cause the lawyer's personal loyalty to the client, beyond the professional loyalty, to improperly supersede competing professional duties, including the duty to other lawyers and the duty to the court.

Confidentiality

50. Confidentiality has been recognized by the Law Society repeatedly as being of the utmost importance to the lawyer-client relationship. The Law Society's criticisms of integrated multi-disciplinary partnerships focus heavily on the risks which those organizations ostensibly present for the preservation of lawyer-client privilege.
51. A consensual intimate relationship between lawyer and client presents risks which are, at a minimum, equal to those presented by a multi-disciplinary relationship. To the extent that confidentiality (and privilege) does not extend beyond information provided in the course of the lawyer-client relationship, a distinction must be drawn between information conveyed to the lawyer as lawyer and the lawyer as lover. This creates a situation where the confidentiality could be construed as having been waived because the information has been provided in a non-professional capacity. Even in the best of circumstances for the lawyer, a significant risk of prejudice to the client's right to confidentiality is generated by the sexual relationship.

Breach of Fiduciary Duty

52. Trust is fundamental to the relationship between lawyer and client⁷. It is a result of the fiduciary foundation of the lawyer-client relationship that clients, often in extreme personal circumstances, entrust their personal confidences and well-being to their lawyer. While the level of reliance created by this trust may vary by the nature of the retainer, the client invariably relies on the lawyer's judgment and integrity because the lawyer has knowledge of, and access to, the legal system, which the client lacks without the lawyer's assistance.⁸ This reliance puts the lawyer in a position of power over clients. It is consequently fundamental to the lawyer's obligations to a client that the lawyer will act in the client's best interests, and not act to the disadvantage of the client for the benefit of the lawyer's personal interest.
53. Because the lawyer stands in a fiduciary relationship with the client, an unsolicited sexual advance by the lawyer debases the essence of the lawyer-client relationship. Often the lawyer-client relationship is characterized by the dependence of the client on the lawyer's judgment, and a sexual relationship may well result from the lawyer's exploitation of the lawyer's dominant position.

The inherently unequal attorney-client relationship allows the unethical lawyer just as easily to exploit the client sexually as financially. The trust and confidence reposed in a lawyer can provide an opportunity for the lawyer to manipulate a client emotionally for the lawyer's sexual benefit. Moreover, the client may not feel free to rebuff unwanted sexual advances because of fear that such a rejection will either reduce the lawyer's ardor for the client's cause or, worse yet, require finding a new lawyer, causing the client to lose the time and money that has already been invested in the present representation and possibly damaging the client's legal position.⁹

54. Where the imbalance in the relative power between a lawyer and client is substantial, based on a consideration of all relevant factors, an issue is raised as to the validity of any consent given by the client. Although this situation does not arise in every case, the risk of such an imbalance is ever present and justifies a regulatory response. The Law Society has responded to this same risk in the context of borrowing funds by barring lawyers from directly borrowing funds from clients. Although the consent of all clients who lend money to their lawyers is not vitiated, the risk of that situation justifies the prohibition on such transactions.

⁷ A fiduciary relationship is said to exist when a person has rights and powers which he or she is bound to exercise for the benefit of others. Examples of fiduciary relationships can be found in the relationship of trustee and *cestui que trust*, principal and agent, directors and their companies, and solicitors and their clients."': *Korz v. St. Pierre et al* (1987) O.R. (2d) 609 (C.A.) at p.619. See also *Norberg v. Wynrib*, [1992] 2 S.C.R. 226, at 272.

⁸ *Patrick Anthony Coccimiglio*, Order of Convocation 20 June 1991 (increasing the recommended penalty), and Report and Decision of the Discipline Committee 23 May 1991, at 7.

⁹ *People v. Good* 893 P.2d 101 (Col. 1995) at pp. 103-104

Potential Prejudice to Client's Interests

55. Sexual relations between a client and lawyer may impact negatively on both the legal and psychological interests of the client. In the legal context, the example most frequently cited is the concern in family law that the sexual relationship between a woman facing matrimonial difficulties and her lawyer will likely impair the efforts that the lawyer must make to encourage reconciliation of the spouses. Even apart from the question of reconciliation, it is foreseeable that the revelation of sexual relations between one spouse and her lawyer will make ongoing negotiations more difficult. One can anticipate other scenarios which may adversely impact on the client's position and the lawyer's ability to advance that position.
56. The potential psychological consequences to a client of a sexual relationship with a lawyer can include a loss of confidence in the lawyer or, more broadly, the legal system, betrayal, humiliation, and loss of self-respect, among others.

E. SPECIFIC CONCERNS

How long after the lawyer-client relationship has ended does any specified prohibition stop?

57. If there is an acceptance that sexual relations between lawyers and clients should be prohibited, an issue arises as to how long after the lawyer-client relationship ends does the prohibition cease to apply. The focus of any prohibition is to force lawyers and clients to choose which of the two relationships they wish to pursue, if in fact they are genuine, and not merely exploitative, relationships. Thus, there needs to be a time when a sexual relationship between a lawyer and former client could be pursued. The Committee considered two options.
58. In the first option, to ensure that the rule addresses exploitative relationships, and does not merely allow them to be pursued the day after the professional relationship is terminated, there needs to be a "cooling off" period to allow the client to step back from the influences of the professional relationship and assess the suggested personal one. This option would regard as appropriate a continuation of any prohibition for a one year period, as is the case for physicians other than those involved in therapeutic relationships, which should allow for bona fide relationships to be pursued but provide a strong deterrent to improper ones.
59. A second option would acknowledge that the fact that a lawyer has made a choice is sufficient, and that if the choice is to continue the sexual relationship and end the professional relationship, no continuing prohibition period is necessary. This option is based on the view that once the ultimate conflict ends, the surviving relationship can continue immediately with impunity.

What is the scope of the relationships to be included, such as spousal relationships and relationships predating the lawyer/client relationship?

60. In most existing rules dealing with sexual relations between lawyers and clients in other jurisdictions, there is an exception for sexual relationships which pre-exist the professional relationships. Such an exception allows, for example, lawyers to act for their spouses. This exemption acknowledges that the pre-existing relationships do not typically involve the same considerations of abusing the lawyer-client relationship for improper (sexual) ends or exploitation of the client. It also concedes what is probably an accepted practice in the many parts of the profession: acting for one's spouse or domestic partner. Notwithstanding that practice, however, the exemption fails to recognize the concerns about the inherent conflict of interest in these situations and the jeopardy in which the lawyer's professional objectivity is placed. If anything, an established relationship may cause more prejudice to the lawyer's objectivity, in a manner similar to the lawyer acting for him or herself. However, while common sense may dictate against a lawyer acting for him or herself, there is nothing in the rules of conduct which prohibits the lawyer from doing so.
61. It is certainly arguable that a lawyer's spouse may receive a better quality of representation, and more objective representation, if represented by a lawyer other than his/her spouse, who is not encumbered by the conflict of the personal relationship, no matter how well-intentioned.

Can partners or associates in a firm of the lawyer involved in the sexual relationship act for the client?

62. Where a lawyer having sexual relations with a client practises in a firm setting, the question arises as to whether, if the lawyer is prohibited from acting for the client, the other members of the firm can act. To the extent that the conflict of interest is a central concern, analogy to other conflict of interest rules which only disqualify an individual lawyer from acting in cases of what could be described as “personal conflicts”, is of assistance.
63. Rule 2.05 provides one example where a lawyer transfers between firms and may, as a result, end up in a conflict acting against a former client. Under rule 2.05(4), even where the transferring lawyer has relevant confidential information, the firm may act if certain conditions are met. The effect of these conditions is that “fire walls” separate the lawyer from the file, so that the conflict does not infect the rest of the firm. A similar provision could apply to where a lawyer has a sexual relationship with a client, assuming that the sexual relationship would not be characterized as exploitative. An exploitative relationship is more likely to, at least appear to, taint the entire firm; however, these may be situations caught by wording similar to current subrule 2.05(4)(b) as situations where it may not be in the “interests of justice” for another lawyer in the firm to act.

F. OTHER JURISDICTIONS

64. Appendix 3 is a chart listing all of the Canadian and U.S. jurisdictions and the rules, if any, which they have been adopted in relation to sexual relations between lawyers and clients. The following highlights information about these developments.
65. In Canada, only British Columbia and Nova Scotia have adopted rules or commentaries. While a number of American jurisdictions have rules on the subject, the most significant is the American Bar Association’s new Rule 1.8(j), which was adopted in August 2001 as part of an extensive revision of the Model Rules. This Rule is one of the rules relating to conflicts of interest and addresses lawyers’ sexual relationships with clients. It provides:

A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced.

66. The Committee noted the definitive guidance in the health professions on this issue as it relates, for example, to relationships between patients and physicians. In May 1992, the College of Physicians and Surgeons of Ontario (CPSO) adopted the following guideline under the title “Physician-Patient Dating” (currently under review):
1. Sexual relationships between doctors and patients during treatment are prohibited. (See also the legislative definitions of professional misconduct).
 2. When the doctor-patient relationship involves psychoanalysis or psychotherapy, sexual relations with the patient is prohibited at any time after termination of the treatment.
 3. Where the doctor-patient relationship has, at any time, involved psychotherapy of such duration that it may be seen to have been a significant component* of treatment, sexual contact with the patient is also prohibited at any time after termination of treatment.
 4. In all other cases, the general rule is that physicians should not have sexual contact with a former patient for a period of one year following the date of the last professional contact with the patient, even if the physician has formally terminated the professional relationship. In some instances, it may never be appropriate for a post-termination sexual relationship to develop. In others, it may be unnecessary to wait for one year before a sexual relationship can develop; for example, an emergency room physician who has treated a patient on one occasion.

*“Significant component” is defined as distinct from superficial, supportive psychotherapy administered infrequently or on isolated occasions and as incidental to the overall doctor-patient relationship. “Counselling” which is to be considered distinct from psychotherapy, is defined as a form of treatment in which the physician engages in an educational dialogue with the patient, on an individual or group basis, where the goal of the physician and the patient is to become aware of the patient’s problem or situation and of modalities for prevention and/or treatment.

G. POLICY OPTIONS AND THE COMMITTEE'S VIEW

67. The Committee, based on the working group's report, identified a range of eight possible regulatory responses, six of which involved some form of rule, to address the issue of sexual relations between lawyers and clients. Those options are summarized in the following table, ranging from the least restrictive to the most restrictive, along with the arguments for and against each option.

Option # 1: No rule, No sanctions	
For	Against
Option avoids difficulty of defining the type of conduct to be proscribed for purposes of a rule.	Option creates uncertainty for the public and the profession about the propriety of this conduct as a matter of professional conduct.
Absence of any rule keeps the Law Society out of lawyer's "bedrooms".	Option fails to recognize nexus between this type of conduct with a client and lawyer's practice.
	Option conveys wrong message to the public and profession about profession's ethical standards, or lack thereof, and suggests that profession regulates money-related conduct but not conduct infringing on personal integrity.
	Option leaves a void in the Rules in a sensitive area where the power dynamic in the lawyer and client relationship can be prominent, especially in the case of vulnerable clients.
	Absence of any regulation will not address an abuse or exploitation of the relationship by the lawyer as an incident of providing legal services, and may, in fact, implicitly sanction egregious conduct.
	Option fails to recognize underlying concerns such as conflict of interest.
	Complete absence of regulation represents a regressive position not currently adopted in decided Ontario cases or any other jurisdiction considered.
Option # 2: No Specific Rule, but Prohibition in Interpretation of Other Rules	
For	Against
This option represents the <i>status quo</i> in Ontario. ¹⁰	Lack of clear rule creates uncertainty for the public about the propriety of this conduct as a matter of professional conduct.

¹⁰ The "status quo" refers to the application of current rules of conduct and/or judicial precedent on what constitutes professional misconduct to complaints of lawyer conduct relating to ostensibly or actual consensual sexual relations between a lawyer and client. For example, a lawyer was found guilty of professional misconduct for initiating in the course of the solicitor-client relationship a personal relationship with a client and engaging in a sexual relationship with the client in circumstances where the lawyer knew the client was vulnerable. In this case, the lawyer's rights and privileges were suspended for a period of three months.

<p>A non-specific approach to misconduct of this nature may direct focus to the range of issues that may arise, rather than only the narrow issue of sexual relations with a client.</p> <p>Option permits a discretionary approach to cases based on the facts.</p>	<p>Option provides no guidance to the profession as to the limits on appropriate behaviour in anything but the vaguest terms.</p> <p>Option conveys wrong message to the public and profession about profession's ethical standards, or lack thereof, and suggests that profession regulates money-related conduct but not conduct infringing on personal integrity.</p> <p>Option leaves a void in the Rules in a sensitive area where the power dynamic in the lawyer and client relationship can be prominent, especially in the case of vulnerable clients.</p> <p>An acceptance that a specific rule is not required is premised on the likely flawed notion that the inherent conflict of interest in these situations could be genuinely waived in some cases.</p> <p>In some cases, it may be difficult to accurately characterize the conduct under an existing rule, particularly where a lawyer's conflict of interest or impairment of objectivity, for example, is not readily identifiable because no actual harm has yet manifested.</p> <p>Regulation only on a case-by-case basis may not adequately address an abuse or exploitation of the relationship by the lawyer as an incident of providing legal services.</p> <p>Option does not encourage consistent enforcement, or development of clear principles, due to range of interpretative options of existing Rules.</p> <p>Option perpetuates risk of putting client "on trial" whenever allegations advanced because vulnerability, consent and prejudice to client are left in issue. This in turn creates deterrent to reporting of misconduct.</p>
<p>Option #3: Rebuttable Presumption Against Sexual Relations in Certain Areas of Practice (e.g. family) and where clients are described as vulnerable or dependent</p>	
<p>For</p>	<p>Against</p>
<p>Adoption of a rule sends a clear message to the profession that such personal relationships with clients are not acceptable, within the limited context proscribed.</p> <p>A limited rule focuses on those clients and those situations where problems in these types of relationships generally arise, but permits other situations where problems may not be manifest.</p> <p>Option recognizes the risks that relationships in certain practice areas can create for the trust underlying a</p>	<p>Limited scope of rule undermines clarity of message conveyed to the public.</p> <p>Limited prohibition, combined with a rebuttable presumption, does not address the fundamental conflict of interest outside the proscribed areas, and is, in fact, premised on notion that the conflict can be waived where there is not clear vulnerability or a lawyer-client relationship outside the specified areas.</p> <p>Limited rule may not capture certain instances of</p>

<p>solicitor and client relationship.</p> <p>Even a minimal rule assists clients who may feel the need to establish boundaries around their relationships with lawyers. Even a minimal Rule provides some guidance to members of the profession and defines the parameters for enforcement.</p> <p>If sufficiently broad range of practice areas enumerated, there is little need for reliance on the troubling basket clause.</p> <p>Rebuttable presumption places the onus on the lawyer to justify why a specific relationship falls outside the prohibition, but it does allow a lawyer to justify a specific relationship.</p> <p>Presumptive rule is less intrusive than a complete ban, and is the minimum response possible to address serious problem.</p> <p>Presumptions of this sort already used in relation to conflicts of interest.</p>	<p>misconduct.</p> <p>Option does not provide clear guidance to profession as to what is vulnerable, or even defining practice areas (e.g. real estate deal involving matrimonial home)</p> <p>Option does not encourage consistent enforcement, or development of clear principles, due to range of interpretation of “vulnerable” and “dependent”.</p> <p>Requirement that client is vulnerable, along with the rebuttable presumption, perpetuates risk of putting client “on trial” whenever allegations advanced because vulnerability, consent and prejudice to client are left in issue. This in turn creates deterrent to reporting of misconduct.</p> <p>A presumption in the rule may be considered to create a “guilty until proven innocent” situation.</p> <p>Any prohibition, potentially, has the effect of forcing lawyers to choose between professional and personal relationships, raises issue of client’s ability to have the counsel of his/her choosing.</p>
Option #4 Rebuttable Presumption Against Sexual Relations With All Clients	
<p style="text-align: center;">For</p> <p>Adoption of a rule sends a clear message to the profession that such personal relationships with clients are not acceptable, subject to interpretation of the circumstances in which the presumption will be rebutted.</p> <p>Even a minimal rule assists clients who may feel the need to establish boundaries around their relationships with lawyers.</p> <p>Even a minimal Rule provides some guidance to members of the profession and defines the parameters for enforcement.</p> <p>Rebuttable presumption places the onus on the lawyer to justify why a specific relationship falls outside the prohibition, but it does allow a lawyer to justify a specific relationship.</p> <p>This option does not focus on the vulnerability of the client in any direct way, thereby refocusing the inquiry, at least in part, on the lawyer’s conduct. Presumptive rule is less intrusive than a complete ban, and is the minimum response possible to address serious problem.</p> <p>Presumptions of this sort already used in Rules in relation to conflicts of interest.</p>	<p style="text-align: center;">Against</p> <p>Rebuttable presumption undermines clarity of message conveyed to the public.</p> <p>Rebuttable presumption does not address the fundamental conflict of interest, and is, in fact, premised on notion that the conflict can be waived where there is not clear vulnerability or a lawyer-client relationship in the specified areas.</p> <p>Clarity of direction given to profession reduced by opening prospect of rebutting the presumption.</p> <p>Option does not encourage consistent enforcement, or development of clear principles, due to range of possible cases where presumption may be found to be rebutted.</p> <p>Rebuttable presumption perpetuates risk of putting client “on trial” whenever allegations advanced because vulnerability, consent and prejudice to client are left in issue. This in turn creates deterrent to reporting of misconduct.</p> <p>A presumption in the rule may be considered to create a “guilty until proven innocent” situation.</p> <p>A presumptive rule fails to address the fundamental conflict of interest in the relationship.</p>

A broad based rule eliminates the ambiguity in language and categorization which arises in Rules limited to “vulnerable” clients or clients in certain areas of law.	Any prohibition, potentially, has the effect of forcing lawyers to choose between professional and personal relationships, raises issue of client’s ability to have the counsel of his/her choosing.
Option #5: Presumption that Sexual Relationship Exploits Solicitor-Client Relationship, Subject to Rebuttal and Exemption of Pre-existing Relationships	
For	Against
<p>Adoption of a rule sends a clear message to the profession that such personal relationships with clients are not acceptable, subject to interpretation of the circumstances in which the presumption will be rebutted.</p> <p>Even a minimal rule assists clients who may feel the need to establish boundaries around their relationships with lawyers.</p> <p>Even a minimal Rule provides some guidance to members of the profession and defines the parameters for enforcement.</p> <p>Rebuttable presumption places the onus on the lawyer to justify why a specific relationship falls outside the prohibition, but it does allow a lawyer to justify a specific relationship.</p> <p>This option does not focus on the vulnerability of the client in any direct way, thereby refocusing the inquiry, at least in part, on the lawyer’s conduct.</p> <p>Presumptive rule is less intrusive than a complete ban, and is the minimum response possible to address serious problem.</p> <p>Presumptions of this sort already used in Rules in relation to conflicts of interest.</p> <p>A broad based rule eliminates the ambiguity in language and categorization which arises in Rules limited to “vulnerable” clients or clients in certain areas of law.</p>	<p>Rebuttable presumption undermines clarity of message conveyed to the public.</p> <p>Rebuttable presumption does not address the fundamental conflict of interest, and is, in fact, premised on notion that the conflict can be waived where there is not clear vulnerability or a lawyer -client relationship in the specified areas.</p> <p>Option does not provide clear guidance to profession as to what is exploitative; may be difficult term to define.</p> <p>Clarity of direction given to profession reduced by opening prospect of rebutting the presumption.</p> <p>Option does not encourage consistent enforcement, or development of clear principles, due to range of possible cases where presumption may be found to be rebutted.</p> <p>Rebuttable presumption perpetuates risk of putting client “on trial” whenever allegations advanced because vulnerability, consent and prejudice to client are left in issue. This in turn creates deterrent to reporting of misconduct.</p> <p>A presumption in the rule may be considered to create a “guilty until proven innocent” situation.</p> <p>A presumptive rule fails to address the fundamental conflict of interest in the relationship.</p> <p>Option does not give recognition to the factors other than vulnerability (and therefore exploitation) which arise around conduct of this nature.</p> <p>The prohibition, potentially, has the effect of forcing lawyers to choose between professional and personal relationships, raises issue of client’s ability to have the counsel of his/her choosing.</p>
Option #6: Absolute prohibition on sexual relationships in Certain Areas of Practice (e.g. family) and where clients are described as vulnerable or dependent	
For	Against
Adoption of a rule sends a clear message to the profession that such personal relationships with clients are not acceptable, at least within the specified practice areas.	<p>Limited scope of rule undermines clarity of message conveyed to the public.</p> <p>Limited prohibition does not address the fundamental conflict of interest outside the proscribed areas, and is, in</p>

<p>A limited rule focuses on those clients and those situations where problems in these types of relationships generally arise, but permits other situations where problems may not be manifest.</p> <p>Option recognizes the risks that relationships in certain practice areas can create for the trust underlying a lawyer and client relationship.</p> <p>A rule with a clear prohibition provides concrete guidance to clients who may feel the need to establish boundaries around their relationships with lawyers.</p> <p>A rule with a clear prohibition provides concrete guidance to members of the profession and defines the parameters for enforcement. If sufficiently broad range of practice areas enumerated, there is little need for reliance on the troubling basket clause</p>	<p>fact, premised on notion that the conflict can be waived where there is not clear vulnerability or a lawyer-client relationship outside the specified areas.</p> <p>Limited Rule may not capture certain instances of misconduct.</p> <p>Absolute rule may be too broad, capturing relationships that may not involve actual detriment to the client or may be genuinely consensual, including all pre-existing relationships and marriage/spousal situations, and not taking into account individual circumstances.</p> <p>Option does not provide clear guidance to profession as to what is vulnerable, or even defining practice areas (e.g. real estate deal involving matrimonial home)</p> <p>Option does not encourage consistent enforcement, or development of clear principles, due to range of interpretation of “vulnerable” and “dependent”.</p> <p>Requirement that client be vulnerable perpetuates risk of putting client “on trial” whenever allegations advanced because vulnerability, consent and prejudice to client are left in issue. This in turn creates deterrent to reporting of misconduct.</p> <p>Any prohibition, potentially, has the effect of forcing lawyers to choose between professional and personal relationships, raises issue of client’s ability to have the counsel of his/her choosing.</p>
Option #7: Absolute prohibition, with limited exceptions for pre-existing relationships	
For	Against
<p>Same as Option # 6, above, except that it makes allowance for pre-existing relationships which many members of profession consider acceptable.</p>	<p>Same as Option # 6.</p> <p>Option leaves open the issue of whether the profession really wants to encourage lawyers to act for their spouses - although the Law Society has already left that option open under rule regarding the two lawyer rule.</p>
Option #8: Absolute prohibition on Sexual Relations with All Clients	
For	Against
<p>Absolute rule provides clear guidance to the profession as to the conduct which is prohibited.</p> <p>Absolute rule conveys an unequivocal message to the public as to what conduct is not acceptable to the profession</p> <p>An absolute, unconditional, rule facilitates enforcement by creating clear standards of conduct.</p> <p>The absence of any conditions on the prohibition avoids interpretation issues about types of relationships which</p>	<p>Absolute rule may be too broad, capturing relationships that may not involve actual detriment to the client or may be genuinely consensual, including all pre-existing relationships and marriage/spousal situations, and not taking into account individual circumstances.</p> <p>An absolute prohibition may generate interpretation problems about what is and what is not within the ambit of the term “sexual relationship”.</p> <p>A prohibition which, potentially, has the effect of forcing lawyers to choose between professional and</p>

<p>are covered by the prohibition.</p> <p>The rule would require lawyers and clients to make a choice between continuing a pre-existing personal relationship and starting a professional relationship</p> <p>By applying to all lawyer-client relationships, the rule protects all clients equally.</p> <p>This Option recognizes the inherent conflict of interest where a lawyer has a personal and professional relationship, and the consequent impairment of professional objectivity.</p> <p>This Option takes into account all of the facets of sexual relations between lawyers and clients by not focussing on one specific element (e.g. vulnerability).</p> <p>An absolute rule prevents hearings from turning into inquiries about the client and returns focus to member.</p>	<p>personal relationships, raises issue of client's ability to have the counsel of his/her choosing.</p>
---	--

The Committee's View

68. Of the above options, the Committee is proposing that option 7 be adopted. For the reasons identified in this report, the Committee believes that a stringent rule is required in this area to provide appropriate clarity and certainty on what is permissible conduct. Option 7, while a prohibition, is not absolute, in that it permits the continuation of pre-existing relationships. As a clear prohibition, however, it should have the advantage of absolute clarity in its application.
69. The essence and justification for the proposed new rules is the inherent conflict of interest that a sexual relationship presents to a lawyer and client relationship. Based on the advice of the drafter of the proposed rules, Paul Perell, it seems logical and appropriate to place the new rules within rule 2.04 (Avoidance of Conflicts of Interest) as subrules 2.04(3.1) and (3.2). This placement is necessary to avoid confusion about the role of client consent. Adopting these new rules also necessitates some amendments to other rules within rule 2.04.
70. "Sexual relationship" is the term used in the new rule, rather than "sexual relations". This provides better parallelism and focus on the policy issues underlying the rule. This approach is also consistent with the overall approach of the Rules of Professional Conduct, which is to focus on relationships.
71. The following explain in more detail the nature of the amendments:
- The design of the amendments is that if a client has a pre-existing consensual sexual relationship with a lawyer, the lawyer must still satisfy the conflict of interest rules by obtaining an informed consent from the client. The presence of a sexual relationship does not diminish the normal rules about conflicts of interest.
 - The two new rules attempt to address two policy goals, which address the problems of lawyer and client sexual relationships from different directions. The first goal addressed by 2.04(3.1) is to regulate the significance of a sexual relationship to the lawyer and client relationship. The second goal addressed by 2.04(3.2) is to regulate the significance of a lawyer and client relationship to a sexual relationship. The first policy focuses on regulating when a sexual relationship may interfere with proper legal representation. The second policy focuses on regulating a lawyer and client relationship that may be misused to exploit the client sexually.
 - In the definition of "conflict of interest" in rule 2.04 (1), rule 2.04 (3.1), and the commentary, "handling the client's work" is an operative element of the definition for the purpose of a sexual relationship type of conflict of interest. The language of "handling the client's work" alludes to the

definition of “client” in rule 1.02, which states that “a client includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the work.” As a result of including “handling the client’s work” in the definition:

- a client remains a client of the firm, because the definition of client is not altered,
 - a lawyer handling the work will have a conflict if he or she has a sexual relationship with the client,
 - the firm will still have a conflict if its client has a sexual relationship with a lawyer of the firm handling the work,
 - the firm’s conflict would be removed if another lawyer in the firm (without a sexual relationship with the client) were to take over and handle the work,
 - as a corollary, there would be no conflict if a lawyer not handling the work has a sexual relationship with a client, and
 - a firm will not have a conflict of interest if a lawyer has a sexual relationship with a potential client, although sexual relationships with a potential client would still fall under the regulation of 2.04 (3.2).
- d. The matter of sexual relationships with the representatives of organizations is dealt with in the commentary, where the instructing mind of the organization is described as “any representative of the organization who instructs or could instruct the lawyer on behalf of the organization”.

REPORT FROM THE PROFESSIONAL REGULATION DIVISION

72. The Professional Regulation Division’s Quarterly Report 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 October to December 2003. A separately bound version of the Quarterly Report with colour graphs and charts will be available at Convocation for those who wish to receive a copy.

APPENDIX 1

INFORMATION ON INVITATIONS TO ATTEND

INITIAL LETTER TO MEMBER

PRIVATE AND CONFIDENTIAL

[date]

[Member or Counsel]

Dear [Member or Counsel]:

Re: Complainant:
Member:

I am writing to confirm that this matter was considered by the Proceedings Authorization Committee at its meeting on [date].

The Committee determined that you should be invited to attend in accordance with section 9 of By-law 21 of The Law Society of Upper Canada By-laws.

I wish to confirm that [date] has been set for your personal attendance. The Invitation will be conducted at offices of the Law Society, 130 Queen Street West, Toronto, in the Convocation Room at [time] or so soon thereafter as the matter can be heard.

The Invitation is not a formal disciplinary process and therefore will not form part of your disciplinary record. It takes place in camera before a Committee of Benchers. There is no reporter present and no publication of these proceedings is made. Witnesses are not present and the Society does not require that you attend with counsel.

Enclosed please find a summary of the Society's investigation which contains a discussion of the issues to be addressed at your meeting with the Committee.

Yours truly,

Law Society Counsel
Encl.

LETTER TO COMPLAINANT

PRIVATE AND CONFIDENTIAL

[date]

[Complainant or Counsel]
Toronto, ON

Dear [Complainant or Counsel]:

Re: Complainant:
Member:

I refer to your complaint against [the Member].

This matter was considered at the meeting of the Proceedings Authorization Committee on [date]. The Committee authorized an Invitation to Attend pursuant to section 9 of By-law 21 of The Law Society of Upper Canada By-laws. The Invitation to Attend is a process whereby [the Member] attends before a panel of Law Society Benchers to discuss the circumstances that led to your complaint. Once [the Member] has attended the Invitation to Attend, the matter is concluded and I will close my file.

The decision of the Committee is final and there is no further review or proceeding available with respect to this matter.

Thank you for bringing your concerns to the attention of the Law Society.

Yours truly,

[Law Society Counsel]

CLOSING LETTER TO MEMBER

PRIVATE AND CONFIDENTIAL

[date]

[Member or Counsel]
 Barrister & Solicitor
 Toronto, ON

Dear [Member or Counsel]:

Re: Complainant:
 Member:

I wish to confirm your attendance at an Invitation to Attend held on [date] before Benchers [list Benchers].

Having discussed the matter with you, the Committee instructed me to close the file.

I also wish to confirm that the Invitation is not a formal disciplinary process and therefore is not part of your disciplinary record.

Thank you for your cooperation.

Yours truly,

Law Society Counsel

APPENDIX 2

LAWYER'S SEXUAL RELATIONSHIPS WITH CLIENTS

MATERIAL REVIEWED

A. Ontario

1. Law Society of Upper Canada Policy Reports

Professional Regulation Committee Working Group Report, March 12, 1998 "Standards for the Authorization of Sexual Impropriety Complaints and Related Issues"

2. Law Society of Upper Canada Discipline Cases

a. Re the Law Society of Upper Canada and Michael Elliott Chodos, Report and Decision of the Discipline Committee dated October 28, 1986, Order of Convocation dated November 27, 1986.

b. Re the Law Society of Upper Canada and Karla Kathleen Gower, Report and Decision of the Discipline Committee February 14, 1992

- c. Alan Murray Zuker
 - transcript of hearing
 - Law Society Factum
 - Factum of the member
 - Joint Record Book
 - recent press report on the Zuker case
- d. James William Orme

3. Court Cases

- a. *Szarfer v. Chodos*, (1986) 54 O.R. (2d) 663 (C.A.)
- b. *R. v. Matheson*, (1999) 44 O.R. (3d) 557 (C.A.)

B. Other Canadian Law Societies

1. Rules of Conduct

Staff canvassed the other Law Societies in Canada that have rules dealing with the subject or which have applied existing rules to such situations, based on previous information received from these jurisdictions

- a. British Columbia, Chapter 2 (Integrity) rule 1 footnote
- b. Nova Scotia Barristers' Society, Rule 7(a) and Commentary 7.5
- c. New Brunswick Law Society (no rule reference)
- d. Law Society of Alberta Rules of Professional Conduct Rule 8 of Chapter 6 (Conflict of Interest)

2. Discipline Cases

- a. *Re The Law Society of Alberta and Ashraf S. Attia*, Report of the Hearing Committee dated April 2, 1993.
- b. *Nova Scotia Barristers' Society v. Rose* [1996] L.S.D.D. No.108.

C. American Jurisdictions

1. Rules

- a. ABA Rule 1.8
- b. State Bar of California, including rule 3-320 on relationships between lawyers who represent adverse/other parties
- c. State Bar of Minnesota
- d. Oregon State Bar Code of Professional Responsibility
- e. New York State Bar Association Proposed Amendments and Discipline Rule DR 5-111 (June 30, 1999)

2. Opinions

- a. Standing Committee on Ethics and Professional Responsibility of the American Bar Association, "Formal Opinion 92-364: Sexual Relations with Clients" (July 6, 1992)
- b. Commentary - a commentary on a discipline case from Ohio involving sexual activity between a lawyer and client

3. Discipline cases

- a. *In Re: D. Warren Ashby*, Supreme Court of Louisiana, Lawyer Disciplinary Proceedings
- b. *In Re: Robert B Schambach*, Supreme Court of Louisiana, Attorney Disciplinary Proceedings

D. Other Professions

- 1. Ethical Principles of Psychologists and Code of Conduct - Rule 4.05 (American Psychological Association)
- 2. National Association of Social Workers - Rule 1.09
- 3. CPSO's guidelines on physician-patient dating
- 4. Information from Institute of Chartered Accountants (ICAO) on Issues Respecting Sexual Relations Between Lawyers and Clients
- 5. *Norberg v. Wynrib*, [1992] 2 S.C.R. 226.

E. Various Articles and Reports

Excerpts from "Breach of Trust in Sexual Assault", a report from the Ontario Women's Directorate and Metro Action Committee on Public Violence Against Women and Children (the "Report") (1992)

"Future of the Legal Profession" ¹¹

"The Law of Lawyering" ¹²

"Claims Against Attorneys Based on Sexual Misconduct"

"Sexual Exploitation of Divorce Clients: The Lawyer's Prerogative?" ¹³

"Women, Sexual Abuse by Professionals, and the Law: Changing Parameters" ¹⁴

"Sex and the Divorce Lawyer: Is the Client off Limits?" ¹⁵

¹¹ "Future of The Legal Profession", (1994) 44:53 Case Western Reserve Law Review at 559.

¹² Geoffrey Hazard Jr., et al, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct*, (2d) (1990) v. 1 at 246.

¹³ Thomas Lyon, "Sexual Exploitation of Divorce Clients: The Lawyer's Prerogative?" (1987) 10 Harvard Women's Law Journal 159.

¹⁴ Patricia Hughes, "Women, Sexual Abuse by Professionals, and the Law: Changing Parameters", (1993) 21 Queen's L.J. 297.

“Investigating Sexual Abuse of Patients: The Ontario Experience” (based on a lecture by the chair of the Task Force on Sexual Abuse of Patients commissioned by the College of Physicians and Surgeons)

The Committee on Sexual Exploitation in Professional Relationships - Highlights from the Preliminary Report

The Committee on Sexual Exploitation in Professional Relationships - The Final Report

Legislative Reform: The Health Professions Act and Procedural Code

“Professional Responsibility”, A. Craig Fleishman, The National Law Journal, May 25, 1998, page B04

“Indecent Proposals”, September 1998 ABA Journal

¹⁵ Lawrence Dubin, “Sex and the Divorce Lawyer: Is the Client off Limits?”, (1988) 1 Georgetown J. of Legal Ethics 585.

APPENDIX 3

CANADIAN AND U.S. JURISDICTIONS' RULES ON LAWYER/CLIENT SEXUAL RELATIONSHIPS		
Jurisdiction	Rule	Commentary/Discussion/ Explanatory Notes
British Columbia	<p>Chapter 2, Rule 1</p> <p>Dishonourable conduct</p> <p>1. A lawyer must not, in private life, extra professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice. 1</p>	<p>FOOTNOTES:</p> <p>1. A lawyer must not exploit the relationship between solicitor and client to the lawyer's own advantage. An intimate relationship between a lawyer and a client, such as a sexual one, may constitute exploitation.</p> <p>An intimate relationship with a client is also likely to affect a lawyer's professional judgement, which could cast doubt on a lawyer's ability to represent the client competently. A lawyer owes each client a duty to provide objective legal advice and perform services in a professional manner. The lawyer must not permit any personal interest to interfere with that objectivity.</p>
Nova Scotia	<p>7. Conflict of Interest Between Lawyer and ClientRule</p> <p>(a) A lawyer has a duty not to act for a client when the interests of the client and the personal interests of the lawyer or, to his knowledge, the interests of an associate of the lawyer, as defined by the Guiding Principles are in conflict.</p>	<p>Sexual Relations with Client</p> <p>7.5 Rule 7(a) is intended to prohibit, inter alia, sexual exploitation by a lawyer in the course of a professional representation. Often, based upon the nature of the underlying representation, a client exhibits vulnerability. The lawyer must not take advantage of that vulnerability. The solicitor-client relationship frequently creates an imbalance of power in favour of the lawyer where a client exhibits dependence upon the lawyer. A lawyer owes the utmost duty of good faith to the client. The relationship between a lawyer and client is a fiduciary relationship of the very highest character and all dealings between a lawyer and client that are beneficial to the lawyer will be closely scrutinized with the utmost strictness. Where lawyers exercise undue influence over clients to take unfair advantage of clients, discipline is</p>

		appropriate. In all matters, a member is advised to keep clients' interests paramount in the course of the member's representation.
American Bar Association	Rule 1.8(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.	<p>[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer 's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client lawyer relationship. Because of the significant danger of harm to client interests and because the client 's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.</p> <p>[18] Sexual relationships that predate the client lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the relationship existed prior to the commencement of the client lawyer relationship. However, before proceeding with the representation</p>

		<p>in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7 (a)(2).</p> <p>[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.</p>
California	<p>Rule 3 120. Sexual Relations With Client</p> <p>(A) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse.</p> <p>(B) A member shall not:</p> <p>(1) Require or demand sexual relations with a client incident to or as a condition of any professional representation; or</p> <p>(2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or</p> <p>(3) Continue representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of rule 3 110.</p> <p>(C) Paragraph (B) shall not apply to sexual relations between members and their spouses or to ongoing consensual sexual relationships which predate the initiation of the lawyer client relationship.</p>	<p>Discussion:</p> <p>Rule 3 120 is intended to prohibit sexual exploitation by a lawyer in the course of a professional representation. Often, based upon the nature of the underlying representation, a client exhibits great emotional vulnerability and dependence upon the advice and guidance of counsel. Attorneys owe the utmost duty of good faith and fidelity to clients. (See, e.g., <i>Greenbaum v. State Bar</i> (1976) 15 Cal.3d 893, 903 [126 Cal.Rptr. 785]; <i>Alkow v. State Bar</i> (1971) 3 Cal.3d 924, 935 [92 Cal.Rptr.278]; <i>Cutler v. State Bar</i> (1969) 71 Cal.2d 241, 251 [78 Cal.Rptr 172]; <i>Clancy v. State Bar</i> (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) The relationship between an attorney and client is a fiduciary relationship of the very highest character and all dealings between an attorney and client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for unfairness. (See, e.g., <i>Giovanazzi v. State Bar</i> (1980) 28 Cal.3d 465, 472 [169 Cal Rptr. 581]; <i>Benson v. State Bar</i> (1975) 13 Cal.3d 581, 586 [119 Cal.Rptr. 297]; <i>Lee v. State Bar</i> (1970) 2 Cal.3d 927, 939 [88 Cal.Rptr. 361]; <i>Clancy v. State Bar</i> (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) Where attorneys exercise undue influence over</p>

	<p>(D) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this rule solely because of the occurrence of such sexual relations.</p>	<p>clients or take unfair advantage of clients, discipline is appropriate. (See, e.g., <i>Magee v. State Bar</i> (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839]; <i>Lantz v. State Bar</i> (1931) 212 Cal. 213 [298 P. 497].) In all client matters, a member is advised to keep clients' interests paramount in the course of the member's representation.</p> <p>For purposes of this rule, if the client is an organization, any individual overseeing the representation shall be deemed to be the client. (See rule 3 600.)</p> <p>Although paragraph (C) excludes representation of certain clients from the scope of rule 3 120, such exclusion is not intended to preclude the applicability of other Rules of Professional Conduct, including rule 3 110. (Added by order of Supreme Court, operative September 14, 1992.)</p>
Oregon	<p>DR 5-110 Sexual Relations with Clients</p> <p>(A) A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the lawyer/client relationship commenced.</p> <p>(B) A lawyer shall not have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation.</p> <p>(C) For purposes of DR 5-110 "sexual relations" means:</p> <p>(1) Sexual intercourse; or</p> <p>(2) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.</p>	

	<p>(D) For purposes of DR 5-110 “lawyer” means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.</p>	
Minnesota	<p>Rule 1.8(k)</p> <p>A lawyer shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the lawyer client relationship commenced.</p> <p>For purposes of this paragraph:</p> <p>(1) "Sexual relations" means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer.</p> <p>(2) if the client is an organization, any individual who oversees the representation and gives instructions to the lawyer on behalf of the organization shall be deemed to be the client. In house attorneys while representing governmental or corporate entities are governed by Rule 1.7(b) rather than by this rule with respect to sexual relations with other employees of the entity they represent.</p> <p>(3) this paragraph does not prohibit a lawyer from engaging in sexual relations with a client of the lawyer's firm provided that the lawyer has no involvement in the performance of the legal work for the client.</p> <p>(4) if a party other than the client alleges violation of this paragraph, and the complaint is not summarily dismissed, the Director, in determining whether to investigate the allegation and whether to charge any violation based on the allegations, shall</p>	

	consider the client's statement regarding whether the client would be unduly burdened by the investigation or charge.	
New York	<p>DR 5-111 Sexual Relations With Clients [proposed]</p> <p>A. "Sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse.</p> <p>B. A lawyer shall not:</p> <ol style="list-style-type: none"> 1 . Require or demand sexual relations with a client or third party incident to or as a condition of any professional representation. 2 . Employ coercion, intimidation, or undue influence in entering into sexual relations with a client. 3 . Continue representation of a client with whom the lawyer has sexual relations unless a disinterested lawyer would conclude that the representation will not be adversely affected. <p>4 . In domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client.</p> <p>C. DR 5-111(B) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the lawyer-client relationship.</p> <p>D. Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this rule solely because of the occurrence of such sexual relations.</p>	<p><i>EXPLANATION OF CHANGE: (1) Substance of DR1-102(A)(7) has been moved to proposed DR 5-111(B)(4) (current DR 1-102(A)(8) will be renumbered accordingly). (2) Expands existing rule to prohibit pernicious sexual relationships with clients in all matters, not solely domestic relations matters.</i></p>

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

Copy of the Professional Regulation Division's Quarterly Report (October – December 2003).

(pages 42 – 76)

Convocation is requested to approve an amendment to the confidentiality policy with respect to information to the Proceedings Authorization Committee ("PAC") about prior Invitations to Attend ("ITAs") of members that would permit reference to a member's history of ITAs, if any, in material submitted by staff or other investigators to the PAC. The amendment would permit reference to a member's history of ITAs, where PAC is considering whether an ITA is appropriate.

Mr. Cherniak accepted that the matter be put over to the February Convocation.

ITEMS FOR INFORMATION

- Executive Summary of the Task Force Report on the Discovery Process in Ontario
- Director's Quarterly Report

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

REPORTS NOT REACHED

Report of the Finance & Audit Committee

Finance and Audit Committee
January 8, 2004

Report to Convocation

Purpose of Report: Decision
 Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on January 8, 2004. Committee members in attendance were: Ruby C. (c), Chahbar A., (v.c.), Bourque P., Dray P., Gotlib A., Harris H., Lawrence A., Pattillo L., Pawlitza L., Silverstein A., Swaye G., Symes B., Wright B.. Staff attending were Heins M., Tysall W., Corrick K., Grady F., Andonov J., Cawse A..

2. The Committee is reporting on the following matters:
 - Decision
 - J. Shirley Denison Fund grants (in camera)
 - General Fund Long-Term Investment Policy
 - Lawyers Fund for Client Compensation Long-Term Investment Policy

- 2005 budget process
- 2003 capital budget status
- North wing renovation

Information

- Law Society General Fund unaudited financial statements for the third quarter
- Lawyers Fund for Client Compensation Fund unaudited financial statements for the third quarter
- LawPro unaudited financial statements for the third quarter
- LibraryCo Inc. unaudited financial statements for the second quarter
- Investment Compliance Reports
- Long term investment portfolio performance
- Ethical investing

FOR DECISION

J. SHIRLEY DENISON FUND

Convocation is requested to approve the payments from the J. Shirley Denison Fund.

3. A total of \$3,000 in grants made by staff in accordance with the guidelines of the trust were ratified by the Committee. The Committee also approved the payment of four further grants totaling \$29,740. A memorandum providing details to be addressed in camera is attached at page 20.

GENERAL FUND

LONG-TERM INVESTMENT POLICY

Convocation is requested to approve the new Long-Term Investment Policy for the General Fund.

4. Fund balances in the Law Society's General Fund have increased in recent years, primarily because of policies adopted on reserves and annual surpluses achieved on operations. The increasing fund balances led to increased cash available for investment. At September 30, 2003, cash and short-term investments totaled \$33 million.
5. Despite a significant draw on cash reserves expected as a result of the proposed North Wing renovation, cash flow forecasts identify a core cash holding within the Society's General Fund. Year-end is the lowest point of our cash and at December 31, 2004 cash and short-term investments are expected to total \$16 million.
6. This core holding can reasonably be invested in fixed income securities with an average duration ("term to maturity") of 2.5 years rather than the current typical duration of 60 days for General Fund short-term investments. This will allow us to obtain the benefits of higher long-term yields and improved diversification. In 2003 we earned approximately 2.9% on our short-term investments whereas the Scotia Capital Markets Short-Term Index earned approximately 5% for the same period. We are contemplating allocating \$10 million from the General Fund short-term investments to a new General Fund long-term portfolio. Based on the above interest rates, the potential annual return differential equates to \$180,000 on this capital amount after the investment management fee expense of approximately \$20,000 per annum.
7. The contemplated General Fund Long-Term Investment Policy mirrors the Compensation Fund Long-Term Investment Policy with the only difference being the shorter duration of the General Fund's fixed income investments. Potential for a portion of these investments to be utilized to fund the Society's operations makes the shorter duration appropriate for these investments. With a duration range of 1 – 4 years, the benchmark for the General Fund portfolio is the Scotia Capital Markets Short-Term Index. Whereas the Compensation Fund with a duration range of 1 – 6 years, uses the Scotia Capital Markets Universe Index as a benchmark.

8. Foyston, Gordon & Payne Inc. who currently manage the Compensation Fund Long-Term portfolio would administer the General Fund Long-Term portfolio. This outsourcing would release Law Society staff time currently spent administering General Fund short-term investments, provide professional investment management and increase net returns to the Society.
9. A copy of the General Fund Long-Term Investment Policy is attached at page 24.

LAWYERS FUND FOR CLIENT COMPENSATION LONG-TERM INVESTMENT POLICY

Convocation is requested to approve the amended Long-Term Investment Policy for the Lawyers Fund for Client Compensation.

10. The existing Long-Term Investment Policy for the Lawyers Fund for Client Compensation requires that it be reviewed periodically to assess whether its provisions are still appropriate. The Committee recommends only minor changes as indicated on the updated policy attached at page 31.

2005 BUDGET PROCESS

Convocation is requested to approve

- the 2005 budget schedule
- operational reviews for Professional Regulation and Policy and Legal Affairs to be completed no later than June 2004
- the opportunities for Benchers input into the budget process and operational reviews from February to April 2004.

Budget Process

11. The Society's current budget process is consistent with the Society's existing by-laws, respecting the mandates of its various standing committees and recognizes the policy and oversight role of Convocation and the operational role of the CEO.
12. Convocation, in the course of its regular business, receives regular program reports from the Society's various standing committees as well as periodic updates from the CEO on how the policy objectives of Convocation are being implemented and the relative merits and progress of the various initiatives and programs undertaken during the course of the year.
13. A comprehensive system of operational reviews linked to the budget is also in place. As mandated by Convocation in January 2002 these reviews have been carried out for the last two years (the 2003 and 2004 budgets). The Finance & Audit Committee intends to continue the operational reviews for the 2005 budget.
14. As mandated by Convocation in January 2002, completion of actual and envisaged operational reviews for the 2003, 2004 and 2005 budgets will result in substantially all of the Society's programs being reviewed over the three years.

Existing Corporate Governance

15. By-law 9 of the Law Society dictates the mandates of the Society's various standing committees. For example, the Professional Regulation Committee is mandated to develop for Convocation's approval "policy options on all matters relating to regulation of the profession in the areas of professional practice and fitness to practice".
16. The Professional Development, Competence and Admissions Committee has a similar mandate relating to matters of competence. This standing committee structure develops policy options and choices by delegating the research and data collection responsibilities necessary for policy development across the Society's various standing committees with Convocation retaining ultimate decision-making authority.
17. Under By-law 9 the Finance and Audit Committee is mandated,
 "to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item."
18. Section 8 of the Law Society Act provides that the CEO shall, under the direction of Convocation, manage the affairs and functions of the Society.
19. The by-laws also articulate the duties of the Chief Executive Officer. By-law 3 states:
 "The Chief Executive Officer shall be responsible for the management and co-ordination of all phases of the operation, administration, finances, organization, supervision and maintenance of all activities of the Society."
 In addition By-law 3 states,
 "the Chief Executive Officer shall perform all the functions and duties ordinarily associated with the office of chief executive officer including,
 (a) putting into effect all policies and procedures established by Convocation or a standing committee of Convocation;
 (b) counseling and assisting Convocation or any standing committee of Convocation in the development, adoption and implementation and advancement of the various functions of the Society"
20. The by-laws clearly separate the policymaking and operational responsibilities of Convocation and the CEO. Convocation, supported by the guidance of its standing committees, establishes the policy objectives of the Society and delegates operational responsibility for the implementation of these policies to the CEO. On an annual basis, as mandated in By-law 3, the CEO prepares a budget that is "consistent with the activities planned by Convocation for the next fiscal year." This budget is reviewed by the Finance and Audit Committee and must be approved by the Committee and by Convocation.

Budget Principles

21. The Society employs a hybrid budget process that includes some of the characteristics of the base budgeting approach as well as characteristics of a budgeting technique referred to as Zero Based Budgeting ("ZBB").
22. Base budgeting looks at the current year budget as a base or minimum starting point, and increases or decreases that base. This method of budgeting has increasingly gone out of style in favour of more active budgeting processes such as the current Law Society process.
23. Zero base budgeting is a method of budgeting that requires proponents of discretionary expenditures to continually justify every expenditure. For every planning period the starting point for each budget line item is zero. The intention is to avoid incremental budget creep, duplications and non-essentials.

24. The Law Society has applied the ZBB philosophy, but not to every activity, every year. While embracing the philosophy, the Law Society like many other organizations, has adopted a hybrid form of ZBB for a variety of reasons.
25. An assessment of activities “from scratch” is very comprehensive, detailed and therefore expensive. It takes a lot of employee time to prepare. Repetition of the exercise throughout the Law Society each year would render the budget process unproductive and expensive.
26. For-profit organizations typically apply ZBB to discretionary expenditures such as research and development, which are far more “one off” and non-repetitive than most of the Law Society’s activities. Most of the Law Society’s operations are intended to fulfill its mandate and do not vary much from year to year. If other circumstances are relatively stable it would be inappropriate to complete a comprehensive ZBB exercise for every activity, every year.

Operational Reviews

27. This hybrid budgeting approach is the basis for the rotational operational reviews already in place at the Law Society. A number of programs have been selected each year. The objective is to review all areas of the Law Society in a three-year cycle.
28. The reviews have included detailed presentations on the mandate and operational intent of programs and services offered by the functional areas, the human and fiscal resources employed and the descriptions of operational processes. Past expenditures are carefully reviewed. Future expenditures are carefully questioned.
29. The rotational review of activities has the benefits of:
 - Restricting a sense of entitlement to cost increases
 - Allowing a more meaningful, focused, analytical cost containment
 - Increasing discipline in budget development
 - Limiting resistance as the onerous and exhaustive examination of costs is not imposed every year in the absence of changing circumstances
 - Reducing the length of the budget process
 - Increasing Benchers understanding of a number of specific programs each year.
 - Increasing the accountability of management for the programs underlying the financial information contained in the annual budget.
30. Communication about the operational review process in 2004 was complicated by the Bencher election creating shorter timeframes for budget deliberations. For the operational reviews completed as part of the 2005 budget process, we are providing early notice of programs to be reviewed so that Convocation has an opportunity to provide guidance on the programs and methods of review.
31. The operational reviews are prepared by the relevant departments and are first examined by the Senior Management Team. The operational reviews are then presented to the relevant standing committee or the CEO in the absence of a relevant standing committee. The operational review is then presented to the Finance & Audit Committee, which reports results to Convocation. For the period from February to April 2004 Benchers may identify, in writing, issues to be addressed within the programs being reviewed.
32. In addition to financial issues, the Finance & Audit Committee assesses compliance with the Law Society’s role statement and assesses the benefit to the public and profession. It does so bearing in mind that members of the other committees have expertise that Finance & Audit Committee members may not have. The Finance & Audit Committee is respectful of this expertise, but it makes its assessments independently. These assessments are an integral part of the Finance & Audit Committee mandate and in the view of the Finance & Audit Committee are best performed as part of the budget operational review process. This results in recommendations to Convocation to fund or not to fund specific activities. In completing the operational reviews, members of the Committee frequently ask: “Why are we doing this?” If the Committee’s examination indicates that an activity is inconsistent with the role statement, or priorities

regarding the public or the profession, this will be brought to the attention of Convocation. During the operational reviews in recent years the Finance & Audit Committee has not concluded that there was any breach of the organization's role statement or inadequate benefit to the public or profession. This is not to suggest that individual members of the Committee have not reached such a conclusion, however these views have not carried the day in Committee or Convocation.

History of Operational Reviews

33. Operational reviews commenced with the 2003 budget. For the 2003 budget, operational areas reviewed were:
 - The Client Service Centre
 - The Great Library and County Libraries combined with the business plan for LibraryCo.
 - The Lawyers Fund for Client Compensation.
34. These three areas represent over 40% of the total budgeted expenditures of the Society.
35. For the 2004 budget operational areas reviewed were:
 - Professional Development and Competence
 - Communications.
36. These two areas represent an additional 20% of the Society's budgeted expenditures.
37. In addition:
 - the Information Systems department presented the Finance & Audit Committee with an overall review of its operations, its strategic direction and anticipated resource requirements.
 - as part of a continuing review of the Society's control processes our external auditors, Deloitte and Touche, undertook internal control reviews of:
 - the Human Resources department
 - the Finance department's payroll processes
 - the purchasing and payments cycle.
38. The results of these reviews were presented to the Audit Sub-Committee and to the Finance and Audit Committee. Financial processes will continue to undergo further control reviews by Deloitte and Touche.
39. In total therefore, programs utilizing more than 70% of the Society's fiscal resources will have undergone operational reviews or systems audits over the last two years. The operational reviews have been a service to the membership as resources have been directed to the core functions of the Society while at the same time allowing annual membership fees to be reduced.

Operational Reviews for 2005 Budget

40. For the 2005 budget cycle, the Senior Management Team is recommending Professional Regulation and Policy and Legal Affairs for operational review. This will achieve our objective of subjecting virtually all areas of the Law Society to an operational review over the three year period. Professional Regulation (with Professional Development and Competence) has been identified as the Law Society's dominant strategic area and has been in a state of transition over the last two years. Policy and Legal Affairs has also been refocused and restructured over the last two years.
41. It is intended that the operational reviews for the 2005 budget be completed and presented to the Finance and Audit Committee no later than June 2004.

2005 Budget Timetable

DATE (2004)	PROCESS
January / February	Finance & Audit Committee and Convocation approve a process for preparing the 2005 budget.
February, March, April	<p>Benchers' questions and comments for operational reviews submitted in writing to the Chair of Finance & Audit Committee, Chair of the relevant standing committee and CEO.</p> <p>Operational reviews are presented to the Senior Management Team (SMT) and standing committees (or CEO if no relevant standing committee).</p> <p>The SMT commences the budget process by presenting and reviewing individual and collective budget assumptions, variables and objectives.</p>
June	<p>Last Convocation before summer. Last opportunity for Convocation to convey policy objectives and budget priorities to the Finance and Audit Committee prior to the development of the draft budget.</p> <p>After presentation to the relevant standing committee, operational reviews for selected programs are presented to the Finance and Audit Committee and any other Benchers who wish to attend. The Finance and Audit Committee reports results of the operational reviews to Convocation and operational review material is available to all Benchers.</p> <p>LibraryCo submits preliminary submissions on 2004 activities and 2005 projections to the Finance and Audit Committee at this time.</p> <p>External organizations such as CDLPA will have been requested to provide 2005 budget submissions.</p>
July and August	<p>2005 draft budget prepared by CEO and SMT.</p> <p>Facilities and Information Systems compile a capital budget with the assistance of user departments.</p>
October	Draft operating and capital budget is presented to the Finance and Audit Committee and Convocation for approval.

2003 CAPITAL BUDGET STATUS

Convocation is requested to approve that projects budgeted in 2003 but not yet completed, be funded in 2004 from the accumulated year-end balance of the Capital Allocation Fund.

42. The Law Society's financial year-end is December 31 of each year. Capital expenditures for each year are approved in a similar fashion to operating expenditures, but capital projects often extend beyond the financial year-end. The schedule below of capital expenditures provides a summary of capital spending by project for the year 2003.
43. The facilities projects are divided into three categories: projects with 2003 budgets and undertaken as planned, projects undertaken during the year that were not part of the original 2003 plan and projects budgeted but not undertaken.

44. Of the projects undertaken, with the exception of the barristers' robing rooms, the Benchers wing restoration and the roof repair, all are substantially complete and total costs will be within the total spent and committed to date. Additionally, the acquisition of some furniture included in the furniture systems and alterations category, will not be received prior to the end of 2003. Therefore, approximately \$160,000 of the committed amount for furniture systems will not be expended until 2004. Of the projects approved in 2003 to be completed in 2004, the barristers' robing rooms will require additional funding beyond what has currently been spent and committed. It is estimated that an additional \$100,000 will be required to complete the project. Competitive quotes for the restoration of the mosaic tile floor in the Benchers wing and the roof repair have yet to be obtained. The 2003 capital budget is under spent and adequate funding will be available to complete these projects from funds carried forward to 2004.
45. The projects that were undertaken that were not part of the original 2003 plan were projects that arose through the year either as emergencies, such as the replacement of the uninterruptible power supply system for the Society's main computer room or completion of projects approved in 2002 that had some residual work to be completed as in the case of the elevator and main lobby renovations. The funding for these projects was provided from under spending in other projects or from projects not undertaken during the year.
46. The major projects budgeted but not commenced were lecture hall seating replacement and the restoration of the library main reading room floor. The lecture hall seating was deferred pending resolution of proposals to renovate the North Wing and the library floor was deferred to coordinate with planned renovations by the province to the court side of Osgoode Hall.
47. The largest single item budgeted was the renovation of the North Wing. The budget of \$4,000,000 represents the allocation to capital in 2002 in anticipation of the planned renovation of the North Wing. Funding for the full renovation of the North Wing is before Convocation for consideration. To date, money has been spent on architectural work, estimating, plans, etc. in order to provide Convocation with the information necessary for decision making on the future of the North Wing.
48. Information systems projects for 2003 are substantially completed. The final phase of the financial systems upgrade will be completed in early 2004. The over spending on 2003 budget is primarily due to the acquisition of a server late in 2003 for the library automation project budgeted in 2004. The spending on this specific project will be reduced in 2004 to offset the acquisition cost of this server in 2003.
49. The status of approved 2003 capital expenditures is set out below.

Capital Projects	Budget \$	Spent & Committed \$	(Over)Under \$
Restoration of Perimeter Fence	310,000	245,166	64,834
Mechanical Upgrade	300,000	280,355	19,645
Furniture Systems and Alterations	200,000	256,936	(56,936)
Barristers' Robing Rooms	150,000	92,752	57,248
Restoration of Benchers' Wing	100,000	76,240	23,760
Cafeteria Renovations	100,000	25,378	74,622
Accessibility Alterations	100,000	128,409	(28,409)
Ottawa Building Restoration	95,000	62,860	32,140
Electronic Security System	80,000	78,550	1,450
Roof Repair	60,000	10,500	49,500
Signage Contingency	50,000	16,737	33,263
	25,000	11,000	14,000

Uninterruptible Power Supply	-	73,923	(73,923)
Main Floor Renovation	-	65,182	(65,182)
Elevator Renovation	-	19,336	(19,336)
Lecture Hall Seating Replacement	225,000	-	225,000
Library Main Reading Room	60,000	-	60,000
Irrigation Systems	10,000	-	10,000
Total Facilities Projects	1,865,000	1,443,324	421,676
North Wing Renovations	4,000,000	341,995	3,658,005
Information Systems	770,000	776,522	(6,522)
Total Capital Expenditures	6,635,000	2,561,841	4,073,159

NORTH WING RENOVATION

Convocation is requested to approve the proposed plan for the renovation of the North Wing.

50. The original motivation for renovating the North Wing was to bring off-site Law Society staff back to Osgoode Hall, realizing significant operating and financial benefits. This opportunity was brought about by developments in the way the Bar Admission Course is to be offered and the reduced need for classrooms.
51. In 2002, a preliminary investigation and costing for renovation of the North Wing was completed. In March 2003 Convocation approved the renovation of the 2nd, 3rd and 4th floors at an estimated cost of \$4.7 million. At the direction of the Finance and Audit Committee, staff explored the possibility of including the 1st floor in the renovation plans. Subsequent considerations, including the need to extend the main elevators to the 6th floor to enhance accessibility and renovations to the Lamont Lecture Hall to make it a multi-use, multi-functional space have resulted in detailed plans being developed for a full renovation of the North Wing from the 1st to the 6th floors at an estimated cost of \$9.028 million, broken down as follows:
- | | |
|-------------------------------------|----------------|
| · Mechanical/ Electrical | \$2,690 |
| · Architectural/Structural | 2,076 |
| · Overhead / Contingencies | 1,380 |
| · Furniture/Equipment/Moving/Design | <u>2,882</u> |
| Total | <u>\$9,028</u> |
52. As noted above the renovation of floors two, three and four has already been approved. This portion of the renovation primarily converts class room space to office space, resulting in quantifiable savings in off-site lease costs and other financial benefits. It is estimated there will be positive financial benefits within four years with savings sufficient to recover the initial investment of \$4.7 million in these three floors within approximately 12 years.
53. The renovation of the 5th and 6th floors involves the optimisation of existing office space and the extension of elevator service to the 6th floor, eliminating the serious accessibility deficiency that exists at the present time. Similar quantifiable savings associated with floors two through four do not accompany the renovation of this space. However, the construction synergies, operating efficiencies and enhanced accessibility upon completion justify the renovation of the entire North Wing. The projected cost for renovating these two floors is approximately \$2.9 million.

54. The renovation of the 1st floor Lamont Lecture Hall will convert it into a multi-use, multi-functional space more appropriate for the Law Society's current CLE needs now that the Hall is no longer required for the BAC program. The total projected cost for renovating the 1st floor is \$1.4 million.
55. The benefits of renovating the entire North Wing will permeate all aspects of Law Society operations. The productivity gains from incorporating the top two floors into the renovations of the other floors are summarized as:
- o Comprehensive, Society wide improvements to spatial arrangements. Many areas of the Law Society have not been significantly modernized or renovated for decades. This has led to significant compromises being made in accommodating staff and is an ongoing productivity, file management and confidentiality issue. The Law Society's space needs are also expanding as we seek to optimally fulfill our core functions. For instance, in the Regulatory area the continued development of the tribunal process requires more space for meetings and staff.
 - o The space we are currently renting offsite is in modern commercial buildings with high space efficiency ratios. Osgoode Hall is obviously an older building with a mixed use history leading to lower space efficiency. It is therefore important that if we are to relocate staff back to Osgoode Hall that we are able to optimise space arrangements. This cannot be done without reconfiguring the space on the 5th and 6th floors. This will allow specific space designs meeting functional requirements and allow related functions to be located an efficient distance from each other.
 - o Appropriate quality of accommodation
 - o Improved security. Security is becoming increasingly important at institutions such as the Law Society. The comprehensive reconfiguration of the building will allow an effective and systematic security system to be put in place. For instance under the existing layout, it is impossible to comprehensively restrict access to regulatory areas as they are spread throughout the building.
 - o Improved accessibility. North Wing renovations from the 2nd to the 6th floor will significantly improve accessibility at the Law Society, from the obvious benefit of the extension of elevator service to the sixth floor, to improved floor layouts that will reduce barriers to access. The existing layouts on all floors are based on building infrastructure that is decades old. The existing floor layouts have also been adapted over time between business and education needs resulting in a hybrid layout which is neither efficient nor accessible. Renovations on all floors will focus on open plans, work flows and practical accessibility. There will also be specific accessibility improvements such as better positioned and equipped washrooms.
 - o The implications of not renovating anything in the North Wing need to be incorporated into the renovation considerations, as there are significant financial consequences of maintaining the status quo. For instance
 - there are mechanical and HVAC upgrades and replacements required as part of the building's long-term maintenance plan. These changes are included in the costs of renovation if the classrooms are converted to office space but would otherwise have an annual cost of at least \$300,000 for the next few years.
 - Refurbishment of the Lamont Lecture Hall and 4th floor, whether the latter is for students or employees, will have an immediate cost of at least \$360,000.
 - Even if classroom space is not converted into office space the integration of the Regulatory division, improvement of office space on the second floor, and the increased provision of services will result in departmental moves and an increase in space required possibly requiring more external space. It is conceivable that we would expand into the other half of the floor we currently occupy at 393 University Ave. There would be leasehold improvements associated with this move estimated at \$60 / square foot, and the costs of moving would result in an expense of at least \$600,000. This is in addition to annual rental costs of \$300,000 based on our current rates. All these costs would be paid to the landlord rather than invested in our own building.
56. There have been space changes on a departmental basis in recent years but these changes represented minor modifications to the space plan. The significant square footage involved in the 2nd, 3rd and 4th floor renovation (an increase of useable office space from 14,200sq. ft. to 28,700sq. ft.) is an opportunity to ensure that an updated, comprehensive space plan for the whole organization is in place. It is impossible to optimise the use of space on the 2nd, 3rd and 4th floors without incorporating changes to other floors. For

instance, it is recommended that the Investigation Department move from the 6th floor to the 3rd floor, in close proximity to the Discipline Department and other Regulatory departments. The Regulatory division is currently spread over three floors, the 2nd, 5th, and 6th and the related Compensation Fund and Staff Trustee functions are offsite. This is not appropriate for efficiency, confidentiality, communications within the department and file management. However regulatory functions cannot be integrated without making changes to the 5th and 6th floors in conjunction with the education space released on floors 2 to 4.

57. Convocation recently set the future direction of the Bar Admission Course. This direction means that the primary user of the Lamont Lecture Hall will be the Continuing Legal Education program. The existing single, tiered auditorium is not appropriate for CLE programs and other Law Society users which has led to its contemplated reconfiguration as smaller, more flexible rooms.
58. The approved 2004 budget included the transfer of the 2003 Unrestricted Fund surplus (projected at \$3.2 million) to the Capital Allocation Fund to support the planned renovation. The balance of the required funding (projected at \$1.8 million) will be provided from the transfer of future surpluses and/or the allocation of a portion of the annual capital levy. The 2004 budget also indicated detailed plans for the project would be brought back to Convocation and these plans are attached in the form of the Schematic Design Summary Report from the Ventin Group, Architects.
59. To ensure proper costing of the project, the Architect engaged a professional quantity surveyor / cost consultant to develop elemental breakdowns of construction components based upon schematic plan layouts and existing plans. As well, a cost review will be conducted at the conclusion of the design development to ensure costing information is consistent with the original estimates. Further cost reviews will be conducted at other critical milestones of the construction phase.
60. The project will be tendered in the summer of 2004, with construction to commence in September 2004 and continue for a period of 16 to 20 months. A tight program of schedule control will be implemented to reduce the risk of construction delays.
61. The Finance and Audit Committee will be provided with a summary of tender proposals for information subsequent to the close of the tender process.
62. The Schematic Design Summary Report from the architects is separately attached.

FOR INFORMATION

LAW SOCIETY OF UPPER CANADA GENERAL FUND UNAUDITED FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2003

63. The interim financial statements of the General Fund for the third quarter of 2003 were reviewed. The Committee recommends that the statements be received by Convocation for information (page 39).

LAWYERS FUND FOR CLIENT COMPENSATION UNAUDITED FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2003

64. The interim financial statements for the Lawyers Fund for Client Compensation for the third quarter of 2003 were reviewed. The Committee recommends that the statements be received by Convocation for information (page 43).

LAWYER'S PROFESSIONAL INDEMNITY COMPANY UNAUDITED FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2003

65. The interim financial statements for LawPro for the third quarter of 2003 were reviewed. The Committee recommends that the statements be received by Convocation for information (page 45).

LIBRARYCO INC.
UNAUDITED FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED
JUNE 30, 2003

66. The interim financial statements for LibraryCo Inc. for the second quarter of 2003 were reviewed. The Committee recommends that the statements be received by Convocation for information (page 59).

INVESTMENT COMPLIANCE REPORTS

67. Investment Compliance Reports for the quarter ended September 30, 2003 for the General Fund and the Lawyers Fund for Client Compensation are attached at page 61. The Reports confirm there are no breaches in compliance.

LAWYERS FUND FOR CLIENT COMPENSATION
LONG-TERM INVESTMENT PORTFOLIO PERFORMANCE

68. A Compliance Report and Investment Review from our Investment Manager, Foyston Gordon and Payne (Foystons) is attached (page 64). Returns for the last three months, and since Foystons took over management of the portfolio, exceed Investment Policy benchmarks.

ETHICAL / SOCIALLY RESPONSIBLE INVESTING

69. A working group to review the inclusion of an ethical investing component in our Long-Term Investment Policies will be formed.

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

- (1) Copy of a memorandum re: payments from the J. Shirley Denison Fund. (in camera) (pages 20 – 23)
- (2) Copy of the General Fund Long-Term Investment Policy. (pages 24 – 30)
- (3) Copy of the amended Long-Term Investment Policy for the Lawyers Fund for Client Compensation. (pages 31 – 38)
- (4) Copy of the Law Society of Upper Canada General Fund Unaudited Financial Statements for the Nine Months ended September 30, 2003. (pages 39 – 42)
- (5) Copy of the Lawyers Fund for Client Compensation Unaudited Financial Statements for the Nine Months Ended September 30, 2003. (pages 43 – 44)
- (6) Copy of the Lawyer's Professional Indemnity Company Unaudited Financial Statements for the Nine Months Ended September 30, 2003.

(pages 45 – 58)

- (7) Copy of LibraryCo Inc. Unaudited Financial Statements for the six Months Ended June 30, 2003.
(pages 59 – 60)
- (8) Copy of Investment Compliance Reports for the quarter ended September 30, 2003.
(pages 61 – 63)
- (9) Copy of a Compliance Report and Investment Review for the last three months.
(pages 64 - 67)

Report of the Professional Development, Competence & Admissions Committee

Professional Development, Competence & Admissions Committee
January 22, 2003

Report to Convocation

Purpose of Report: Decision
 Information

Policy Secretariat
(Sophia Sperdakos 416-947-5209)

OVERVIEW OF POLICY ISSUES

PRACTICE REVIEW PROGRAM – PROPOSED AMENDMENTS TO BY-LAW 24

Request to Convocation

1. That Convocation approves proposed amendments to By-law 24, set out at Appendix 2.

Summary of the Issue

2. Section 42 of the Law Society Act provides that the Law Society may conduct a review of a member's practice in accordance with by-laws for the purpose of determining whether a member is meeting standards of professional competence. Such a review may be ordered if required in a conduct proceeding, if the member consents, or if the Chair or Vice-chair of the Professional Development and Competence Committee directs. The Chair or Vice-chair shall direct a review if the circumstances prescribed by the by-laws exist.
3. By-law 24 (Professional Competence), set out at Appendix 1, provides that the Chair or Vice-chair will order a practice review where "there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence".
4. The Committee proposes amendments to By-law 24 to set out considerations that may be taken into account in determining whether reasonable grounds to direct a practice review exist. Appendix 2 contains the proposed amendments to By-law 24, which Convocation is requested to approve.

5. Appendix 3, provided to Convocation for information, contains a guide that will be available to members, describing those considerations relevant in determining whether there are reasonable grounds to direct a practice review.

THE REPORT

Terms Of Reference/Committee Process

6. The Committee met on November 10, 2003 and January 8, 2004. Committee members George Hunter (Chair), Gavin MacKenzie (Vice-Chair), Bill Simpson (Vice-Chair), Peter Bourque, Kim Carpenter-Gunn, Gary Gottlieb, and Laura Legge and staff members Mirka Adamsky-Rackova, Diana Miles, Dulce Mitchell, and Leslie Greenfield attended the November meeting. Bill Simpson (Vice-Chair), Peter Bourque, Gary Gottlieb, and Bonnie Warkentin and staff members Caterina Galati, Leslie Greenfield, Diana Miles, Dulce Mitchell, Elliot Spears and Sophia Spurdakos attended the January meeting.
7. The Committee is reporting on the following matters:

Policy – For Decision

- Amendment to By-law 24 (Professional Competence)

Information

- Professional Development and Competence Department Quarterly Report
- Task Force on the Discovery Process in Ontario

PRACTICE REVIEW PROGRAM – PROPOSED AMENDMENTS TO BY-LAW 24

Background

8. Section 42 of the Law Society Act provides that the Law Society may conduct a review of a member's practice in accordance with by-laws for the purpose of determining whether a member is meeting standards of professional competence if,
 - a. the Chair or Vice-Chair of the Committee directs it pursuant to section 49.4;
 - b. the member is required pursuant to a conduct proceeding under section 35 of the Act to cooperate in a review; or
 - c. the member consents.
9. Section 49.4 provides that,

...the chair or vice-chair of the standing committee of Convocation responsible for professional competence shall direct that a review of a member's practice be conducted under section 42 if the circumstances prescribed by the by-laws exist.
10. By-law 24 (Professional Competence) currently provides that the Chair or Vice-chair of the Committee will order a practice review where "there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence." By-law 24 is set out at Appendix 1.
11. Section 41 of the Law Society Act provides that a member fails to meet standards of professional competence for the purposes of the Act if,
 - a. there are deficiencies in,
 - i. the member's knowledge, skill or judgment,
 - ii. the member's attention to the interests of clients,
 - iii. the records, systems or procedures of the member's practice, or
 - iv. other aspects of the member's practice; and

- b. the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.
- 12. Without further direction in the Act or By-law 24, staff relies primarily on complaints made against a member as the main criteria for considering whether a practice review may be warranted and examines the nature, source and frequency of those complaints. Staff also relies upon referrals from other departments within the Law Society that suggest a failure to meet standards of professional competence.
- 13. Currently, staff in the practice review program will consider whether the complaints or referrals point to reasonable grounds to believe that a member may be failing or may have failed to meet standards of professional competence. The Director of Professional Development and Competence reviews the staff assessment. If the Director is satisfied that there are reasonable grounds she will then send an Authorization Memorandum to the Chair of the Committee for his consideration. The Chair decides whether or not to direct the review. No assumption is made at any stage of the assessment that the existence of complaints or referrals necessarily means that a practice review is warranted. Each case is weighed to determine whether the facts of the case point to reasonable grounds to recommend a practice review. This flexibility is important.
- 14. By-law 24 provides little information on what should be taken into account in determining the existence of “reasonable grounds”. Members have complained that the By-law is vague and that there is little guidance on the considerations that will be applied in determining whether to direct a review. In November the Committee considered possible amendments to By-law 24 to provide that in considering “reasonable grounds” a Chair or Vice-chair might take into account a number of specific considerations. In January the Committee considered the draft by-law amendments and now recommends their approval to Convocation. The proposed amendments are set out at Appendix 2.
- 15. To further assist members a guide will be available describing those considerations relevant to determining whether there are reasonable grounds to direct a practice review. A copy of the guide is set out for Convocation’s information at Appendix 3.

Request to Convocation

- 16. That Convocation approves proposed amendments to By-law 24, set out at Appendix 2.

INFORMATION

PROFESSIONAL DEVELOPMENT AND COMPETENCE DEPARTMENT – QUARTERLY REPORT

- 17. The Director of Professional Development and Competence has provided a quarterly report on the operations of her department. This is set out at Appendix 4.

TASK FORCE ON THE DISCOVERY PROCESS IN ONTARIO

- 18. In 2001, the Attorney General and the Chief Justice of the Superior Court of Justice appointed a Discovery Task Force to “undertake a comprehensive review of Ontario’s civil discovery process, identify problems with the current process and recommend options for reform”.
- 19. In March 2003, the Chair of the Task Force, Justice Colin Campbell, attended a meeting of the Committee to discuss some of the issues the Task Force had identified that might be relevant for inclusion in professional development programs and other competence related initiatives. As well, the Task Force established a Steering Committee to assist and advise on the implementation of proposed best practice guidelines. The Director of the Professional Development and Competence department is a member of the Steering Committee. The Steering Committee will shortly begin its work on formulating best practices.
- 20. The Task Force has now issued its final report. The Executive Summary is set out at Appendix 5.

APPENDIX 1

BY-LAW 24

Made: March 26, 1999

Amended:

May 28, 1999

April 26, 2001

January 24, 2002

October 31, 2002

April 25, 2003

PROFESSIONAL COMPETENCE

Exercise of powers by committee

1. The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for professional competence matters under this By-Law is not subject to the approval of Convocation.

Delegation of powers and duties of Secretary: Director, Professional Development and Competence

2. (1) An officer or employee of the Society who holds the office of Director, Professional Development and Competence may exercise the powers and perform the duties of the Secretary under,

- (a) subsections 42 (3), (4), (5), (6) and (8) of the Act;
- (a.1) section 44 of the Act;
- (b) section 45 of the Act, as it relates to an order made for failure to comply with a professional competence order;
- (c) section 49.2 of the Act;
- (d) By-Law 21, as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the professional competence of a member, a request to the Committee to withdraw an application for a professional competence order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of a review, a search or seizure related to a review or a professional competence proceeding; and
- (e) this By-Law.

Delegation of powers and duties of Secretary: Chief Executive Officer

(2) An officer or employee of the Society who holds the office of Chief Executive Officer may, in the absence of the Director, Professional Development and Competence and the Secretary, exercise the powers and perform the duties of the Secretary under,

- (a) subsections 42 (3), (4), (5), (6) and (8) of the Act;
- (a.1) section 44 of the Act;
- (b) section 45 of the Act, as it relates to an order made for failure to comply with a professional competence order;
- (c) section 49.2 of the Act;

- (d) By-Law 21, as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the professional competence of a member, a request to the Committee to withdraw an application for a professional competence order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of a review, a search or seizure related to a review or a professional competence proceeding; and
- (e) this By-Law.

INFORMATION

Requirement to provide information

- 3. (1) The Secretary may require a member to provide to the Society specific information about the member's quality of service to clients, including specific information about,
 - (a) the member's knowledge, skill or judgment;
 - (b) the member's attention to the interests of clients;
 - (c) the records, systems or procedures of the member's practice; and
 - (d) other aspects of the member's practice.

Notice of requirement to provide information

- (2) The Secretary shall notify a member in writing of the requirement to provide information under subsection (1) and shall send to the member a detailed list of the information to be provided by him or her.

Time for providing information

- (3) The member shall provide to the Society the specific information required of him or her not later than thirty days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

- (4) Despite subsection (3), on the request of the member, the Secretary may extend the time within which the member shall provide to the Society the specific information required of him or her.

Request for extension of time

- (5) A request to the Secretary to extend time under subsection (4) shall be made by the member in writing and not later than the day on which the member is required under subsection (3) to provide to the Society the specific information required of him or her.

PRACTICE REVIEWS

Appointment of persons to conduct reviews

- 4. The standing committee of Convocation responsible for professional competence matters or Convocation on the recommendation of the committee shall appoint one or more persons to conduct reviews of members' practices under section 42 of the Act.

Mandatory reviews

- 5. (1) On the request of the Secretary, the chair or a vice-chair of the standing committee of Convocation responsible for professional competence matters shall direct that a review of a member's practice be conducted if the chair or the vice-chair to whom the Secretary has made the request is satisfied that there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence.

Mandatory reviews: benchers

(2) The Treasurer shall exercise the authority of the chair or a vice-chair of the committee under subsection (1) when the Secretary requests a review of a bencher's practice.

Review of member's practice

6. (1) The Secretary shall assign one or more persons appointed under section 4 to conduct a review of a member's practice.

Assignment of additional persons to review

(2) At any time after a review has commenced, the Secretary may assign one or more persons appointed under section 4 to assist or replace the person or persons originally assigned to conduct the review.

Review of bencher's practice

(3) Subsections (1) and (2) do not apply to a review of a bencher's practice that is directed by the Treasurer under section 5.

Review of practice is not public information

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

Final report

7. (1) On completion of a review of a member's practice, the person or persons who conducted the review shall submit to the Secretary a final report on the review.

Contents of final report

(2) The final report on a review of a member's practice shall contain,

- (a) the opinion of the person or persons who conducted the review as to whether the member who was the subject of the review is failing or has failed to meet standards of professional competence; and
- (b) if the person or persons who conducted the review are of the opinion that the member who was the subject of the review is failing or has failed to meet standards of professional competence, the recommendations of the person or persons.

Final report: Secretary's duties

(3) The Secretary shall consider every final report submitted to him or her and shall provide to the member who is the subject of the final report a copy thereof.

Recommendations

8. (1) If on completion of a review of a member's practice and receipt of the final report on the review, the Secretary decides to make recommendations to the member under subsection 42 (3) of the Act, but not to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Secretary shall so notify the member in writing.

Same

(2) The Secretary may make recommendations to the member at the same time as he or she notifies the member under subsection (1) or within a reasonable period of time after he or she notifies the member under subsection (1).

Proposal for order

9. (1) If on completion of a review of a member's practice and receipt of the final report on the review, the Secretary decides to make recommendations to the member under subsection 42 (3) of the Act and to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Secretary shall so notify the member in writing.

Same

- (2) The notice under subsection (1) shall be accompanied by the proposal for an order.

Form of proposal for an order

- (3) A proposal for an order shall, as far as possible, be in the form of an order made under subsection 42 (7) of the Act.

Time for responding to proposal

- (4) A member who receives a proposal for an order shall, not later than thirty days after the date specified on the notice given to the member under subsection (1), notify the Secretary in writing as to whether he or she accepts the proposal.

Extension of time for responding to proposal

- (5) Despite subsection (4), on the request of the member, or on his or her own initiative, the Secretary may extend the time within which the member shall respond to the proposal.

Request for extension of time

- (6) A request to the Secretary to extend time under subsection (5) shall be made by the member in writing and not later than the day on which the member is required under subsection (4) to respond to the proposal.

Modifying proposal for order

- (7) Before the time for responding to a proposal for an order has expired, the Secretary may modify the proposal if the member consents to the modification, and the modified proposal shall be deemed to be the proposal to which the member is required to respond under subsection (4).

Failure to respond

- (8) A member who fails to respond in writing to a proposal for an order within the thirty day period specified in subsection (4), or within the extended time period specified by the Secretary under subsection (5), the member shall be deemed to have refused to accept the proposal.

Review of proposal by benchers: materials

10. The Secretary shall provide to the elected benchers appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member the following materials:

1. The final report on the review of the member's practice.
2. The member's written response, if any, to the final report, including the member's written response, if any, to the recommendations of the person or persons who conducted the review.
3. The proposal for an order made to the member.
4. The member's written response, if any, to the proposal.

Review of proposal by benchers: refusal to make order

11. An elected benchers appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may refuse to make an order giving effect to the proposal only after a meeting with the member and the Secretary.

Review of proposal by benchers: modifications

12. An elected benchers appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may make an order that includes modifications to the proposal only after a meeting with the member and the Secretary.

Communications with member and Secretary prohibited

13. An elected benchers appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not communicate with the member or the Secretary with respect to the proposal except in accordance with section 14.

Meeting with member and Secretary

14. (1) An elected benchler appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may meet with the member and the Secretary by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously.

Both parties to be present

(2) Subject to subsection (3), an elected benchler appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not meet with the member alone or with the Secretary alone to discuss the proposal, but nothing in this subsection is intended to deny to the member the right to counsel.

Exception

(3) An elected benchler appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may meet with the Secretary alone to discuss the proposal if,

- (a) the meeting is not held under section 12; and
- (b) notice of the meeting has been given to the member in accordance with subsections (4) and (5) and the member fails to attend at the meeting.

Notice

(4) The Secretary shall give to a member reasonable notice of a meeting with the elected benchler appointed under subsection 42 (6) of the Act to review the proposal for an order made to the member.

Same

- (5) A notice of a meeting shall be in writing and shall include,
 - (a) a statement of the time, place and purpose of the meeting; and
 - (b) a statement that if the member does not attend at the meeting, the elected benchler appointed under subsection 42 (6) of the Act to review the proposal for an order made to the member may meet with the Secretary alone to discuss the proposal.

Order

15. (1) An order made under subsection 42 (7) of the Act shall be in Form 24A [Order] and shall contain,
- (a) the name of the elected benchler who made it;
 - (b) the date on which it was made; and
 - (c) a recital of the particulars necessary to understand the order, including the date of any meeting and the persons who attended at the meeting.

Same

(2) The operative parts of an order made under subsection 42 (7) of the Act shall be divided into paragraphs, numbered consecutively.

Notice of order

(3) The Secretary shall send to the member who is the subject of an order made under subsection 42 (7) of the Act a copy of the order by any of the following methods:

- 1. Personal delivery to the member.
- 2. Regular lettermail to the last known address of the member.

3. Fax to the last known fax number of the member.
4. E-mail to the last known e-mail address of the member.

Date of receipt: mail

(4) If the copy of the order is sent by regular lettermail, it shall be deemed to be received by the member on the fifth day after the day it is mailed.

Date of receipt: fax or e-mail

(5) If the copy of the order is sent by fax or e-mail, it shall be deemed to be received on the day after it was sent, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

Effective date of order

(6) Unless otherwise provided in the order, an order made under subsection 42 (7) of the Act is effective from the date on which it is made.

Order is not public information

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

Order limiting member's rights and privileges is public information

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

Interpretation: "holiday"

(7) In this section, "holiday" means,

- (a) any Saturday or Sunday;
- (b) New Year's Day;
- (c) Good Friday;
- (d) Easter Monday;
- (e) Victoria Day;
- (f) Canada Day;
- (g) Civic Holiday;
- (h) Labour Day;
- (i) Thanksgiving Day;
- (j) Remembrance Day;
- (k) Christmas Day;
- (l) Boxing Day; and
- (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Order

(File no., if any)

The Law Society of Upper Canada

(Name of elected benchner
made)(Day and date order
made)In the matter of the Law Society Act
and (identify member), a member of The Law Society of Upper Canada

ORDER

A PROPOSAL FOR THIS ORDER was made by the Secretary, under subsection 42 (4) of the *Law Society Act*, to the member (identify member) on (specify date) and was accepted by the member on (specify date).

(OR, where the order includes modifications to the proposal,

A PROPOSAL FOR AN ORDER was made by the Secretary, under subsection 42 (4) of the *Law Society Act*, to the member (identify member) on (specify date).)

ON READING the final report on the review of the member's practice, (the member's response to the final report,) (and) the proposal for the order, (and the member's response to the proposal for the order,)

(ON MEETING with the member and the Secretary (or the Secretary alone, the member not attending and not being represented at the meeting, although properly notified), and on hearing the submissions of the member and the Secretary (or the Secretary),

OR

ON MEETING with the member and the Secretary and on hearing their submissions on an order that would include modifications to the proposal made by the Secretary to the member (if applicable, add: including their consent to such an order),)

IT IS ORDERED as follows:

1.
2.

(Signature of elected benchner)

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 22, 2004

MOVED BY

SECONDED BY

THAT By-Law 24 [Professional Competence], made by Convocation on March 26, 1999 and amended on May 28, 1999, April 26, 2001, January 24, 2002, October 31, 2002 and April 25, 2003, be further amended as follows:

BY-LAW 24
[PROFESSIONAL COMPETENCE]

1. Section 5 of By-Law 24 [Professional Competence] is amended by adding the following:

Determination of reasonable grounds

(3) In determining that there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence, the chair or vice-chair of the standing committee of Convocation responsible for professional competence or the Treasurer may consider the following:

1. The nature, number and type of complaints made to the Society in respect of the conduct and competence of the member.
2. Any order made against the member under section 35, 40, 44 or 47 or subsection 49.35 (2) of the Act.
3. Any undertaking given to the Society by the member.
4. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of considering a complaint which suggests that the member may be failing or may have failed to meet standards of professional competence.
5. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of an investigation which suggests that the member may be failing or may have failed to meet standards of professional competence.
6. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of a proceeding which suggests that the member may be failing or may have failed to meet standards of professional competence.
7. The result of an audit where the result suggests that,
 - (a) the member is in default of the requirements of By-Law 18 [Record Keeping Requirements] or 19 [Handling of Money and Other Property];
 - (b) the member is in default of the requirements of Rule 2.04 of the Rules of Professional Conduct;
 - (c) there are deficiencies in the records, systems or procedures in the member's practice; or
 - (d) there are deficiencies in the administration of the member's practice.

APPENDIX 3

PRACTICE REVIEW
GUIDE FOR MEMBERS
RELEVANT CONSIDERATIONS IN DIRECTING A PRACTICE REVIEW

COMPLAINTS HISTORY

A member's complaints history is a relevant consideration in assessing whether there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence.

In assessing complaints the following considerations are relevant:

- the number of complaints;
- the time frame over which they have occurred;
- the seriousness of the complaints;
- the nature of the complaints, in particular,
 - o failure to account to clients
 - o failure to fulfill financial or other commitments or undertakings in a timely fashion
 - o investigation authorizations pursuant to section 49.3 of the Law Society Act

CONDUCT, CAPACITY OR COMPETENCE ORDERS

- Conduct, capacity or competence orders that limit or restrict the member's rights to practice or relate to practice management issues.

UNDERTAKINGS

- Undertakings given to the Law Society that limit or restrict the member's rights to practise or relate to practice management issues.

REFERRALS FROM LAW SOCIETY DEPARTMENTS

- Referrals from Law Society departments, including Complaints, Discipline, Investigation, and Spot Audit that indicate that there may be reasonable grounds to believe that the member may be failing or may have failed to meet standards of professional competence.
- Referrals from Law Society departments including Complaints, Discipline, Investigation, and Spot Audit that indicate that the member may require professional or personal counseling.
- Referrals from spot audit that indicate that there are deficiencies in the records, systems or procedures of the member's practice regarding,
 - o Filing systems
 - o File organization
 - o Compliance with By-laws 18 [Record Keeping Requirements] and 19 Handling of Money and Other Property]
 - o Compliance with conflicts management systems as required by the Rules of Professional Conduct
 - o Staff support

that gives rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

ADMINISTRATIVE SUSPENSIONS

- Administrative suspensions for failure to file, in combination with other indicators.

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

- (1) Copy of the Quarterly Benchmark Report from the Professional Development & Competence Department (2003 Year-end Statistics dated January 2004.
(Appendix 4, pages 21 – 28)
- (2) Copy of the Report of the Task Force on Discovery Process, Executive Summary dated November 2003.
(Appendix 5, pages 29 – 53)

CONVOCATION ROSE AT 1:00 P.M.

The Treasurer and Benchers had as their guests for luncheon, Mr. David Brown, Chair of the Ontario Securities Commission and Professor John H. Farrar, School of Law, Bond University, Queensland Australia.

Confirmed in Convocation this 25th day of March, 2004.

Treasurer