MINUTES OF CONVOCATION

Thursday, 22nd September, 2011
9:00 a.m.

PRESENT:

The Treasurer (Laurie H. Pawlitza), Anand, Aaron (on telephone), Backhouse, Boyd, Braithwaite, Bredt, Callaghan, Campion, Chilcott (on telephone), Conway, Copeland, Daud, Doyle, Dray (on telephone), Elliott (on telephone), Epstein, Eustace, Evans, Falconer, Furlong, Goldblatt, Gottlieb, Haigh, Halajian (on telephone), Hartman, Horvat, Hunter (on telephone), Krishna, Leiper, Lerner, MacKenzie, MacLean, Marmur, McDowell, McGrath, Matheson, Mercer, Minor, Murchie, Murphy, Murray, Potter, Pustina, Rabinovitch, Richardson, Richer, Ross, Rothstein, Ruby (on telephone), Sandler, Scarfone, Schabas, Sikand, Silverstein, C. Strosberg, H. Strosberg (on telephone), Swaye, Symes, Wadden, Wardle and Wright (on telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed members of the LAWPRO Board and staff.

On behalf of Convocation, the Treasurer extended best wishes to Heather Ross and the community of Goderich during a difficult and challenging time following the devastation caused by a tornado on August 21, 2011.

The Treasurer congratulated Constance Backhouse who was awarded the Ontario Bar Association Mundell Medal for Legal Writing on May 5, 2011; Harvey Strosberg who will be honoured with the Ontario Bar Association Award of Excellence in Civil Litigation on October 25, 2011 and Gerald Swaye who will be honoured by the Hamilton Law Association with the Emilius Irving Award on October 27, 2011.

The Treasurer congratulated three benchers who were named among the 25 most influential lawyers in the Canadian Lawyers' magazine. Paul Schabas was named in the category of Corporate Commercial and Clayton Ruby and Beth Symes were named in the category of Criminal and Human Rights.

The Treasurer congratulated Paul Copeland and Beth Symes who were invested into the Order of Canada on September 16, 2011.

Congratulations were also extended to The Honourable Edra I. S. Ferguson who was presented the insignia of member of the Order of Canada on August 9, 2011 in a private ceremony.

The Treasurer thanked Harvey Strosberg for representing the Treasurer at the Opening of the Courts on September 13, 2011.

DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of June 14, 16, 17, 21 and June 23, 2011 were confirmed.

MOTION – APPOINTMENTS

It was moved by Mr. Schabas, seconded by Ms. Leiper, –

THAT Virginia MacLean be removed from the Equity and Aboriginal Issues Committee at her own request.

THAT Sydney Robins be added to the Professional Regulation Committee.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, September 22nd, 2011.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of September, 2011

CANDIDATES FOR CALL TO THE BAR

September 22, 2011

Sarom Bahk
Guylaine Boudreau
Andrew Robert Brown
Sarah Joslyn Crowder
Benjamin Joseph Eberhard
Maritza Christina Estridge
David Elie Ettedgui
Keri Ann Gammon
Aviad Matthew Grunbaum
Fiona Mary Hamilton
Rustam Juam
Vivian Kung
Lauren Simona Leinburd
Rebecca Lynn Lewis
Daphne Carol Helen Loukidelis
Alyson Lauren Lozoff
Mavis May-Yan Mak
Kyle Andrew Mc Cleery
Anita Mohan
Marie-Pier Sylvie Nadeau
Alexandra Nantel-Soucy
Ritika Narang
Caryn Shoshanah Narvey
Antonios Rasoulis
Christa Joy Cavelle Reccord
Nicole Elaine Ross
Jolan Barbara Storch
Lisa Michele Strueby
Jeremy William Trickett
Anna Turinov
Jared Ashby Will
Leah Marie Winters
Leslie Wain-yan Woo
Mingliang James Yap

It was moved by Mr. Conway, seconded by Mr. Campion, that the Report of the Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

LAWPRO REPORT

Mr. Krishna presented the Report.

Report to Convocation

September 15, 2011

TO: The Treasurer and Benchers of the Law Society of Upper Canada

RE: 2012 Insurance Program: Transmittal of Report to Convocation

At the risk of sounding like a broken record, the theme for this year's transmittal memo on the 2012 Law Society insurance program – and indeed for much of LAWPRO's communication efforts -- is the continuing high cost of claims.

It's a theme we introduced in our transmittal memo last year, and which we focused on again in our 2010 Annual Report and in the Annual Review issue of LAWPRO, as well as in presentations, articles and reports we've issued over the past 24 months.

Our ongoing actuarial analysis makes it clear that we are certainly in a world where claims costs of $80 million and more are the norm, not the exception. In fact, for 2012 we anticipate claims costs will be close to $89 million; moreover, we expect them to stay in this range for the foreseeable future.

This compares unfavourably to the earlier part of the last decade, during which annual claims costs were in the $50 million to $65 million range, consistently.

Given that claims costs represent about 78 per cent of LAWPRO's budgetary needs, it is not surprising that the base insurance premium has been increased for each of the last two years. What is surprising perhaps is that – despite the elevated level of claims costs – the base premium for 2012 will remain at the 2011 level of $3,350 per insured lawyer.

Moreover, a number of lawyers will see premiums decrease in 2012: Analysis of claims and risk associated with some areas of practice means that new lawyers, those who practise part time and those who restrict their practice to criminal or immigration law will see the premium discount for these practice areas increase to 50 per cent from 40 percent; the supplementary (REPCO) premium required of those who practise real estate will fall to $250 from $400. These and other premium adjustments are more fully explained in the following pages.

LAWPRO's ability to provide premium stability for the coming year – and indeed to reduce premiums slightly for some practice areas in keeping with our mandate to risk rate the insurance program – are a testament to the professionalism and expertise of its Board of Directors and management team. The premium increases of the last two years address current realities – consistently higher claims costs – and provide the margin LAWPRO needs to meet solvency tests, as discussed more fully below. They also ensure the long-term viability of the program: We assure Benchers that our asset-liability matched investment fund continues to **fully** back our existing claims portfolio.

The soundness of this approach and the company's financial strength was again corroborated by A.M. Best Company when earlier this year it gave LAWPRO its 11th consecutive A (Financial Strength) rating.

The high cost of claims
One might well ask why claims costs are about 50 per cent higher now than at the start of the last decade. In our Annual Report, our Annual Review (available online at http://www.practicepro.ca/Lawpromag/LawPROmagazine10_1_Summer2011.pdf) and in a claims orientation presentation given to new Benchers earlier this year, we suggested a number of explanations:

- *Lawyers are reporting more claims*: This is perhaps best measured in claims frequency – i.e., the number of claims reported per 1,000 lawyers in practice as this measure takes into account the annual increase in the number of practicing (and insured) lawyers. Between 2005 and 2010, the general trend has been up: claims frequency in 2010 stood at 99 claims per 1,000 lawyers compared to 91 in 2005.

- *Claims appear to be more complex*: As evidenced by the increase in the number of claims that are costing more than $100,000 to resolve. Between 2000 and 2008, we saw a 54 per cent increase in the number of these larger claims. In other words, the errors lawyers make are more costly to the program.

- *Costs are up in all areas of practice*: With real estate leading the pack: Real estate claims account for about 30 per cent of all claims costs incurred by the program. The number of real estate claims in the past decade has increased more than 45 percent, and the cost of these claims is up more than 100 per cent – driven in part by the fact that housing prices in Ontario have doubled over the past decade. However, we have also seen significant increases in other areas of practice: litigation costs are up more than 20 per cent in the 2000-2008 period, family law is up 110 percent, wills and estates claims costs are up more than 160 per cent and corporate-commercial claims costs rose close to 25 per cent over that period.

- *Communication-related issues represent by far the largest percentage of claims reported and claims costs across all areas of practice* (see page 50 in Appendix B): Moreover, the single biggest communication error committed by lawyers is all about failing to keep the client informed – issues such as not making it clear that the lawyer is declining the retainer, failing to apprise the client about the file's progress and costs associated with the file, failing to make it clear that the lawyer is no longer acting for the client, or failing to explain the likely adverse consequences of settling a claim.

  It is the soft skills – such as listening, understanding, managing expectations, keeping the client informed – that are the issues that lawyers have to address in order to reduce the likelihood of a claim. Interestingly, these communication issues are, in some ways, easy for the lawyer to address: They don't require expensive software or new legal expertise. But there needs to be a commitment of time and discipline.

LAWPRO's risk management efforts over the past year have been focused on driving home this message with the practising bar. For example we have published a series of articles specific to each area of practice that examine the causes of loss for each practice area and provide practical tips on how lawyers can avoid the common pitfalls in each of the practice areas. An important focus for each of these articles has been the communication issues specific to each practice area. As well, the September 2011 issue of LAWPRO Magazine has as its principal focus communication issues and claims.

Other revenue requirements

Although claims costs account for the bulk of our revenue requirements, LAWPRO also requires funds for other purposes – principally to operate the program (general expenses) and to provide the extra margin required so that we can meet the financial benchmarks set by our regulator and satisfy prescribed solvency tests – the aim being to ensure the long-term viability of the program.

Program expenses for 2012 are estimated to be about $18.5 million – or about 19 per cent of our expected premiums of $99.1 million. (This compares favourably to the industry norm of close to 30 per cent for general operating expenses.)

As well, LAWPRO has to set aside funds that – in effect – provide it with an extra margin to ensure our regulator, the Financial Services Commission of Ontario, that we have access to sufficient funds to weather any unexpected losses (such as several large claims) or deteriorating market conditions that result in poorer than expected investment returns.

FSCO measures this capacity to absorb the unexpected via a set of prescribed benchmarks and solvency tests. The most important of these is the Minimum Capital Test (MCT) – a ratio of a company's available capital (assets) to the amount of capital required (a defined calculation set by FSCO), expressed as a percentage. A detailed description of the MCT is available at paragraphs 88 to 93 of this Report, and was included in the September 2010 issue of LAWPRO Magazine ("Why profit is not always a bad word").

LAWPRO's MCT at June 30, 2011, stood at 220 per cent which is at the low end of the desired MCT range of 220 to 230 set by the Board.

What all this means is that the company cannot afford to only break even each year: The extra margin that the regulators require of us (and basic financial prudence) means that LAWPRO needs to make about five million dollars in either net profit or unrealized gains on our surplus portfolio for every year in which we operate the primary insurance program.

Investment returns do help us fulfill this need for an extra margin; but in today's weaker and uncertain investment climate, these returns are not sufficient to provide the cushion required by our regulators, so some of these funds must come from premium income. The decision to increase premiums in 2011 was driven in part by this need to ensure we have the capacity to absorb unexpected losses, as required by our regulator, as well as to address the issue of rising claims costs and weaker investment returns in 2010.

Given the solid foundation now in place, and our projection that claims costs for 2012 will be consistent with what we have seen in 2010 and 2011, we expect that a base premium of $3,350 per lawyer will enable us to fund the program for 2012 and meet the capital requirements laid out by our regulators.

LAWPRO Board members and management look forward to continuing to provide the members of the Ontario bar with a cost-effective and responsive insurance program in 2012 and beyond.

Ian D. Croft
Chair

Kathleen A. Waters
President & CEO

TABLE OF CONTENTS

Appendices

Appendix A

Appendix B

Appendix C

LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")
REPORT TO CONVOCATION – SEPTEMBER, 2011

BACKGROUND

1. The Law Society of Upper Canada ("Law Society") governs the legal profession in the public interest. One of the ways it discharges its responsibilities is through the mandatory requirement it places on practising lawyers to obtain professional liability insurance coverage. This coverage is provided by LAWPRO, a provincially licensed insurer that is owned by the Law Society.

2. The coverage that the mandatory LAWPRO program provides is considered to be both in the best interests of the public and in the best interests of Ontario lawyers – in that the public has reasonable assurance that an insurance policy backstops errors committed by lawyers in practice, and lawyers have assurance that they have a degree of financial protection for their professional liability that is well-suited to most lawyers' practice needs.

3. In recent years, over 3,100 insurance claims have been open at any one time. The gross value of open claims was estimated at $381.6 million as at December 31, 2010. Overall, the insurance program manages about 85 per cent of the Law Society's $675 million in combined assets.

4. Each September since 1995, LAWPRO's Board of Directors has reported to Convocation on changes to the Law Society's professional liability insurance program for the following calendar year. The timing of this report is necessitated by the logistics of renewing almost 23,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.

5. This report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy direction where necessary. Financial information on LAWPRO and the program is provided to Convocation throughout the year.

6. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report (the "Task Force Report"). The mandate and principles of operation derived from the Task Force Report are as follows:

- that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
- that LAWPRO be operated in a commercially reasonable manner;
- that LAWPRO move to a system where the cost of insurance reflects the risk of claims; and
- that claims be resolved fairly and expeditiously; however, this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied or coverage was limited.

For 2012, we have conducted our annual review of the program to re-validate the approach and rating structure in light of these Task Force recommendations.

7. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed program for 2012 continues to fulfill these principles. This report deals solely with the mandatory professional liability program. The LAWPRO optional programs, such as TitlePLUS® title insurance and the Excess professional liability insurance program, are operated on an expected break-even or better basis.

2012 PROGRAM SUMMARY

8. The following summarizes the 2012 professional liability insurance program, as provided for in this report.

Premium Pricing for 2012:

(i) The base premium is $3,350 per lawyer for 2012, the same base premium charged in 2011 (paragraph 97[a]).

(ii) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at $24.8 million for the purposes of establishing the base premium for 2012 and other budgetary purposes (paragraph 97[b]).

(iii) No funds are expected to be drawn from the available surplus in the Errors and Omissions Insurance ("E&O") Fund, built up in previous years, to be applied to the 2012 insurance premium (paragraph 97[c]).

(iv) To the extent that levies (noted in (ii) above) collected in 2012 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the E&O Fund (paragraph 97[d]).

(v) The premium for the Real Estate Practice Coverage Option ("REPCO") will decrease to $250 in 2012 from $400 charged in 2011 (paragraph 61[a]).

(vi) 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2012, subject to limited capital backstop protection provided by the E&O Fund, and reinsurance protecting the program from multiple losses arising out of a common event or nexus (paragraph 69).

(vii) The Continuing Professional Development ("CPD") Premium Credit will be continued for the 2013 program, with a $50 premium credit per approved CPD program, subject to a $100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and successfully completed by lawyers between September 16, 2011, and September 15, 2012, for which the lawyer has successfully completed the online CPD Declaration Form (paragraph 43).

(viii) The Part-Time Practice Option premium discount is increased to 50 per cent of the base premium for 2012 from 40 per cent in 2011 (paragraph 61[b]);

(ix) The Restricted Area of Practice Option premium discount is increased to 50 per cent of the base premium for 2012 from 40 per cent in 2011 (paragraph 61[c]);

(x) The discount for new lawyers is adjusted as a percentage of the base premium, as follows (paragraph 61[d]):

Years in Practice	2011 Discount	2012 Discount
Less than one full year	40%	50%
Less than two full years	30%	40%
Less than three full years	20%	30%
Less than four full years	10%	20%

(xi) The minimum premium, which applies only to the calculation of premiums to reflect the New Lawyer, Part-Time Practice option and Restricted Area of Practice option discounts, is reduced to 50 per cent of the base premium in 2012, from 60 per cent of the base premium in 2011 (paragraph 61[e]).

(xii) Subject to the changes identified earlier in this report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2011 will remain unchanged for the 2012 insurance program (paragraph 102).

Errors & Omissions Insurance Fund:

(xiii) The investment income of the E&O Fund which is surplus to the obligations of the fund will be made available to the Law Society during 2012. (paragraph 11).

Conclusion:

(xiv) The LAWPRO Board considers the program changes to be appropriate and consistent with its mandate as set out in the Task Force Report. The LAWPRO Board offers this program of insurance for 2012 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2012 insurance program can be implemented by January 1, 2012.

PART 1 – THE ERRORS & OMISSIONS INSURANCE FUND

9. LAWPRO provides services to the Law Society with respect to the E&O Fund of the Law Society, which is currently in run-off mode. (The E&O Fund was responsible for the insurance program prior to 1990, and for a group deductible of up to $250,000 per claim prior to 1995.)

10. As of June 30, 2011, the E&O Fund had outstanding claims liabilities of $0.7 million. The number of open files for 1994 and prior years stood at seven. Since there are sufficient assets in the E&O Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the E&O Fund is surplus to the needs of the E&O Fund and can be used by the Law Society for its general purposes.

11. Accordingly, the investment income of the Errors & Omissions Fund which is surplus to the obligations of the fund will be made available to the Law Society during 2012.

PART 2 – CHANGES TO THE INSURANCE PROGRAM FOR 2012

12. In developing the details of the 2012 program, LAWPRO has, as always, considered the changing environment in which lawyers practise and any comments received from the profession during the previous year. However, the general structure of the current program, as well as policy limits, coverage and available options, appear to generally meet the needs and practice realities of the profession for 2012.

13. Consequently, for the 2012 program no substantive modifications in the structure of the program and in the form and substance of the policy are contemplated.

PART 3 – THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

14. Persistent increases in the number and cost of claims over the past few years are putting significant pressure on the program. The program is also subject to ongoing uncertainty regarding investment income and transaction levies. Because of the elimination of the Premium Stabilization Fund, there is no longer a significant pool of money in the Law Society's E&O Fund which can be used to insulate the program from negative impacts.

15. As LAWPRO works through these challenging times, the company's prudent and conservative approach to the issues of the day has stood it in good stead. LAWPRO experienced a growth in its capital base as of December 31, 2010, and its minimum capital test ("MCT") as of June 30, 2011, was 220 per cent. This MCT result is above the regulators' minimum level of 100 per cent and supervisory threshold of 150 per cent, and above LAWPRO's internal minimum target of 185 per cent. LAWPRO has a robust asset-liability matching program to ensure that the funds are available to satisfy the claims obligations undertaken to date. Also, LAWPRO has received a consistent "A" (Excellent) rating from A.M. Best Co. eleven times since 2000.

16. However, LAWPRO was given a "negative" outlook by A.M. Best Co. in early 2010. (An "outlook", which looks more to the future, is different from a "rating".) This was in essence a message from the rating agency that attention needs to be paid to some key issues (especially level of premium income when compared to the cost of claims) if LAWPRO intends to keep assuming claims liabilities at its current rate. While the MCT of 220 per cent as of June 30, 2011, represents a relatively flat result from 226 per cent as at December 31, 2010, this level of capital is somewhat lower than various Canada-wide averages, such as the overall insurer average of 260 per cent, the personal lines average of 240 per cent or the commercial lines average of over 300 per cent.[1] The proposals outlined in the following pages are designed to address the present challenges in a prudent fashion and maintain the company's ability to meet the needs of the bar in the years to come.

17. To establish the recommended program for 2012, the LAWPRO Board considered several factors, such as:

- the cumulative effect of the recent underwriting and investment results, and the economic environment, on the program;
- the expected future loss costs;
- the revenue sources which are expected to supplement the base levies; and
- the inherent uncertainties associated in predicting the results of the program each year.

18. To ensure the program's long-term viability, LAWPRO and the Board took a prudent approach to projections of revenue, as well as claims frequency and severity, taking into account factors such as emerging claims trends, general economic conditions, the tax environment and inflationary pressures on the claims portfolio.

19. As part of its ongoing planning process, LAWPRO looked at a five-year time horizon. Any LAWPRO forecast is reviewed and revised periodically based on new information as it emerges. The subject forecast reflects the trends detailed in this report, and takes a conservative approach to projecting the frequency and cost of claims under the program. This prudent approach is dictated by uncertainties associated with predicting (a) general economic and inflationary trends, and (b) claims associated with recommended or recent program changes, as applicable.

[1] As reported by MSA Research Inc. and Baron Insurance Services Inc.'s Outlook Reports.

Program Costs

20. LAWPRO's revenue requirements for the 2012 insurance program are based on the anticipated cost of claims for the year, as well as the cost of applicable taxes and program administration.

21. Loss experience has trended up noticeably in terms of frequency since 2004, with more claims reported than in the earlier part of the decade. While it is too early to form a final view on the development of the most recent fund years' claims, such as 2009 through 2011, recent statistics also indicate an increase in the number of claims involving $100,000 or more (as seen below) and a resulting overall upward trend in claims severity (cost per claim).

Aggregate Dollar Value of Claims Valued at Greater than $100,000
by Age and Fund Year

(see graph in Convocation Report)

Count of Claims Valued at Greater than $100,000
by Age and Fund Year

(see graph in Convocation Report)

22. For 2012, LAWPRO expects direct claims costs alone to be $88.9 million (see chart following). LAWPRO estimates total program funds (that is, claims costs plus general expenses) required for 2012 to be $113.7 million. This estimate is higher than the current forecast of total program funds for 2011, which is approximately $112.8 million. The anticipated increase in 2012 is mainly due to the general upward claims trend.

Claims Cost of Ontario Program, by Fund Year ($000's)

(see graph in Convocation Report)

Impact of the Harmonized Sales Tax

23. As part of its 2009 budget, the Ontario government announced plans to harmonize its provincial sales tax with the federal government's goods and services tax ("GST").[2] The resulting harmonized sales tax ("HST") came into effect on July 1, 2010, and has placed an extra eight per cent sales tax burden on expenditures such as corporate rent, certain utilities, certain new home purchases and – most importantly for LAWPRO – services.

24. Because insurance is considered a financial service and therefore an "exempt supply" under the *Excise Tax Act*, LAWPRO does not charge GST (or HST) on its premiums, but also does not get to recover GST/HST paid while conducting its business. Therefore, the additional eight per cent sales tax that LAWPRO is incurring as a result of the harmonization represents a permanent cost to the company.

[2] Note that the Ontario government's current position is that, post-harmonization, the eight per cent provincial sales tax on insurance premiums continues to be collected on most non-auto insurance premiums.

25. Similar to 2011, in 2012 LAWPRO will experience the impact of the HST on operating costs such as rent, utilities and services (such as legal, audit and other consulting work), which LAWPRO has estimated will increase its annual program administration expenses by approximately $250,000, in comparison to a typical 12-month period before the HST implementation.

26. Of even greater concern, however, is the impact that HST has had on LAWPRO's claims costs. Resolving claims on behalf of the legal profession involves incurring significant defence costs, and legal fees in particular. In addition, claimants' legal and other consulting costs often factor into indemnity payments made by LAWPRO. Given the current estimates of future claims costs, the company expects the annual burden of HST on claims costs to be $3.2 million (or about $150 per lawyer). This expected cost for a full 12 months has been factored into the total claims costs presented in the chart in paragraph 22, and is included in the base premium recommended for the 2012 program (see paragraph 97[a]).

27. The introduction of HST imposed a retrospective tax on many industries, such as insurance. In addition to the HST impact on the claims costs associated with future policies issued by LAWPRO, the company had to revalue its loss provisions for claims that were already on the books but that would be resolved in the time period after the July 1, 2010, implementation of the HST regime. That revaluation occurred as of December 31, 2009, in accordance with standard actuarial practice, as the legislation was substantively enacted before year-end. The increased claims liabilities of more than $10 million was compensated for by automatic payment of an additional premium from the E&O Fund under the terms of the 2009 insurance program, as reported in the Annual Reports of the Law Society and LAWPRO for 2009.

Risk Rating
(a) Background

28. As already discussed in this report, the Task Force Report concluded that the cost of insurance under the program should generally reflect the risks.

29. Specifically the Task Force Report indicated that "... as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."[3]

30. In keeping with this approach, LAWPRO regularly conducts detailed analyses of the risks associated with the program. The earlier results of these analyses are summarized in previous Reports to Convocation. These analyses concluded that the practice of real estate and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

31. The objective of risk rating was finally achieved in 1999 by applying various discounts and additional levies (such as the real estate and civil litigation transaction levies and claims history levy) to the insurance program.

[3] 1994 Task Force Report, at page 17.

32. Risk rating, however, is not static. Because the relationship between the cost of claims and different areas of practice may change, LAWPRO must continue to monitor the program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are re-evaluated each year, and the factors used to assess risk and determine premium under the program are reevaluated for degree of relevance. The factors currently used to match risk to premium include area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

33. As in the past, LAWPRO's risk analysis also examined the degree of specialization, size of firm, and geographic location of practice as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a combined basis to determine any correlation or dependencies.

34. In 2011 this review has reaffirmed the overall validity of the rating structure currently in place, subject to certain adjustments in magnitude. The results of the customary re-evaluation of the earlier risk analyses are addressed in this report at paragraphs 44 to 61.

(b) Practice Trends

35. LAWPRO's present risk analysis reaffirms the results of its last report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with real estate currently equalling or leading the practice of civil litigation as the area of practice with the greatest relative exposure for losses. In particular, the analysis indicates that overall real estate and civil litigation represent a disproportionate risk when compared to other areas of practice. These two areas of practice represented 62 per cent of the claims reported and 57 per cent of the claims costs under the program in 2010.

36. In particular:

a) Real estate claims costs have trended upwards consistently in the 2000 to 2010 period with real estate accounting for 28 per cent or more of costs consistently over this time. Since 2004, costs in this area of practice have increased more than 140 per cent;

b) In 2010, the exposure relating to the practice of civil litigation again was substantially more than that traditionally seen, with civil litigation accounting for 35 per cent of the claims reported and 37 per cent of the claims costs under the program (well above the traditional levels of 27 per cent and 18 per cent seen in the 1989-94 period);

c) In 2010, the nature of claims against civil litigators was also reaffirmed, with general conduct or handling of the matter accounting for about 70 per cent of litigation claims compared to missed limitation period claims which accounted for only 30 per cent of these claims; and

d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior 10 years were more than three times more likely to report a claim during the past year than those with no claims in the prior 10 years.

37. The results of this analysis are summarized in the graphs contained in Appendix "B" of this report.

(c) Risk Management Initiatives

38. A principal mandate of LAWPRO is to help the legal profession manage the risk associated with practice. This is accomplished by providing lawyers with tools and resources that help them manage risk and practise in a more risk-averse fashion. Among LAWPRO's major risk management initiatives are:

- TitlePLUS® Program: TitlePLUS insurance is a competitive title insurance product that has made a positive difference in the Ontario real estate market. It expands the choice offered to consumers and lawyers. It influences the behaviour of other title insurers. It educates consumers and has expanded policy coverages available to them. It also provides education on title insurance and real estate trends to lawyers. The TitlePLUS Program promotes real estate lawyers and recommends that consumers seek the advice of lawyers when closing their real estate transactions.

  In early 2011, the TitlePLUS Department hosted seventeen lunch sessions in Ontario that were attended by 565 lawyers and support staff. The sessions were designed to inform lawyers and their staff of underwriting changes that became effective in February 2011 and to encourage them to continue to support the TitlePLUS program. LAWPRO also spoke to lawyers and support staff at these sessions about risk mitigation strategies and best practices.

  TitlePLUS staff have also given lectures at law schools on title insurance and fraud prevention measures in real estate transactions. More presentations and lectures will take place in the coming months. These are designed to provide the legal profession, including new lawyers entering practice, with the tools they need to manage risk and avoid claims under both the professional liability and TitlePLUS programs.
  The TitlePLUS EXPRESS, the Department's news bulletin, is sent regularly to subscribing lawyers across Canada, providing legal and underwriting updates on current national real estate issues. Also, in recognition of the role support staff play in real estate transactions, the Department has published "TitlePLUS Tips", a bulletin written specifically for support staff in the offices of subscribing lawyers.

  In 2011, LAWPRO continued with its consumer education program which involves a media campaign highlighting the role of lawyers in real estate transactions and TitlePLUS insurance. This initiative includes a consumer-oriented, online "Real Simple Real Estate Guide" which helps educate consumers about what to expect in real estate transactions and the role a lawyer plays in the transaction. In addition, posters promoting the lawyer's role in real estate matters have been placed in Toronto subway stations and transit shelters. This campaign will continue throughout 2011.

- practicePRO®: Now in its 13th year, LAWPRO's successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources, both inside and outside of Ontario. This year, practicePRO helped lawyers avoid malpractice claims through articles in LAWPRO Magazine and other law-related publications, information on the practicePRO website and AvoidAClaim blog, and live presentations and/or an exhibitor presence at CPD programs and other law-related events. practicePRO has a significant presence in the legal community by maintaining relationships and actively working with its various constituents, including the Law Society, the Ontario and Canadian Bar Associations, local law associations, legal goods and service providers, the legal press and others.

- LAWPRO Magazine: With its strong risk management focus, LAWPRO's flagship publication continues to play an important role in helping lawyers avoid malpractice claims. Through a special Annual Review issue of the magazine, published each spring, LAWPRO provides lawyers with an overview of claims trends and an explanation of how these affected their premiums and LAWPRO'S financial results. This Review issue also provides information on LAWPRO'S efforts to prevent claims and advance lawyers' interests with the government and public opinion. The September 2010 issue of LAWPRO Magazine focused on common claims pitfalls, with LAWPRO claims counsel discussing the types of errors they see in the different areas of law. The December 2010 edition addressed the issue of file retention (one of the most common enquiries LAWPRO receives from lawyers) and it also contained several articles that focused on real estate and title insurance.

- Fraud: In terms of count and cost, fraud-related claims are a significant concern for LAWPRO. LAWPRO continues to take steps to combat fraud through measures within its own operations, its relationship with the legal profession, and by working with law enforcement, land registry, banking, insurance and other organizations and industries also affected by fraud. The May/June 2010 issue of LAWPRO Magazine reminded lawyers to be alert for more sophisticated bad cheque frauds and the September 2010 "Practice Pitfalls" article included a discussion on fraud-for-shelter claims that have been seen in the real estate claims files. As well, the AvoidAClaim blog has become an increasingly important tool for alerting lawyers to the latest online fraud scams as they happen. To date, 366 lawyers have subscribed to updates from the blog and 64 posts were made to it in 2010. Lawyers from all over Ontario and elsewhere are finding the blog when they Google the names of clients on suspicious matters. The information provided by LAWPRO has helped many Ontario lawyers avoid being duped.

- Consultations: practicePRO actively worked with the Law Society and various bar associations to ensure that risk management factors were taken into account when policy issues were under discussion. For example, practicePRO contributed to the Law Society's *Guide to Retention and Destruction of Closed Client Files* and prepared a submission to the Law Society on the challenges of unbundled legal services. practicePRO staff also worked with the large firms on file retention and continued to highlight conflicts of interest claims with the CBA Conflicts Task Force.

- practicePRO Lending Library: To help lawyers improve their practices, this library makes 120 of the best books on law practice and risk management topics available on loan for free to all Ontario lawyers. In 2010, 86 books went out on loan to 60 lawyers.

39. The CPD Premium Credit offered under the program is another significant LAWPRO risk management initiative. The name of the credit was changed to the "Continuing Professional Development Premium Credit," from "Continuing Legal Education Premium Credit," to match the new Law Society nomenclature for this area.

40. In 2001, a premium credit of $50 was first offered to lawyers using the practicePRO Online Coaching Centre, an Internet-based, self-coaching tool that helps lawyers enhance their business and people skills.

41. The premium credit was broadened in the following year to provide a $50 credit (to a maximum of $100 per lawyer per year) for designated law-related CPD courses and programs completed by the lawyer. These courses are offered by the Law Society, Ontario Bar Association, The Advocates' Society and other not-for-profit CPD providers, and must include a substantial risk management component. In keeping with the most frequent causes of loss, the risk management content of these programs deals with the "soft" skills of lawyering, such as lawyer/client communication, documenting a file, and time management, rather than substantive law.

42. For a credit on premiums for 2012, lawyers must have participated in LAWPRO-approved CPD programs between September 16, 2010, and September 15, 2011. In addition to the Online Coaching Centre, 194 programs qualified for the credit during this period. The programs were attended more than 24,000 times by lawyers. Prior to the implementation of the CPD credit, most CPD programs focused solely on substantive law. Due to the CPD credit and the Law Society's new focus on mandatory ethics and professionalism content, a significant number of Ontario CPD programs have been broadened to include risk management and claims prevention content.

43. Accordingly, the Continuing Professional Development ("CPD") Premium Credit will be continued for the 2013 program, with a $50 premium credit per approved CPD program, subject to a $100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and successfully completed by lawyers between September 16, 2011, and September 15, 2012, for which the lawyer has successfully completed the online CPD Declaration Form.

(d) Revalidating Risk Rating

44. It is important to periodically re-evaluate the program by area of practice to ensure that it continues to be effective in its risk rating. The following chart shows the distribution of claims costs by detailed area of practice since 2001.

Distribution of Claim Cost and Program Expenses, by Grouped Area of Practice

(see graph in Convocation Report)

45. Apparent from this chart are the significant and growing claims costs in many practice areas and the fact that real estate and litigation continue to be higher risk.

46. The fact that few lawyers practise exclusively in one area provides a compelling reason to group together common or related areas of practice. However, to ensure that risk rating is being achieved, the program's anticipated losses and related costs must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program up to December 31, 2010), the following chart compares the anticipated losses and costs distributed by area of law to the proposed base premiums by primary area of practice. The premiums in this chart include the proposed base premiums with real estate practice coverage, innocent party and base premium adjustments, but exclude transaction levies and claims history surcharges.

Comparison of Projected 2012 Premium by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law

(see graph in Convocation Report)

47. The shortfall between the anticipated claims costs and expenses to base premiums is particularly significant for the areas of real estate law and civil litigation.

48. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, the 2012 base premium would be $9,900 for those whose primary area of practice is real estate.

49. Past Reports to Convocation have discussed the importance of using the transaction and claims history surcharge levies as premium, to avoid any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.[4]

50. By including the transaction and claims history surcharge levies as in past years without the adjustment to the real estate transaction levy that was made effective January 1, 2010, a large shortfall between anticipated claims costs and expenses to total insurance levies would have existed for the area of real estate law. By adjusting the real estate transaction levy from $50 to $65 effective for transactions on or after January 1, 2010, the shortfall for real estate claims costs was largely overcome. Therefore, it is proposed to maintain the real estate transaction levy at $65.

51. In April 2008, LAWPRO introduced a real estate practice coverage option ("REPCO"). One REPCO claim has arisen as of June 30, 2011, representing a limit loss of $250,000 which was paid out. LAWPRO is maintaining an actuarial loss reserve for potential incidents that have occurred but have not yet been reported to the company. (Since the essence of REPCO coverage is to compensate for an act of fraud by the insured lawyer, it is unlikely that there will be an immediate report by the lawyer involved; therefore, LAWPRO is making a conservative

[4] 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-38; and 1996 LAWPRO Report to Convocation, pp. 32-36.

assumption that there will often be delays in reporting under this coverage.) To acknowledge the promising results to date, the price of the REPCO coverage was decreased by a prudent $100, to $400 from $500, for the 2010 program. Given the favourable loss experience thus far for the coverage, it is possible to decrease the premium for the REPCO coverage to as low as $250 per lawyer for 2012 from $400 per lawyer in 2011.

52. The following chart compares the anticipated premiums sorted by the lawyer's primary area of practice (plus the claims history surcharge and transaction levies as revised) to the anticipated claims costs and expenses for each area of law.

Comparison of Projected 2012 Premium by Lawyer's Primary Area of Practice + Allocated Levies to Claims and Expenses by Claim's Area of Law

(see graph in Convocation Report)

53. This comparison indicates that, with the benefit of the transaction and claims history surcharge levies, and including the REPCO premium, there is a substantial correlation between revenues and claims for the major practice areas.

54. The graph does indicate some subsidy by area of practice. This subsidy changes somewhat over time and may vary considerably from year to year for the smaller practice areas.

55. The area of wills and estates has experienced a significant increase in claim costs in the last few years. Given the relatively small number of practitioners in this area, a few large claims often skew the results. LAWPRO will continue to monitor these results and propose any action, if appropriate, at a future date.

56. Appreciating the foregoing variables and possibilities of comparison by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year. Although some subsidy may exist for certain areas of practice, when taking into account operating costs and commercial realities, the cost of 25 insurance under the program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "…no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."[5]

57. Other aspects reviewed in the analysis included the exposure based on the size of firm, year of call, geographic location and prior claims history. The overall results of this analysis reaffirm the premium discounts already in place, including the surcharge applied to practitioners with a prior claims history. However, the analysis did indicate that a slight increase in the discounts for new, part-time and restricted area of practice lawyers, in the neighborhood of 10 percentage points, could be justified. The results of this analysis are reproduced in select graphs in Appendix "B".

58. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice as well as the higher risk associated with real estate conveyancing and civil litigation.

[5] 1994 Insurance Committee Task Force Report, at page 17.

59. Accordingly, the LAWPRO Board is satisfied with the continued use of the transaction and claims history levy revenues as premium, with the result that the cost of insurance under the program continues to generally reflect the risk.

60. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized in Appendix “C” of this Report.

61. Accordingly:

a) The premium for the Real Estate Practice Coverage Option (“REPCO”) will decrease to $250 in 2012 from $400 charged in 2011;

b) The Part-Time Practice Option premium discount is increased to 50 per cent of the base premium for 2012 from 40 per cent in 2011;

c) The Restricted Area of Practice Option premium discount is increased to 50 per cent of the base premium for 2012 from 40 per cent in 2011;

d) The discount for new lawyers is adjusted as a percentage of the base premium, as follows:

Years in Practice	2011 Discount	2012 Discount
Less than one full year	40%	50%
Less than two full years	30%	40%
Less than three full years	20%	30%
Less than four full years	10%	20%

e) The minimum premium, which applies only to the calculation of premiums to reflect the New Lawyer, Part-Time Practice option and Restricted Area of Practice option discounts, is reduced to 50 per cent of the base premium in 2012, from 60 per cent of the base premium in 2011.

f) For clarity, the minimum premium does not apply to the calculation of premiums as it relates to other discounts or surcharges that are expressed as a percentage of premium (e.g., adjustment for deductible option or surcharge in the event that no completed application form is filed) nor to discounts and/or surcharges expressed as a stated dollar amount (e.g., innocent party and real estate practice coverage option premiums, and early lump sum payment, e-filing and CPD discounts).

Reinsurance and Capital Preservation

62. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.

63. In its early years, LAWPRO purchased program-wide quota share reinsurance. A stronger financial position and more stable claims experience enabled the company to cease reinsuring

the program with quota share reinsurance starting in 2003. In addition to relying on LAWPRO's own capital, the resources of the E&O Fund up to a $15 million cap were effectively relied on starting in 2003. An enhanced retrospective premium endorsement provided that for certain years actual loss experience above a certain threshold would be borne by the E&O Fund through additional premiums. On the other hand, actual loss experience below a certain threshold would trigger a refund of premiums to the E&O Fund. The E&O Fund has used the Premium Stabilization Fund ("PSF") as a mechanism to fulfill its potential obligation for additional premiums and as a place to hold premiums refunded.

64. Given the current uncertain environment for future claims, transaction levies and investment income, and the rapidly declining balance of the PSF, it was decided in September 2009 that LAWPRO would achieve greater program stability by retaining in the company any future favourable claims development. As a result, the refund aspect of the retrospective premium endorsement was not continued in the 2010 insurance program.

65. As already noted, under the endorsement as drafted in certain years before 2010, additional premium payments relating to past insurance fund years were potentially required as final claims costs emerged. Accordingly, recognizing the decreased size of the PSF and not wanting to place undue pressure on the E&O Fund as a whole, the threshold for the additional premium aspect of the retrospective premium endorsement was increased in 2010.

66. For 2012, it is proposed that there continue to be a $15 million dollar cap on the E&O Fund's exposure to provide additional premium to LAWPRO. As in 2010 and 2011, to the extent that the net loss ratio exceeds the anticipated loss ratio for the year by an absolute 10 per cent, the E&O Fund would cover the losses. The 2010, 2011 and 2012 backstop provisions will be evaluated separately, with the $15 million limit shared by the three fund years. The lower likelihood of a payout by the E&O Fund in this regime, as it commenced on January 1, 2010, makes the protection more akin to a catastrophic coverage, providing payout only in the unlikely scenario that an insurance fund year experienced significant deterioration from its initial expectations.

67. By relying on its own resources and the $15 million backstop from the E&O Fund as described above, LAWPRO will not need to pursue the expensive course of purchasing reinsurance on a program-wide basis.

68. For 2012, LAWPRO will again consider purchasing reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005. This protection against aggregated losses extends across both the professional liability and TitlePLUS programs, and offers some measure of protection against a series of claims such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in title affecting an entire condominium project.

69. Accordingly, 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2012, subject to limited capital backstop protection provided by the E&O Fund, and reinsurance protecting the program from multiple losses arising out of a common event or nexus.

Revenues

70. To meet the total expected program obligations for 2012, LAWPRO first evaluates its likely investment income, and then considers premium sources. By way of contrast with recent years, premium revenues to meet fiscal requirements for 2012 will come from only two principal sources: the base premium[6] and levy surcharges. So, there will no longer be a premium contribution from the E&O Fund.

71. The projected premium revenues from these three sources are as follows:

Premium Revenues, by Source ($000s)

(see graph in Convocation Report)

(a) Investment Income

72. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs by investing any available funds into a well-diversified portfolio of fixed income and equity securities. LAWPRO uses the resulting investment income to help pay operating and claim expenses, thereby reducing the amount of funds that must come from premium sources.

73. LAWPRO provides further stability to the program by segregating into a separate portfolio (the liability-matched portfolio) sufficient money to pay anticipated future claim costs, with any surplus capital held in a different portfolio. The securities in the liability-matched portfolio consist of high-quality government and corporate fixed income securities, with the future cash inflows to the company arranged to coincide with the expected payout patterns of the future claim costs. The surplus portfolio consists of a prudent mix of fixed income and equity securities.

74. During recent years investment returns have weakened as the worldwide credit crunch resulted in some depressed equity and fixed income prices. In addition, with central banks such as the Bank of Canada lowering their overnight interest rates to rock-bottom levels, the rates of return on fixed income securities have also dropped significantly. For LAWPRO, the downward pressure on returns is exacerbated as fixed income securities mature and need to be reinvested at these low rates. Although the Bank of Canada has recently started the process of increasing its overnight interest rates, it will likely be some time before interest rates available upon purchasing new fixed income securities equal the rates that have been available to LAWPRO in the past.

75. LAWPRO's prudent investing philosophy helped protect its portfolios (both liabilitymatched and surplus as described above) from significant losses of principal during the economic turbulence of recent years. However, as a result of continued market uncertainty, the company has maintained its expected return on investments for 2012 at 3.75 per cent, as in 2011, and compared to 5 per cent (or higher) in previous years.

[6] "Base premiums" includes base premiums with applied discounts or charge, as well as innocent party and REPCO premiums.

(b) Levy Surcharges

76. The Ontario real estate market has been very volatile in the last number of quarters, with indications that this trend will continue for some time. Statistics published by Canada Mortgage and Housing Corporation in June 2012 indicate that the number of resale transactions remained relatively flat in 2010, and is forecast to drop almost 3 per cent in 2011 and then stabilize slightly with an increase of 1 per cent in 2012. Similarly, after a 33 per cent drop in 2009, new housing starts rebounded by 20 per cent in 2010, with forecasts of a 1 per cent decrease in 2011 followed by a 3 per cent increase in 2012.

77. At present, the levy surcharges include a $50 civil litigation transaction levy and a $65 real estate transaction levy, as well as a claims history levy surcharge.[7] Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

78. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the revenue from real estate transaction levies declined by approximately 50 per cent between 1999 and 2009 (prior to the increase in the levy for the 2010 program).

79. The increased use of title insurance is considered to be largely responsible for a reduction in the count of real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers.

80. It is estimated that more than 90 per cent of residential real estate transactions in Ontario are title-insured.[8] In recent years, the number of real estate transaction levies collected has moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

81. More recently, the number of transaction levies has been affected by the ongoing decline in Ontario real estate sales. As of June 2011, transaction levy revenues are more than $1.4 million under budget, although this result was adversely affected by the disruption in the delivery of levy filings due to the Canada Post strike.

82. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges for 2012.

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[7] The claims history levy surcharge ranges from $2,500 for a lawyer with one claim paid in the last five years in practice, to $25,000 for a lawyer with five claims paid in the last five years in practice (an additional $10,000 is levied for each additional claim paid in excess of five).

[8] LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy filings.

83. As described above in this report, the use of transaction levies ensures an element of risk rating in the insurance program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995.

84. For 2012, reflecting the rate increase noted above, LAWPRO estimates transaction and claims history levy surcharge revenues at $24.8 million.

(c) E&O Fund

85. Since the introduction of the 1999 program, any receipts in excess of those budgeted from the transaction levies and claims history surcharges collected in the year have been held within the PSF component of the E&O Fund. They have been managed on a revolving account basis and applied to the insurance program. These funds are used to guard against any future shortfall in levy receipts in a given year, appreciating the difficulties in forecasting transaction levy revenues in a changing economic climate, and acted in some years as a buffer against the need for increases in base premium revenues.

86. Because of the obligation to meet its retrospective premium obligation for 2009, which involved a payout of $13 million given the one-time retrospective impact of the HST (see paragraphs 23 through 27), the PSF was exhausted as of December 31, 2009. While the E&O Fund has approximately $60.6 million of surplus as at June 30, 2011, some of those funds have already been committed for specific purposes, such as the $15 million backstop (see paragraphs 62 through 69). The remaining available surplus may be used by the E&O Fund to pay for ongoing operating costs, make an annual premium contribution, or fund potential shortfalls in expected transaction levies and/or claims history surcharges.

87. Given the funds required to fund future operating costs of the E&O Fund and provide stability against potential transaction levy shortfalls in the short term, no funds will be drawn from that surplus and applied towards the premium under the 2012 program. The current LAWPRO five-year projection does not assume further contributions from the E&O Fund to support the base rate premium.

(d) Capital Requirements

88. As a final consideration before determining the base premium, LAWPRO must consider its capital needs. Canadian regulators use the MCT test in order to assess capital adequacy of a property and casualty insurer. The MCT is a risk-based ratio calculation which compares the insurer's capital or net assets available to the "capital required." Through the capital required component of the test, regulators prescribe certain additional capital or margins that must be held based on the various types of assets and liabilities on the insurer's balance sheet.

89. A significant margin requirement relates to the 15 per cent additional capital that must be held for all the net claims liabilities on the books that relate to commercial liability (which includes professional liability coverage). Given the steady historical growth of LAWPRO's net claims liabilities over the last decade or so, even a net income of $5 million can often lead to a decline in LAWPRO's MCT ratio. As a very general rule of thumb, LAWPRO requires in the neighbourhood of $5 million of either net income or increased after-tax net unrealized gains on its surplus portfolio[9] to achieve a stable to slightly increasing MCT ratio.

90. The determination of a specific insurer's "ideal" MCT ratio is no easy task, as the current industry metrics are primarily designed simply to identify levels that are too low. Canadian regulators require that insurers do not fall below various MCT levels, such as the 100 per cent minimum and 150 per cent supervisory levels. In addition, working in conjunction with LAWPRO, the regulators have accepted a further 185 per cent internal target level. All of these figures represent minimum MCT levels, not ideal operating targets in and of themselves.

91. Subject to future regulatory direction in this regard, the Board believes that a long-term operating MCT target in the neighborhood of 220 to 230 per cent balances LAWPRO's risk profile and its unique ability to set premiums and raise capital, which differ significantly from those of other commercial insurers in Canada. An MCT in this range would allow LAWPRO some capacity to absorb unexpected losses or changes in market conditions, and have time to implement a strategy to restore capital levels to the desired range.

92. With LAWPRO's MCT at 220 per cent as of June 2011, the low end of the Board's preferred long term range, key near-term trends must also be considered. For example, for 2012 the Canadian insurance regulators are changing the manner in which the MCT ratio is calculated. A December 2010 study published by the Office of the Superintendent of Financial Institutions noted that, based on its calculation using Canadian insurer regulatory filings, the average drop in an insurer's MCT using the new rules was 14.1 per cent. With no proposed reduction in the regulatory MCT targets imposed by the regulators, all Canadian insurers must act accordingly to meet these new regulatory expectations.

93. Given LAWPRO's current capital levels as well as near-term challenges, the premium for 2012 and onwards must be set at a level that generates significantly more than a break-even result, allowing the Company to continue a phase of capital ratio stabilization and replenishment.

(e) Base Premiums

94. Based on the previous discussion of program costs, sources of revenue and capital needs, the base premium will be set at $3,350 per member to account for a deterioration in claims experience and the likelihood of continuing economic uncertainty. In summary, the 2012 proposed base premium is based on the following key assumptions:

[9] Increases in net unrealized gains relating to the liability-matched portfolio, as well as realized gains, are included in net income.

- 23,436 practicing insured lawyers (full-time equivalents);
- $113.7 million in anticipated total claims costs (paragraph 22);
- $24.8 million in budgeted transaction and claims history levy revenues (paragraph 84);
- No funds to be drawn from the E&O Fund on account of the premium (paragraph 87); and
- 3.75 per cent return on investment (paragraph 75).

Base Premium, by Fund Year

(see graph in Convocation Report)

95. At this time, the Board is satisfied that this base premium rate appropriately recognizes the uncertainties in emerging claims experience and economic conditions, and allows the program to continue to operate on a self-sustaining basis while protecting the company's overall financial position. The rate is consistent with information provided in the Report to Convocation in recent years. It was repeatedly noted that the historically low base premium (for example, less than $2,500 per insured lawyer) may not be sustainable in future years, as higher claims costs had already begun to emerge. In particular, the beneficial 2008 base premium level was a method of giving the benefit to the bar during 2008 of some superior 2007 investment results and favourable claim reserve development for earlier fund years. As noted earlier, investment returns in the current market are lower than in 2007 and 2008, and claims experience in terms of frequency and severity has continued to deteriorate. Also, the full impact on the program of Ontario's adoption of HST has now been evaluated and factored into the premium calculations.

96. In setting a base rate for 2012, LAWPRO tested its five-year planning horizon under various scenarios. Overall company results are projected to exceed break-even, thus allowing LAWPRO to both stabilize and strengthen its capital position for the possible challenges of coming years. Many factors influence this forecast, most significantly interest rates and claims experience. The results of this forecast cannot be considered definitive in nature and further base rate increases may be required in future years.

97. Accordingly:

a) The base premium is $3,350 per lawyer for 2012, the same base premium charged in 2011;
b) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at $24.8 million for the purposes of establishing the base premium for 2012 and other budgetary purposes;
c) No funds are expected to be drawn from the available surplus in the Errors & Omissions Insurance ("E&O") Fund, built up in previous years, to be applied to the 2012 insurance premium; and
d) To the extent that levies (noted in (b) above) collected in 2012 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the E&O Fund.

(f) Other Adjustments

98. With the exception of the changes specifically described in this report, all aspects of the insurance program for 2012 will remain unchanged from the program now in place.

99. As detailed in Appendix "A", subject to the noted changes, the current insurance program for lawyers in private practice encompasses the following:

- standard practice coverage, including Mandatory Innocent Party Coverage;
- coverage options, including Innocent Party Buy-Up, Part-Time Practice, Restricted Area of Practice and Real Estate Practice.

100. The current program also provides for premium discounts and surcharges. Discounts and surcharges expressed as a percentage of premium include:

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a surcharge in the event that no completed application form is filed.

101. Discounts and surcharges expressed as a stated dollar amount include:

- the Mandatory Innocent Party premium;
- optional Innocent Party Buy-Up premium;
- the Real Estate Practice Coverage premium;
- premium discount for early lump sum payment;
- e-filing discount; and
- Continuing Professional Development discount.

102. Subject to the changes identified earlier in this report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2011 will remain unchanged for the 2012 insurance program.

CONCLUSION

103. The LAWPRO Board considers the program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this program of insurance for 2012 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2012 insurance program can be implemented by January 1, 2012.

ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September 2011

Ian D. Croft
Chair of the Board
Lawyers' Professional Indemnity Company

James R. Caskey, Q.C.
Vice-Chair of the Board

Lawyers' Professional Indemnity Company

APPENDIX A

 Standard Insurance Program Coverage

Appendix "A"

The Standard Insurance Program Coverage for 2012

Eligibility

- Required of all sole practitioners, lawyers practising in association or partnership, and lawyers practising in a Law Corporation, who are providing services in private practice.

- Required of all other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who do not fully meet the program exemption criteria.

- Available to lawyers who do meet the exemption criteria but opt to purchase the insurance coverage.

Coverage limit

- $1 million per CLAIM/$2 million aggregate (i.e. for all claims reported in 2012), applicable to CLAIM expenses, indemnity payments and/or cost of repairs together.

Standard DEDUCTIBLE

- $5,000 per CLAIM applicable to CLAIM expenses, indemnity payments and/or costs of repairs together.

Standard base premium

- $3,350 per insured lawyer.

Transaction Premium Levy

- $65 per real estate transaction and $50 per civil litigation transaction;

- No real estate transaction levy generally payable by transferee's lawyer if title-insured.

Premium reductions for new lawyers

- Premium for lawyers with less than 4 full years of practice (private and public):

- less than 1 full year in practice: premium discount equal to 50 per cent of base premium;

- less than 2 full years in practice: premium discount equal to 40 per cent of base premium;

- less than 3 full years in practice: premium discount equal to 30 per cent of base premium;

- less than 4 full years in practice: premium discount equal to 20 per cent of base premium.

Mandatory Innocent Party Coverage
Eligibility
The minimum coverage of $250,000 per claim/in the aggregate must be purchased by all lawyers practising in association or partnership (including general, MDP and LLP partnerships), or in the employ of other lawyers.

The minimum coverage must also be purchased by all lawyers practising in a Law Corporation, where two or more lawyers practise in the Law Corporation.

Premium
$250 per insured lawyer.

2012 Program Options

1. Deductible option

$Nil deductible
- Increase in premium equal to 15 per cent of base premium ($502.50 increase).

$2,500 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together
- Increase in premium equal to 7.5 per cent of base premium ($251.25 increase).

$2,500 deductible applicable to indemnity payments and/or costs of repairs only
- Increase in premium equal to 12.5 per cent of base premium ($418.75 increase).

Standard insurance program: $5,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together
- Base premium of $3,350 per insured lawyer.

$5,000 deductible applicable to indemnity payments and/or costs of repairs only
- Increase in premium equal to 10 per cent of base premium ($335 increase).

$10,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together
- Decrease in premium equal to 7.5 per cent of base premium ($251.25 decrease).

$10,000 deductible applicable to indemnity payments and/or costs of repairs only
- Increase in premium equal to 7.5 per cent of base premium ($251.25 increase).

$25,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs
- Decrease in premium equal to 12.5 per cent of base premium ($418.75 decrease).

2. Innocent Party Sublimit Coverage Options

Innocent Party Coverage Sublimit Buy-Up: For lawyers practising in associations, partnerships and Law Corporations
Lawyers practising in association or partnership (including general, MDP and LLP partnerships) or a Law Corporation (with more than one practising lawyer) can increase their Innocent Party Coverage in two ways:

Increase coverage sublimit to:	Additional annual premium:
$500,000 per CLAIM/aggregate	$150 per insured lawyer
$1 million per CLAIM/aggregate	$249 per insured lawyer

Optional Innocent Party Sublimit Coverage: For sole practitioners and lawyers practising alone in a Law Corporation
Coverage limits
- $250,000 per CLAIM/in the aggregate
- $500,000 per CLAIM/in the aggregate
- $1 million per CLAIM/in the aggregate

3. Practice Options

Restricted Area of Practice Option
Eligibility
Available only to lawyers who agree to restrict their practice to criminal[10] and/or immigration law[11] throughout 2012.

Premium
Eligible for discount equal to 50 per cent of base premium, to a maximum of $1,675.[12]

Part-Time Practice Option
Eligibility
Available only to part-time practitioners who meet the revised part-time practice criteria.

Premium
Eligible for discount equal to 50 per cent of base premium, to a maximum of $1,675.

[10] Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.
[11] Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining in this report, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights.*
[12] The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Practitioners' discount combined cannot exceed 50 per cent of the base premium.

Real Estate Practice Coverage Option
Eligibility
All lawyers who intend to practice REAL ESTATE LAW in Ontario in 2012 must be ELIGIBLE for and apply for this coverage option.

"ELIGIBLE" means eligible to practice REAL ESTATE LAW in Ontario in accordance with the *Law Society Act*, R.S.O. 1990, c. L.8. Categories of lawyers who would not be ELIGIBLE to practice REAL ESTATE LAW in Ontario, include:

- Those who are in bankruptcy;
- those who have been convicted or disciplined in connection with a real estate fraud;
- those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practicing real estate, or an undertaking not to practise real estate.

Premium
$250 per insured lawyer.

4. Premium Payment Options

Instalment Options:

- Lump sum payment by cheque or pre-authorized bank account debit: eligible for $50 discount.
- Lump sum payment by credit card
- Quarterly instalments
- Monthly instalments

5. E-filing Discount
- $25 per insured lawyer (if filed by November 1, 2011)

6. Continuing Professional Development (Risk Management) Premium Credit

- $50 per course, subject to a $100 per insured lawyer maximum discount, will be applied under the 2013 insurance program.

- For pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2011, and September 15, 2012, where the lawyer completes and files the required LAWPRO CLE electronic declaration by September 15, 2012.

- LAWPRO'S Online Coaching Centre is included as a pre-approved course, where the insured lawyer completes at least three modules between September 16, 2011, and September 15, 2012.

APPENDIX B

Distribution of Claims by Geographic Region (2000-2010)

(see graph in Convocation Report)

Distribution of Claims by Firm Size (2001-2010)

(see graph in Convocation Report)

Distribution of Claims by Years since Date of Call (2000-2010)

(see graph in Convocation Report)

Claims Causes by Area of Law (2000 to 2010)

(see graph in Convocation Report)

Communications: Poor communication, not keeping clients informed or failing to obtain client consent are the main causes of claims in all areas of law (except litigation, where it is the #2 cause) and firms of all sizes. While the most numerous claims, they are at the same time the most easily prevented. Lawyers can reduce their exposure to these types of claims by controlling client expectations, actively communicating with the client at all stages of a matter, documenting advice and instructions and confirming in writing what work was done on a matter at each step along the way.

Time management: These kinds of claims include failing to ascertain a deadline, failing to calendar the deadline, and failing to react to the deadline even when it was known. These lapses often become claims when a limitation period ends up being missed. There are also claims resulting from lawyers simply procrastinating in dealing with that dusty file in their offices. Time management claims are heavily concentrated in the litigation field, as it is so reliant on deadlines. Practice management software and tickler systems can help prevent these claims, as can lawyers building in more time cushions so that they aren't undone by unexpected delays.

Inadequate investigation: Modern technology and busy practices may be behind the tendency of lawyers to give quick legal advice without taking extra time to dig deeper or ask appropriate questions on a client's matter. LAWPRO has seen a big increase in these types of claims in real estate. High-volume practices often mean lawyers don't have enough time to ask the clients about their plans for the property, and as a result don't do the necessary searches or obtain the proper title insurance.

Failure to know/apply the law: These claims result from a lawyer not having sufficient or current knowledge of the relevant law on a matter in which he or she is working. Extensive federal and provincial legislation, as well as voluminous case law, help make this the second-most-common type of claim in family law. This category also includes failing to know or appreciate the consequences of tax law in corporate/commercial matters. Lawyers can best avoid this type of claim by sticking to the law they know best and not "dabbling" in other areas.

Conflict of interest: There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for multiple clients/entities, real estate and corporate commercial lawyers experience more conflicts claims than other areas of law, while litigators have a relatively low rate of conflicts claims.

Clerical errors: These types of errors include things such as simple clerical mistakes, errors in mathematical calculation, work delegated to an employee or outsider that isn't checked and failures to file documents. As important as delegation is to the efficient functioning of a law firm, lawyers need to take the time to review the work as they are ultimately responsible for it.

The 80-20 Rule
Claims Reported, 2000-2010
Members in Practice, 2010

(see graph in Convocation Report)

APPENDIX C

Premium Rating Examples..... 55

(see graph in Convocation Report)

It was moved by Mr. Krishna, seconded by Ms. McGrath, that Convocation approve the program of insurance offered by LAWPRO for 2012 as set out in the Report.

Carried

The Treasurer thanked Kathleen Waters, CEO and the LAWPRO Board for their work in the past year.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Schabas presented the Report.

Report to Convocation
September 22, 2011

Professional Regulation Committee

Committee Members
Paul Schabas (Chair)
Julian Porter (Vice-Chair)
Susan Richer (Vice-Chair)
Robert Burd
John Campion
Robert Evans
Julian Falconer
Alan Gold
Carol Hartman
Janet Leiper
William McDowell
Kenneth Mitchell
Malcolm Mercer
Jan Richardson
James Scarfone

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
(Sophie Galipeau – 416-947-3458)

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on September 8, 2011. In attendance were Paul Schabas (Chair), Julian Porter (Vice-Chair), Susan Richer (Vice-Chair), Robert Burd, Robert Evans, Carol Hartman, Janet Leiper, William McDowell, Malcolm Mercer, Kenneth Mitchell, and James Scarfone. Staff attending were, Naomi Bussin, Malcolm Heins, Terry Knott, Janice LaForme, Zeynep Onen, Jim Varro, and Sophie Galipeau.

FOR DECISION

AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT* AND THE *PARALEGAL RULES OF CONDUCT* RESPECTING LIMITED SCOPE RETAINERS
(JOINT MEETING OF THE PROFESSIONAL REGULATION, ACCESS TO JUSTICE AND PARALEGAL STANDING COMMITTEES)

Motion

2. That Convocation approve the amendments to the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* at Appendix 3 to provide guidance to lawyers and paralegals who provide legal services under a limited scope retainer.

Introduction

3. As reported to Convocation in June 2010, the Professional Regulation Committee's working group on unbundling, which also included members of the Paralegal Standing Committee and the Access to Justice Committee[1] , was formed to consider issues related to limited scope retainers, also called "unbundling" of legal services.

4. The concept of limited scope retainer means taking a legal matter apart into discrete tasks and having a lawyer or paralegal perform some of those tasks, that is, provide legal services for part, but not all, of a client's legal matter by agreement with the client. For other parts of the legal matter, the client is self-represented.

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

The Consultation Process on Proposed Amendments to the Rules of Conduct

6. During the spring of 2010, the Working Group drafted proposed amendments to the *Rules of Professional Conduct* and to the *Paralegal Rules of Conduct* to provide guidance on limited scope retainers. In developing the proposals, the guiding principle was that any amendment would not create new standards of professional conduct but confirm existing standards with awareness around how they apply in the context of a limited scope retainer.

[1] Working group members were Raj Anand, Robert Burd, Paul Dray, Michelle Haigh and Susan McGrath. Linda Rothstein, Glen Hainey and Carl Fleck also served as chairs of the working group.

7. In September 2010, Convocation reviewed the draft proposals and approved a call for input to obtain comments from stakeholders. The material for the call for input is at Appendix 1. It includes background information on limited scope retainers, developments in other jurisdictions and drafts of the proposed rule changes for comment.

8. The call for input was published in October 2010 in the Ontario Reports and on the Law Society's website, and was also included in Law Society e-mails to lawyers and paralegals. The Chair of the Working Group also wrote letters to eight legal organizations requesting their comments on the proposals. The deadline for responses was November 30, 2010 but some responses continued to arrive until late April 2011.

9. The call for input resulted in a very worthwhile range of comments. In total, 22 responses were received from lawyers and legal organizations. The list of those who responded is found at Appendix 2.[2]

10. Much of the feedback received was general comment about limited scope retainers. The vast majority of respondents saw value in having ethical rules and guidance on the provision of legal services under a limited scope retainer to ensure that lawyers and paralegals provide competent services and communicate effectively with clients in that context.

Revision of the Proposals Following the Call for Input

11. After reviewing the responses, the Committees agreed that some revisions to the proposals were warranted. The main changes recommended by the Committees, discussed in the next section of the report, are as follows:

    a. New language to describe and clarify the concept of 'limited scope retainer' in the definition of the Rules.
    b. Clearer language to emphasize the level of competence required in the context of a limited scope retainer.
    c. The creation of exceptions to the rule requiring written confirmation of the services under a limited scope retainer.

12. The proposals agreed upon by the Committees appear in the following section with an explanation of the changes. The changes to the version that was included in the call for input material are underlined ("L" refers to the lawyer rules and "P" refers to the paralegal rules). The amendments as prepared by the Law Society's Rules Drafter Don Revell, that Convocation is asked to approve, are at Appendix 3 for the lawyer rules and for the paralegal rules. For reference, the complete text of each rule/commentary affected by the revised proposals is reproduced at Appendix 4

13. As the paralegal rules do not include commentary, where commentary is amended or added to the lawyer rules, similar language would be added to the Paralegal Guidelines that accompany the paralegal rules.

[2] The actual responses are included in a separate document that is available to Convocation on request.

Recommended Changes to the Proposals

Rule 1.02(*L*)/1.02(*P*) - Interpretation

14. In the call for input material, it was proposed that the definition of 'legal practitioner' that exists in the lawyer rules be added to the paralegal rules. It was also proposed that an additional clause be added to include (c) 'a person who is not a licensee but is permitted by the Law Society to provide legal services in Ontario'. However, as this may mean that licensees would owe professional obligations to a wider group of people than is now required, the Committees concluded that clause (c) not be included in the lawyer rules and the paralegal rules. This change does not impact the substance of the proposals on limited scope retainers.

15. A number of respondents to the call for input stated that the term "limited legal services" could be more descriptive. One respondent said that the use of the words *limited services* in the definition might suggest to some clients and lawyers less than full and competent legal service and suggested using the term "limited scope retainer". The Committees agree with this view and recommend using the term "limited scope retainer".

16. The Committees also recommend that the term "legal representation" should be removed as it is included in the term "legal services" and is not defined in the rules.

Rule 1.02(L)/1.02(P) – Interpretation

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

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

Commentary to Rule 2.01(L) – Competence

17. Several respondents mentioned that the legal services under a limited scope retainer should be provided with the same legal knowledge, skill, thoroughness and preparation as if they were undertaken under a full retainer agreed but felt that the proposed addition to the commentary could be clearer about this.

18. The Committees agree with these comments and recommend the following changes to the commentary to more clearly state the level of competence required in that context.

Rule 2.01 (*L*) – Competence (addition to commentary)

When ~~A~~ a lawyer ~~may accept~~ considers whether to provide legal services under a limited scope retainer ~~for limited legal services~~, he or she ~~but~~ must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. ~~Although a~~ An agreement to provide ~~for~~ such services does not exempt a lawyer from the duty to provide competent representation. As in any retainer, the lawyer should consider~~, the limitation is a factor to be considered when determining~~ the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 2.02(6.1) to (6.3)

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

19. A number of respondents were concerned about the proposed requirement for a written confirmation of the limited scope retainer, on the basis that it would be counterproductive to the goal of access to justice in certain situations. Many stated that such a requirement would be impractical and unsuitable for duty counsel offices or providers of summary advice through community clinics and telephone hotlines. They suggested that the Rules should recognize an exception for non-profit services aimed at increasing access to justice.

20. The Committees agree with those views and recommend that exceptions be created to the written confirmation requirement for summary advice and services provided in specific circumstances.

21. The Committees recommend revisions to paragraph (b) to clarify that the written confirmation of the services does not require an agreement in a form that requires the signature of the client. Furthermore, because in some cases it may not be possible for the licensee to give the written confirmation to the client, the Committee recommends a change that would allow the licensee the flexibility to give the document to the client when practicable to do so.

22. The Committees also recommend a change in the commentary under Rule 2.02(6) to recognize that the lawyer's duty to accommodate the needs of a client under a disability is the same in the context of a limited scope retainer as in the context of a full-service retainer.

~~Limited~~ Legal Services Under a Limited Scope Retainer

2.02(6.1)(*L*)/3.02(8.1)(*P*) Before providing ~~limited~~ legal services ~~to a client~~ under a limited scope retainer, ~~the~~ a lawyer/paralegal shall
~~(a)~~ advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer/paralegal can provide, and ~~including~~, where appropriate, whether the services can be provided within the financial means ~~provided by~~ of the client.~~, and~~

~~(b)~~(6.2)(*L*)/(8.2)(*P*) When providing legal services under a limited scope retainer, a lawyer/paralegal shall confirm the services in writing and ~~provide~~ give the client ~~with~~ a copy of the ~~agreement~~ written document when practicable to do so. ~~between the lawyer and the client for the provision of the services~~.

Commentary
Reducing to writing the discussions and agreement with the client about the limited scope retainer ~~legal services~~ assists the lawyer and client in understanding the limitations of the services to be provided and any risks of the retainer. In certain circumstances, such as when the client is in custody, it may not be possible to give him or her a copy of the document. In this type of situation, the lawyer should keep a record of the limited scope retainer in the client file and, when practicable, provide a copy of the document to the client.

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

A lawyer who is providing ~~limited~~ legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed. See rule 6.03(7.1)(*L)*

(6.3)(*L*)/(8.3)(*P*) Subrule (6.2)/(8.2) does not apply to a lawyer/paralegal if the legal services are

(a) (*L*) legal services or summary advice provided as a duty counsel under the *Legal Aid Services Act*, *1998,* or through any other duty counsel or other advisory program operated by a not-for-profit organization;
(a) (*P*) legal services provided by a licensed paralegal in the course of his or her employment as an employee of Legal Aid Ontario;
(b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;
(c) summary advice provided through a telephone-based service or telephone hotline;
(d) summary advice provided by the lawyer/paralegal to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or
(e) pro bono summary legal services provided in a non-profit or court-annexed program.

Commentary
The consultation referred to in subrule (6.3)(d) may include advice on preventative, protective, pro-active or procedural measures relating to the client's legal matter, after which the client may agree to retain the lawyer.

Commentary under rule 2.02(6) – Client Under a Disability

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

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

23. In the call for input, two options were presented for proposed changes to this rule which deals with communications with represented parties. The changes focus on the communications with the person who is represented under a limited scope retainer and how they should be managed.

24. The majority of respondents who commented on this proposal preferred the option under which opposing counsel are allowed to communicate with the party until opposing counsel receives a written notice of the limited scope representation.

25. The Committees agree that opposing counsel should be able to communicate with the party until that counsel is notified of the party's representation by a lawyer or paralegal under a limited scope retainer and recommends that the proposal be revised to reflect that option. The Committees also recommend that clause (b) be removed as it is redundant.

26. In the Committees' view, this proposal would fit better under Rule 7.01 of the paralegal rules and recommends that it be moved under that rule.

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

(7.1)(*L*)/~~4.02~~ 7.01(6.1)(*P*) Subject to subrule (8)[3], if a person is receiving ~~limited~~ legal services ~~representation~~ from a legal practitioner under a limited scope retainer on a particular matter, a lawyer/paralegal may, without the consent of the legal practitioner,
~~(a)~~ approach, communicate or deal directly with the person on the matter, ~~or~~
~~(b) attempt to negotiate or compromise the matter directly with the person~~,
unless the lawyer/paralegal receives written notice of the limited nature of the legal services ~~representation~~ being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

Commentary

Where notice as described in subrule (7.1) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is representing ~~providing~~ the person under a limited scope retainer ~~with the limited legal representation~~, but only to the extent of the ~~limited representation~~ matter or matters within the scope of the retainer as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited scope retainer ~~legal representation~~.

[3] This subrule deals with second opinions.

Proposals Awaiting Possible Development of Procedural Rules

27. Some proposals included in the call for input material related to procedural matters before a tribunal. These proposals are not being recommended for adoption by Convocation at this stage, as they must await possible development of procedural rules addressing the issue of limited scope retainers. The Professional Regulation Committee will update Convocation in the event such procedural rules are amended.

Appendix 1

"UNBUNDLING" OF LEGAL SERVICES

Introduction

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

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

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

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

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

Some Background on Developments in Other Jurisdictions

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

United States

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

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

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

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

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

Canadian Bar Association

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

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

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

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

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

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

advice, but could also be interpreted to mean that the lawyer and client can agree that the lawyer's role is limited and the advice based on incomplete information.
The report concludes by saying that if the concerns can be adequately addressed, unbundling could become a useful approach in the future.

Law Society of British Columbia

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

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

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

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

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

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

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

1. Rules that govern professional conduct and procedure before the courts should be amended as required to facilitate the proper, ethical provision of limited scope legal services.
2. Amendments to the ethical rules for guidance for limited scope legal services should not create a lesser standard of professional responsibility than is otherwise expected of a lawyer.
3. If the lawyer does not feel the professional services contemplated by the limited retainer can be performed in a competent and ethical manner, the lawyer should decline the retainer.
4. The lawyer should ensure the client understands the limited scope of the retainer, the limits and risks associated with such services, and should confirm this understanding, where reasonably possible, in writing.

    a. Example: counsel may enter into an agreement with an accused person to act at trial only, and not to act for the accused in any procedural matters leading up to the trial. Counsel would have an obligation to explain to the client any risks that a limited retainer of this nature might carry for the client.

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

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

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

    a. The lawyer has been notified of the limited scope lawyer's involvement;
    b. The communication concerns an issue within the scope of the limited scope lawyer's involvement; and
    c. The limited scope lawyer or his or her client has asked the lawyer to communicate with the limited scope lawyer about the issue in question.

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

Canadian Law Societies' Rules of Conduct on Unbundling

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

British Columbia

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

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

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

> Annotations
>
> Rule 10 - Limited retainer
>
> There is no necessary conflict between Rule 10 and the Criminal CaseFlow Management Rules, which seem to require the presence of counsel at certain procedural stages of criminal proceedings. It is proper for counsel to enter into an agreement with an accused person to act at trial only, and not to act for the accused in any procedural matters leading up to the trial. Of course, counsel would have an obligation to explain to the client any risks that a limited retainer of this nature might carry for the client.
> *EC November 30, 2000 item 9*
>
> It is not inconsistent with Rule 10 for a lawyer to provide anonymous drafting assistance to a client.
> *Recommendation 8 of Report of Unbundling of Legal Services Task Force p. 22; approved by Benchers April 2008*
>
> Failing to provide information to an unrepresented party about the limitations of the retainer does not amount to professional misconduct.
> *DCD 00-16*

Alberta

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

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

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

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

Nova Scotia

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

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

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

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

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

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

1. <u>Defining the scope of representation</u>: There is a need for an understanding between the lawyer/paralegal and client about what the lawyer will do by way of providing limited legal services;
2. <u>Clarifying communications between counsel and parties</u>: The issue is how the rules around communications with represented parties should be applied, given that the lawyer/paralegal providing limited legal services will not be counsel of record or may not consider himself or herself retained for the purposes of the rule;
3. <u>The lawyer's or paralegal's role in document preparation, including disclosure of such assistance</u>: This relates to notice to the court of "ghostwriting" of pleadings, or whether the court must be advised that the client has counsel for a particular part of the case.

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

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

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

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

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

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

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

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

Rule 2.01 - Competence
While the competence rule itself would not appear to require amendment, additional commentary should be added to address competence in the delivery of limited legal services.

The following is a proposed addition:

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

Rule 2.02(L) – Quality of Service/Rule 3.02(P) – Advising Clients
It would appear appropriate to add a new rule and commentary to set out the lawyer's or paralegal's obligation to provide candid advice about the limited retainer and to commit to writing the agreement between the lawyer/paralegal and client for the limited legal services. This would assist clients in understanding the nature of a limited retainer, and remind them of the limits on the service to which they agreed. The following is the proposal:

Limited Legal Services

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

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

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

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

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

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

Rule 2.09(L)/Rule 3.08(P) – Withdrawal from Representation
The proposed amendment to rule 2.09 provides that the lawyer or paralegal is deemed to have withdrawn once the services provided within the limited retainer are complete.[9] The amendment would read as follows:

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

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

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

Rule 4.01(L) – The Lawyer as Advocate/Rule 4.01(P) – The Paralegal as Advocate
The proposed amendment to rule 4.01 addresses required disclosure when a lawyer or paralegal appears as advocate for a client in a limited retainer. The proposed rule reads:

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

Rule 6.03 (L) – Responsibility to Lawyers and Others/Rule 4.02(P) – Interviewing Witnesses
A key issue in the unbundled context relates to communications with opposing counsel when a party is only represented for part of a legal matter. The general rule requires the consent of the party's lawyer or paralegal for direct communication by an opposing counsel with that party. In a limited retainer, it would appear appropriate to vary that standard, depending on the nature and stage of the communication.

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

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

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

> 6.03/4.02(X) Subject to subrule (8)[10], if a person is receiving limited legal representation from a legal practitioner on a particular matter, a lawyer/paralegal may, without the consent of the legal practitioner,
>
> (a) approach or communicate or deal with the person on the matter, or
>
> (b) attempt to negotiate or compromise the matter directly with the person,
>
> unless the lawyer/paralegal receives written notice of the limited legal representation.
>
> Commentary
> Where notice as described in subrule (X) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is providing the person with the limited legal representation, but only to the extent of the limited representation as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited legal representation.

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

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

[10] This subrule deals with second opinions.

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

APPENDIX 1
(to consultation document)

RULES OF PROFESSIONAL CONDUCT

1.02 DEFINITIONS

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

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

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

Definitions

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

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

[Amended – June 2007]

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

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

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

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

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

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

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

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

(i) managing one's practice effectively,

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

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

Commentary

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

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

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

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

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

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

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

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

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

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

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

[Amended - June 2009]

2.02 QUALITY OF SERVICE

…

Limited Legal Services

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

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

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

Commentary

Reducing to writing the discussions and agreement with the client about limited legal services assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer. A lawyer who is providing limited legal services should be careful to avoid acting such that it appears that the lawyer is providing full service to the client.

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

…

Client Under a Disability

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

Commentary

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

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

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

…

2.09 WITHDRAWAL FROM REPRESENTATION

Withdrawal from Representation

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

…

Limited Legal Representation

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

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

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

…

4.01 THE LAWYER AS ADVOCATE

Advocacy

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

…

Limited Legal Representation

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

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

...

6.03 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

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

2 options

Option 1:

Communications with a represented person

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

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

[Amended – June 2009]

Limited Legal Representation

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

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

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

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

Second Opinions

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

[Amended - June 2009]

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

The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed.

This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other legal practitioner by closing his or her eyes to the obvious.
Where notice as described in subrule (X) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is providing the person with the limited legal representation, but only to the extent of the limited representation as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited legal representation.

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

[Amended - June 2009]

Option 2:

Communications with a represented person

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

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

[Amended – June 2009]

Limited Legal Representation

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

Commentary

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

APPENDIX 2
(to consultation document)

PARALEGAL RULES OF CONDUCT
AND PARALEGAL GUIDELINES

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

Rule 1 – Citation and Interpretation

1.02 Interpretation

Definitions

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

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

3.02 Advising Clients

General

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

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

Limited Legal Services

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

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

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

3.08 Withdrawal from Representation

Withdrawal from Representation

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

...

Limited Legal Representation

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

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

4.01 The Paralegal as Advocate

Duty to Clients, Tribunals and Others

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

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

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

4.02 Interviewing Witnesses

Interviewing Witnesses

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

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

7.01 Courtesy and Good Faith

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

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

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

(b) attempt to negotiate or compromise the matter directly with the person,
unless the paralegal receives written notice of the limited legal representation

OR

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

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

GUIDELINE 6: COMPETENCE

General

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

Limited Legal Services

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

Cross reference Rule 3.02x – new rule

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

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

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

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

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

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

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

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

GUIDELINE 7: ADVISING CLIENTS

General

Rule Reference: 3.02(1) & (2)

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

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

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

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

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

GUIDELINE 11: WITHDRAWAL FROM REPRESENTATION

General
Rule Reference: Rule 3.08
...

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

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

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

GUIDELINE 14: RETAINERS

General
1. In the context of providing legal services, the word *retainer* may mean any or all of the following:
    - the client's act of hiring the paralegal to provide legal services (i.e., a *retainer*),
    - the contract that outlines the legal services the paralegal will provide to the client and the fees and disbursements and HST to be paid by the client (i.e., a *retainer agreement*), or
    - monies paid by the client to the paralegal in advance to secure his or her services in the near future and against which future fees will be charged (i.e., a *money retainer*).

The Retainer Agreement
Rule Reference: Rule 5.01(1)

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

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

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

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

GUIDELINE 17: DUTY TO PARALEGALS, LAWYERS AND OTHERS

General
Rule Reference: Rule 2.01(3)Rule 7.01

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

Prohibited Conduct
Rule Reference: Rule 7.01

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

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

Limited Legal Services

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

OR

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

Appendix 2

Responses to the Call for Input

Organizations

1. The Advocates' Society
2. Association of Community Legal Clinics of Ontario (ACLCO)
3. Criminal Lawyers' Association (CLA)
4. Equity and Aboriginal Issues Committee (EAIC)
5. Family Lawyers Association
6. LawPRO
7. Legal Aid Ontario (LAO)
8. Ontario Bar Association (OBA)
9. Pro Bono Law Ontario
10. Toronto Lawyers Association (TLA) – Nestor E. Kostyniuk

Individuals

11. Christopher Arnold, Resolution Specialist, Collaborative Family Law – Ottawa
12. David Baker, Bakerlaw Accessible Justice –Toronto
13. Robert R. Berman and Tammy Barrett, Berman Barristers, Family Law Advocacy - Toronto
14. Raj M. Bharati – New Market
15. Raoul Boulakia – Toronto
16. Stephen Ginsberg, Executive Director, CAW Legal Services Plan
17. Pauline Green – Toronto
18. Daniel K. Moorhouse, Holden & Moorhouse – Windsor
19. Veena Pohani – Toronto
20. Heather J. Ross – Goderich
21. Michael Wicklum – Perth
22. Richard Yasny – Toronto

Appendix 3

Draft Amendments to the Rules of Professional Conduct

Rule 1.02 Definition

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

Rule 2.01 Competence -

[Addition to Commentary under subrule 2.01 (1)]

When a lawyer considers whether to provide legal services under a limited scope retainer, he or she must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement to provide such services does not exempt a lawyer from the duty to provide competent representation. As in any retainer, the lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also subrules 2.02(6.1) to (6.3).

Rule 2.02 Quality of Service

[Addition to Commentary under subrule 2.02 (6)]

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

Legal Services Under a Limited Scope Retainer

(6.1) Before providing legal services under a limited scope retainer, a lawyer shall advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide, and, where appropriate, whether the services can be provided within the financial means of the client.

(6.2) When providing legal services under a limited scope retainer, a lawyer shall confirm the services in writing and give the client a copy of the written document when practicable to do so.

Commentary

Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer. In certain circumstances, such as when the client is in custody, it may not be possible to give him or her a copy of the document. In this type of situation, the lawyer should keep a record of the limited scope retainer in the client file and, when practicable, provide a copy of the document to the client. A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting such that it appears that the lawyer is providing services to the client under a full retainer.

A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed. See rule 6.03(7.1).

(6.3) Subrule (6.2) does not apply to a lawyer if the legal services are

(a) legal services or summary advice provided as a duty counsel under the *Legal Aid Services Act, 1998* or through any other duty counsel or other advisory program operated by a not-for-profit organization;

(b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;

(c) summary advice provided through a telephone-based service or telephone hotline;

(d) summary advice provided by the lawyer to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) *pro bono* summary legal services provided in a non-profit or court-annexed program.

Commentary

The consultation referred to in subrule (6.3) (d) may include advice on preventive, protective, pro-active or procedural measures relating to the client's legal matter, after which the client may agree to retain the lawyer.

6.03 Responsibility to lawyers and others:

(7.1) Subject to subrule (8), if a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a lawyer may, without the consent of the legal practitioner, approach, communicate or deal directly with the person on the matter, unless the lawyer receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

Additional Commentary

Where notice as described in subrule (7.1) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is representing the person under a limited scope retainer, but only to the extent of the matter or matters within the scope of the retainer as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited scope retainer.

Draft Amendments to the Paralegal Rules of Conduct

Rule 1.02 Definitions:

"legal practitioner" means a person

(a) who is a licensee,

(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practice law as a barrister and solicitor in that other jurisdiction.

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

Rule 3.02 Advising Clients

Legal Services Under a Limited Scope Retainer

(8.1) Before providing legal services under a limited scope retainer, a paralegal shall advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide, and, where appropriate, whether the services can be provided within the financial means of the client.

(8.2) When providing legal services under a limited scope retainer, a paralegal shall confirm the services in writing and give the client a copy of the written document when practicable to do so.

(8.3) Subrule (8.2) does not apply to a paralegal if the legal services are

(a) legal services provided by a licensed paralegal in the course of his or her employment as an employee of Legal Aid Ontario;

(b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;

(c) summary advice provided through a telephone-based service or telephone hotline;

(d) summary advice provided by the paralegal to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) *pro bono* summary legal services provided in a non-profit or court-annexed program.

Rule 7.01 Courtesy and Good Faith

(6.1) If a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a paralegal may, without the consent of the legal practitioner, approach, communicate or deal directly with the person on the matter, unless the paralegal receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

APPENDIX 4

RULES OF PROFESSIONAL CONDUCT

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,

…

"legal practitioner" means a person

(a) who is a licensee; ~~or~~

(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction;

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

…

2.01 COMPETENCE

Definitions

2.01 (1) In this rule

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

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

[Amended – June 2007]

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

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

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

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

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

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

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

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

(i) managing one's practice effectively,

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

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

Commentary

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

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

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

A lawyer must be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task. If consulted in such circumstances, the lawyer should either decline to act or obtain the client's instructions to retain, consult, or collaborate with a lawyer who is competent for that task. The lawyer may also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, in such a situation, the lawyer should not hesitate to seek the client's instructions to consult experts. A lawyer should clearly specify the facts, circumstances, and assumptions upon which an opinion is based. Unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the lawyer should so state in the opinion.

When a lawyer considers whether to provide legal services under a limited scope retainer, he or she must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement to provide such services does not exempt a lawyer from the duty to provide competent representation. As in any retainer, the lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also subrule 2.02(6.1) to (6.3)

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

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

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

Whenever it becomes apparent that the client has misunderstood or misconceived the position or what is really involved, the lawyer should explain, as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.
The requirement of conscientious, diligent, and efficient service means that a lawyer should make every effort to provide service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[Amended - June 2009]

2.02 QUALITY OF SERVICE

…

Client Under a Disability

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

Commentary

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

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

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

Limited Legal Services

2.02 (6.1) Before providing legal services under a limited scope retainer, the lawyer shall advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide, and, where appropriate, whether the services can be provided within the financial means of the client, and

(6.2) When providing legal services under a limited scope retainer, a lawyer shall confirm in writing the services and give the client a copy of the written document when practicable to do so.

Commentary

Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer. In certain circumstances, such as when the client is in custody, it may not be possible to give him or her a copy of the document. In this type of situation, the lawyer should keep a record of the limited scope retainer in the client file and, when practicable, provide a copy of the document to the client.
A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting such that it appears that the lawyer is providing services to the client under a full retainer.

A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed. See subrule 6.03(7.1)

(6.3) Subrule (6.2) does not apply to a lawyer if the legal services are

(a) legal services or summary advice provided as a duty counsel under the *Legal Aid Services Act, 1998* or through any other duty counsel or other advisory program operated by a not-for-profit organization;

(b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;

(c) summary advice provided through a telephone-based service or telephone hotline operated by a community-based or government funded program;

(d) summary advice provided by the lawyer to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) *pro bono* summary legal services provided in a non-profit or court-annexed program.

Commentary

The consultation referred to in subrule (6.3)(d) may include advice on preventative, protective, pro-active or procedural measures relating to the client's legal matter, after which the client may agree to retain the lawyer.

…

6.03 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

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

…

Communications with a represented person

(7) Subject to subrules (7.1) and (8), if a person is represented by a legal practitioner in respect of a matter, a lawyer shall not, except through or with the consent of the legal practitioner,

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

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

[Amended – June 2009]

Limited Legal Representation

(7.1) Subject to subrule (8), if a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a lawyer may, without the consent of the legal practitioner, approach, communicate or deal directly with the person on the matter, unless the lawyer receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

Second Opinions

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

[Amended - June 2009]

Commentary

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

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

Where notice as described in subrule (7.1) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is representing the person under a limited scope retainer, but only to the extent of the matter or matters within the scope of the retainer as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited scope retainer.

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

[Amended - June 2009]

PARALEGAL RULES OF CONDUCT AND PARALEGAL GUIDELINES

Rule 1 – Citation and Interpretation

1.02 Interpretation

Definitions

"legal practitioner" means a person

(a) who is a licensee;

(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction; or

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

3.02 Advising Clients
General

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

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

…

Limited Scope Retainers

(8.1) Before providing legal services under a limited scope retainer, the paralegal shall advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide and,where appropriate, whether the services can be provided within the financial means of the client, and

(8.2) When providing legal services under a limited scope retainer, a paralegal shall confirm in writing the services and give the client a copy of the written document when practicable to do so.

(8.3) Subrule (8.2) does not apply to a paralegal if the legal services are

(a) legal services provided by a licensed paralegal in the course of his or her employment as an employee of Legal Aid Ontario;

(b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;

(c) summary advice provided through a telephone-based service or telephone hotline operated by a community-based or government funded program;

(d) summary advice provided by the lawyer to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) *pro bono* summary legal services provided in a non-profit or court-annexed program.

7.01 Courtesy and Good Faith

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

(6.1) If a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a paralegal may, without the consent of the legal practitioner, approach, communicate or deal with the person on the matter, unless the paralegal receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

GUIDELINES FOR LAW OFFICE SEARCHES

Motion

28. That Convocation approve the Guidelines for Law Office Searches that appear at Appendix 5.

Introduction and Background

29. In February 2007, Convocation approved in principle the Federation of Law Societies of Canada's Draft "Protocol on Law Office Searches" for purposes of consultation with relevant stakeholders on procedures in respect of such searches. The Federation's Protocol appears at Appendix 6.

30. The Federation's Protocol was prepared following the September 2002 decision of the Supreme Court of Canada in *R. v. Lavallee*,[1] in which the Court struck down s. 488.1 of the Criminal Code as unconstitutional. That section dealt with the procedure police officers were to follow in the execution of a search warrant on a lawyer's office. In *Lavallee*, the Court recognized solicitor-client privilege as a principle of fundamental justice and a civil right of supreme importance, and set out the features that law office searches are required to have to ensure solicitor-client privilege is safeguarded.

31. The Federation's Protocol was intended for a lawyer's use when faced with a law office search. The Protocol is based on the principles articulated in *R. v. Lavallee* and the practical direction provided in the 2003 decision of the Ontario Superior Court of Justice in *R. v. Rosenfeld*.[2]

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[1] *Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink,* [2202] 3 S.C.R. 209.

[2] *R. v. Law Office of Simon Rosenfeld,* (2003), 108 C.R.R. (2d) 165 involved the search of the office of an accused lawyer. The Law Society intervened in the case. The Court made an order in respect of the process that follows the seizure to notify potential clients regarding the issue of privilege. This involves the appointment by the Court of a referee who will review the seized documents and, in conjunction with the affidavit to be produced by the respondent lawyer, identify the clients who are to receive notice of a hearing to establish the process for determining the issue of solicitor-client privilege respecting the documents.

The Consultation Process

32. For the consultation, a draft document titled Guidelines for Law Office Searches was prepared. The proposed Guidelines incorporated much of the content of the Federation's Protocol in a more accessible document for lawyers and law enforcement personnel.

33. In the spring of 2008, prior to the completion of the draft Guidelines, Law Society staff discussed the Federation's Protocol with representatives of the Ministry of the Attorney General and received their comments.

34. A revised draft of the Guidelines for the purpose of the more formal consultation was completed by the summer of 2008.

35. The first phase of consultation occurred in the late summer and fall of 2008. Of the 41 legal and law enforcement organizations invited to review and offer comment on the Guidelines, 20 participated and provided comment and feedback, either in writing or through meetings at the Law Society.[3]

36. The majority of participants saw value in having law office search guidelines. However, it became apparent from comments during the consultation that there was a need to revise and improve the Guidelines as a useful document. The consultation was interrupted at this point to make revisions.

37. The revisions were completed in April 2010. As directed by the Committee, on May 10, 2010, the redrafted Guidelines were circulated to the 20 legal and law enforcement organizations which had participated in the first phase of consultation with an invitation to provide comment.

38. As part of this second phase of consultation, the redrafted Guidelines were sent, with an invitation to provide comment, to the Ministry of the Attorney General, the Department of Justice, the Public Prosecutions Services Canada, the Ontario Crown Attorneys' Association, the Federal/Provincial/ Territorial Heads of Prosecution and the Federation of Law Societies. These legal organizations were not part of the first phase of consultation. This second phase of consultation took place in the late spring and summer of 2010.

39. Eighteen legal and law enforcement organizations of those invited to participate in the second phase of consultation provided written comment and feedback to the Law Society.[4]

40. The majority of the legal and law enforcement organizations that participated in the consultation process recognized the value in having law office search guidelines available to assist lawyers.[5]

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[3] The legal and law enforcement organizations invited to participate and those that participated appear at Appendix 7.

[4] The legal and law enforcement organizations invited to participate in the second phase of consultation and those that participated appear at Appendix 8.

[5] The comment and feedback about the redrafted Guidelines from the legal and law enforcement organizations that participated in the second phase of consultation are included in a separate document that is available to Convocation on request based on permission of the respondents

41. The valuable comments received during the consultations were reviewed by the Committee, and assisted in preparing the final version of the Guidelines. The Committee thanks all those who participated in this process.

Overview of the Guidelines

42. The Guidelines begin with a summary setting out the various steps, in a checklist format, that a lawyer should take when facing a search warrant for a law office search. The substance of the Guidelines follows this summary and in some detail addresses electronic and paper searches. The document ends with an appendix setting out the guidelines expressed by Justice Arbour in *R. v. Lavallee.*

43. The Guidelines cover the matters that require attention when a law office is the subject of a search warrant, including:
    a. Determining the validity of the warrant on its face;
    b. Asserting solicitor-client privilege;
    c. Assessing the potential for a conflict of interest and determining if a referee is required;
    d. Determining whether a computer forensic examiner is required; and
    e. Post-search procedures.

44. An online version of the Guidelines will be available on the Law Society's website once approved.

Appendix 5

LAW SOCIETY OF UPPER CANADA

GUIDELINES FOR LAW OFFICE SEARCHES

SUMMARY OF THE GUIDELINES

WHEN THE POLICE ARRIVE AT A LAW OFFICE

Inspect the search warrant

- Ensure that the law office is identified as the place to be searched,
- Ensure that the date the Police have attended at the law office is the date authorized,
- Ensure that the documents sought are identified,
- Ensure that the offence under investigation is identified,
- Ensure that the requisite judicial officer has signed and dated it,
- If there are deficiencies on the face of the warrant, point them out to the Police and assert that the Police should obtain a proper warrant, and

Do not obstruct the Police, even if you believe the search warrant or its manner of execution to be invalid.

Assert Privilege over all documents to be seized under the search warrant.

Is a Referee required?

Where the Lawyer may be a target of the investigation, if the Lawyer is in a conflict of interest and where there is no Lawyer present, this should be raised with the Police and either the Police or the Lawyer should make an application to the Court for the appointment of a Referee.

Is an Independent Forensic Computer Examiner required?
If the documents sought are on a computer or other electronic device/media, the assistance of a Court appointed Independent Forensic Computer Examiner may be required.

Do I need a Lawyer?
You are the only one who can answer that question. However, you can contact a Lawyer and you may find it helpful to speak with a Lawyer.

Lawyers should contact the Law Society at 416-947-3300 and ask to speak to Senior Counsel to the Director of Professional Regulation for assistance when faced with a law office search.

Next steps to be taken by the Referee or the non-conflicted Lawyer

- Keep notes of participants, contacts, happenings and timing,
- Identify and assert privilege with respect to all documents,
- Offer to, or if requested by the Police, locate the documents and, where practicable, make and keep copies of them,
- Comply with the terms of the search warrant and give only what is demanded by the warrant,
- Retain copies of all documents, to the extent that it is possible, time permitting,
- Offer to, or if requested by the Police, seal the documents in packages marked for identification and initialed by you and the Police, taking care to ensure that the Police do not see the documents or any client names,
- Ensure that the sealed packages are delivered to the custody of the Court or an independent third party as designated by the Court in accordance with the Court order, and
- Make reasonable efforts to contact the Clients whose documents are subject to seizure to advise what is happening and advise that they may wish to obtain independent legal advice.

The Search Warrant has been executed – next steps
If necessary, initiate or respond to applications before the Court that may include applications for,

- An order to unseal and access the sealed packages,
- The appointment of a Referee or an Independent Forensic Computer Examiner,
- The determination of objections to the search warrant or its manner of execution,
- The determination of issues of solicitor-client privilege,
- Further searches such as a comprehensive electronic search of an electronic device/media or a forensic image, and
- Direction with respect to the notification of the Clients of the search for and seizure of solicitor-client privileged documents.

This summary has been drafted for ease of reference. It should be read in conjunction with the attached Guidelines for Law Office Searches.

LAW SOCIETY OF UPPER CANADA LAW OFFICE SEARCH GUIDELINES

SOLICITOR-CLIENT PRIVILEGE

[1] Solicitor-client privilege is a principle of fundamental justice embodied in section 7 of the *Charter of Rights and Freedoms*[1] and is of supreme importance in Canadian law. Solicitor-client privilege, properly understood, is a positive feature of law enforcement, not an impediment to it[2]. Consequently, solicitor-client privileged information is out of reach for the State[3], and investigative necessity does not move it within the reach of the State[4].

[2] Solicitor-client privilege has been held by the Supreme Court of Canada as all but absolute[5] in recognition of the high public interest in maintaining the confidentiality of the solicitor-client relationship[6].

[3] The Client holds the privilege and the Lawyer is the trustee of that privilege. Lawyers are bound in law to protect their Clients' privileged information and are duty bound to act solely in the interests of their Clients in a manner consistent with a Lawyer's professional obligation as an Officer of the Court[7].

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[1] *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209, paragraph 16, *per* Justice Arbour, speaking for the Court, (it is a "fundamental civil and legal right" and a "principle of fundamental justice under s. 7 of the *Charter*".)

[2] *Lavallee,* paragraph 36, ("… In other words, the privilege, properly understood, is a positive feature of law enforcement, not an impediment to it".)

[3] *Lavallee*, paragraph 24, ("...all information protected by solicitor-client privilege is out of reach of the state".)

[4] *Lavallee*, paragraph 36, ("…Sometime, however, the traditional balancing of interests in a s. 8 analysis is inappropriate… Where the interest at stake is solicitor-client privilege – a principle of fundamental justice and civil right of supreme importance in Canadian law – the usual balancing exercise referred to above is not particularly helpful. This is so because the privilege favours not only the privacy interests of a potential accused, but also the interests of a fair, just and efficient law enforcement process.")

[5] The Court may determine that solicitor-client privilege should yield or does not exist in cases where the Court finds the existence of "criminal purpose." The Court may determine that solicitor-client privilege should yield in cases where the Court determines that "innocence is at stake" or that "public safety is at stake."

[6] *Ontario (Public Safety and Security) v. Criminal Lawyers' Association,* [2010] 1 S.C.R. 815, paragraph 53, *per* McLachlin C.J. and Abella J. ("The purpose of this exemption is clearly to protect solicitor-client privilege, which has been held to be all but absolute in recognition of the high public interest in maintaining the confidentiality of the solicitor-client relationship",) See also *Lavallee,* paragraph 36, ("…Indeed, solicitor-client privilege must remain as close to absolute as possible if it is to retain relevance. Accordingly, this Court is compelled in my view to adopt stringent norms to ensure its protection.") and paragraph 49, ("…When allowing a law office to be searched, the issuing justice must be rigorously demanding so to afford maximum protection of solicitor-client confidentiality.")

[7] *Lavallee*, at paragraph 24, *per* Arbour J., speaking for the Court, ("It is critical to emphasize here that all information protected by solicitor-client privilege is out of reach of the state. .... It is the privilege of the client and the lawyer acts as gatekeeper, ethically bound to protect the privileged information that belongs to his or her client.").

[4] Solicitor-client privileged documents cannot be disclosed by the Lawyer; only the Client may give informed consent to the disclosure of his or her privileged information[8].

[5] Just as solicitor-client privilege has evolved to its present constitutional status, so too has its scope evolved. Solicitor-client privilege attaches to documents and communications made in confidence for the purpose of seeking or providing legal advice. Client names may be privileged[9], Lawyers' accounts are presumed to be privileged[10] and factual information may also be privileged[11].

The Court alone controls the search, seizure and post-execution process and determines issues of privilege

[6] The Court alone is competent to adjudicate and determine the issue of privilege. The Court controls the entire search and seizure process and post-execution procedures that include the process of unsealing documents seized from a law office and the process of reviewing and determining if solicitor-client privilege attaches to seized documents .[12]

[7] Where there is a concern or dispute about the search warrant, its manner of execution or whether a Referee or Independent Forensic Computer Examiner is required, an application should be made to the Court for the Court to review and determine the issue or issues.

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[8] It is important to note that prejudice to the Client is presumed if solicitor-client privileged documents or information comes into possession of the State. See *Celanese Canada Inc. v. Murray Demolition Corp.,* [2006] 2 S.C.R. 189, at paragraph 3, *per* Binnie J. See also *MacDonald Estate v. Martin,* [1990] 3 S.C.R. 1235 and *R. v. Bruce Power Inc.,* 2009 ONCA 573.

[9] *Lavallee,* at paragraph 28, per Arbour J., ("The name of the client may very well be protected by solicitor-client privilege, although this is not always the case.")

[10] *Maranda v. Richer,* [2003] 3 S.C.R. 193, at paragraph 33, *per* LeBel J., speaking for the Court,("In law, when authorization is sought for a search of a lawyer's office, the fact consisting of the amount of the fees must be regarded, in itself, as information that is, as a general rule, protected by solicitor-client privilege.")

[11] *Maranda,* at paragraph 31, *per* LeBel J., (quoting with approval the statement in Sopinka, Lederman and Bryant, *The Law of Evidence in Canada*, 2nd ed. (Toronto: Butterworths, 1999,) "The distinction between 'fact' and 'communication' is often a difficult one and the courts should be wary of drawing the line too fine lest the privilege be seriously emasculated."). See also *Wyoming Machinery Company v. Roch*, 2008 ABCA 433, *per* Côté J.A., speaking for the Court in paragraph 19 ("Nor can one short-circuit the whole discussion of privilege by saying that it only applies to communications, and so does not apply to a solicitor's bookkeeping or money flows, on the theory that (a) they are information, not communications, or (b) they are acts, not communications.")

[12] *Attorney General v. Law Society*, 2010 ONSC 2150 *per* Hennessy J. of the Superior Court of Justice at paragraph 27 ("...the court retains control over the entire process of the unsealing of material seized from a law office or subject to solicitor-client privilege". "...at the stage where the material must be reviewed to determine whether it contains solicitor-client privilege, the court controls this process.")

PURPOSE AND SCOPE

[8] Section 488.1 of the *Criminal Code* set out specific procedures for the search of a law office. This provision was struck down as unconstitutional by the Supreme Court of Canada in *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209. As a result, the common law applies to a law office search and where the protection of solicitor client privilege is at issue[13].

[9] In *Lavallee,* the Supreme Court of Canada articulated ten principles that govern the legality of searches of law offices. Those principles are reproduced as an Appendix to these Guidelines. Arbour J., speaking for the Court, also said in the same paragraph that the principles "... are not intended to select any particular procedural method of meeting these standards". These Guidelines are intended to set out best practices to inform lawyers in the event of a search of and seizure from a law office.

[10] Law enforcement officers have the responsibility to maintain the integrity of their investigations and to exercise their own independent judgment about the manner of execution of their duties in relation to searches of law offices, subject to any applicable legislation, the *Charter*, applicable policing standards, and to direction of the Court issuing the warrant and the Court overseeing the post-execution procedures.

[11] After the warrant has been executed on the law office, the Crown will be a party to the proceedings and the Court will determine the issue of privilege. The Court has the sole authority to determine whether a Referee, an Independent Forensic Computer Examiner or any other person is required to be appointed to assist the Court and the precise role and duties of any such appointee; duties which may include who is required to notify potentially affected Clients and what the Clients should be told.

[12] Because solicitor-client privilege has supreme importance in Canadian law as embodied in section 7 of the *Charter*, Crown Counsel, as representatives of the Crown, understand the need to protect solicitor-client privilege and have an important role in the protection of solicitor-client privilege.

[13] Crown Counsel has a duty to ensure that the justice system operates fairly to all: individuals accused of violating the law, complainants, victims, witnesses and the public. The fair conclusion of an investigation may be dependent on the determination of issues of solicitor-client privilege with respect to the seized documents. Consequently, Crown Counsel has a role in the protection of the integrity of the investigation that may include bringing issues of solicitor-client privilege to the attention of the Court for its adjudication and determination in a fair and timely manner.

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[13] *Descôteaux v. Mierzwinski,* [1982] 1 S.C.R. 860, at page 875, *per* Lamer J., ("When the law gives someone the authority to do something which, in the circumstances of the case, might interfere with that confidentiality, the decision to do so and the choice of means of exercising the authority should be determined with a view not to interfering with it except to the extent absolutely necessary in order to achieve the ends sought by the enabling legislation.")

[14] The Police provide law enforcement services in Ontario in a manner that recognizes the fundamental rights of all people as guaranteed by the *Charter*[14] and also have an important role in protecting solicitor-client privilege. Crown Counsel may be approached by the Police for legal advice with respect to obtaining a search warrant on a law office which should include advice about how to protect solicitor-client privilege. Such advice could be beneficial because the search warrant and any ancillary orders issued by the Court govern the search.

[15] These Guidelines deal with search warrants. Law enforcement and other regulatory authorities have other investigative tools at their disposal. For example, the Canada Revenue Agency has the power to demand or require that certain information be provided. Production orders can be issued pursuant to section 487.012 of the *Criminal Code*. Demands and requirements can arrive by letter. Many of the guidelines and principles pertaining to search warrants are relevant to these other investigatory tools.

[16] A Lawyer whose law office is or has been the target of a law office search may find it helpful to contact and speak with another Lawyer.

[17] Lawyers should contact the Law Society at 416-947-3300 and ask to speak to Senior Counsel to the Director of Professional Regulation for assistance when faced with a law office search

DEFINITIONS

[18] "Client" includes a current or former Client of a lawyer whose law office is the target of a search warrant and also includes a current or former Client of the law firm. The Client is the holder of solicitor-client privilege.

[19] “Comprehensive Electronic Search” means a search of an electronic device/media for one or more of the following; active data, operating system artifact data and archival data. Active data are the current files that are visible in directories and available to the operating system, applications and the user. Operating system artifact data are the deleted files (including memory “dumps”) that can be retrieved. Archival data are the data that have been transferred or backed up to peripheral media such as CDs, DVDs, floppy disks, zip disks, network servers or the internet.

[20] A comprehensive search is a search of data in all of the aforementioned areas of the electronic device/media, and may include, but is not limited to, active files, deleted files, slack space, unallocated space, RAM dump, recycle bin, history files, temporary internet directory, unallocated clusters, “swap” files, temporary files, printer spool files, metadata, shadow data, network servers or the internet.

[21] “Conflict of Interest” is an interest that could adversely affect the Lawyer’s judgment on behalf of or loyalty to the Client[15].

[14] Section 1(2) of the *Police Services Act*, R.S.O 1990, Chapter P.15
[15] See R. 2.04(1) of the *Rules of Professional Conduct*.

[22] “Crown” is any public authority that has a prosecutorial and /or investigative power or authority.

[22] “Document” means any medium on which is recorded or marked anything that is capable of being read or understood by a person or a computer system or other electronic device/media.

[23] "Electronic Devices/Media” means any computers, lap tops, servers, servers used in cloud computing and the like and peripheral media on which data can be found. It may include, but is not limited to, photocopy machines, fax machines, Blackberry’s, Palm Pilots, Smartphones, memory sticks, cell phones, mobile phones, GPS devices, iPhones, iPods, USB, CDs, DVDs, zip disks, floppy disks, backup tapes and the forensic image of an electronic device/media.

[25] “Forensic Image” is a forensically sound duplicate of the data of a hard drive or other electronic storage media which is created by a method that does not alter data on the drive being duplicated and which can be authenticated / verified as a true copy through the process of Verification. This duplicate contains a copy of every bit, byte and sector of the source drive, including unallocated space and slack space precisely as the data appears on the source drive relative to the other data on the drive.

[26] “Independent Computer Forensic Examiner” is independent from the Crown, the Police and the conflicted Lawyer. The Independent Computer Forensic Examiner is appointed by the Court as its agent to assist and work with the Referee or the non-conflicted Lawyer to ensure that the search warrant and post-execution procedures are executed in a fashion that will protect solicitor-client privilege and to ensure that the mandate given by the Court is carried out according to its protective conditions[16].

[27] “Independent Third Party” is a person or an organization that is independent of the Crown, Police and the Conflicted Lawyer.

[28] “Law Office” means any place, receptacle or building where privileged materials may reasonably be expected to be located and may include, although not limited to, a personal residence, or a storage facility used to maintain privileged documents.

[29] “Police” means any public authority that has an investigative and / or enforcement power or authority.

[30] “Referee” means a licensed Lawyer who is independent from the Crown, the Police and the conflicted Lawyer. The Referee is appointed by the Court as its agent when it issues a search warrant to ensure that the search warrant and post-execution procedures are executed in a fashion that will protect solicitor-client privilege and to ensure that the mandate given by the Court is carried out according to its protective conditions[17].

[31] “Search Warrant” means a Judge or Justice’s written authorization, based on information received under oath that authorizes a law enforcement officer to search a building, receptacle or place, and seize specific documents or items, or specified categories of documents or items.

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[16] *R. v. Tarrabain, O’Bryne & Company,* 2006 ABQB 8, paragraph 22.
[17] *Tarrabain,* at paragraph 22

[32] "Verification" means the process of comparing a Forensic Image to the data contained on the source electronic device/media, through the use of digital fingerprints, such as MD5 Hash values (a 128 bit value generated by a widely accepted algorithm,) to verify the completeness of the Forensic Image.

STEPS TO TAKE WHEN PRESENTED WITH A SEARCH WARRANT

Determine the validity of the search warrant on its face

[33] When presented with a search warrant by the Police, the Lawyer should inspect the search warrant to ascertain it is a valid search warrant and ensure that,

- The law office is identified as the place to be searched,
- The date that the Police attend at the law office is the date authorized,
- The documents sought are identified or described,
- The offence under investigation is identified, and
- The search warrant was issued by or endorsed by an Ontario Court or the Federal Court of Canada.

[34] Deficiencies in the search warrant should be pointed out to the Police by the Lawyer and the Lawyer should suggest to the Police that a proper warrant be obtained. If the Police decline to seek a further search warrant, the Lawyer should not obstruct the Police in its execution of the warrant but should note the objection.

Court review of concerns about the search warrant

[35] Where there is a concern or dispute about the search warrant, its manner of execution or whether a Referee or Independent Forensic Computer Examiner is required, the issue or issues should be pointed out to the Police and referred to the Court for review. If the Police decline to refer the issue or issues to the Court for review or decline to discontinue the search, the Lawyer should not obstruct the Police in its execution of the warrant but should note the objection. Subsequently the Lawyer should refer the matter to the Court for review.

Assert solicitor-client privilege

[36] The Lawyer must clearly and unequivocally tell the Police that solicitor-client privilege is being asserted with respect to the documents sought pursuant to the warrant and that as a consequence the Police should not be permitted to see these documents. The Lawyer should not obstruct the Police but note the objection if the search warrant or its manner of execution is believed to be invalid or inappropriate.

[37] Lawyers have a positive duty to protect solicitor–client privilege[18]. When the Police arrive with a search warrant or any other statutory demand, the Lawyer should assume that solicitor-client privilege attaches to the documents and assert privilege on behalf of the Client[19].

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[18] *Lavallee*, paragraph 24, *per* Arbour J., speaking for the Court, ("It is critical to emphasize here that all information protected by solicitor-client privilege is out of reach of the state. .... It is the privilege of the client and the lawyer acts as gatekeeper, ethically bound to protect the privileged information that belongs to his or her client.").

[19] *Lavallee,* paragraph 49, principle 4. ("Except when the warrant specifically authorizes the immediate examination, copying and seizure of an identified document, all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer's possession.")

[38] It is the Court's responsibility to decide if solicitor-client privilege attaches to a document; it is not the responsibility of the Lawyer or the Police.

Assess the potential for conflict of interest; determine if a Referee is required
[39] When presented with a search warrant by the Police, the Lawyer should consider whether he or she could be or is a target of the investigation.

[40] Often the Police and the issuing Court will have considered the need for a Referee and a Referee may have been appointed as a condition attached to the search warrant or in an assistance order. In that case, the Referee acts to protect solicitor-client privilege.

[41] A Referee is required if:
- The Lawyer has a conflict of interest in relation to the Client.
- The Lawyer may be or is a target of the investigation, in which case the Lawyer has a conflict of interest in relation to the Client.
- The Lawyer is unable or unavailable to act and no other Lawyer in the law firm is available to act to safeguard solicitor-client privilege[20].

[42] If an Independent Computer Forensic Examiner has been appointed by the Court and the Lawyer,
- Has a conflict of interest in relation to the Client,
- May be or is a target of the investigation, or
- Is unable or unavailable to act and no other Lawyer in the law firm is available to act to safeguard solicitor-client privilege,

a Referee may be required to be appointed by the Court depending upon the mandate given to the Independent Computer Forensic Examiner by the Court.

A Referee is required but has not been appointed
[43] Often the Police and the Court will have appreciated the need for the appointment of a Referee and the Court will have appointed a Referee as a condition attached to the search warrant or in an assistance order.

[44] If a Referee is needed but has not been appointed, the Lawyer should tell the Police that a Referee needs to be appointed by the Court and the Lawyer should ask the Police to return to the Court to seek the appointment of a Referee before proceeding with or continuing with the execution of the search warrant.

[45] If the Police decline to seek the appointment of a Referee or decline to discontinue their search, the Lawyer should not obstruct the Police in their execution of the warrant and cannot stop the search but should note the objection.

[46] In the meantime, the Lawyer continues to have a duty to safeguard solicitor-client privilege and should contact the Law Society for assistance.

[20] See, for example, *Tarrabain, O'Bryne & Company,* 2006 ABQB 14

The role of the Referee

[47] The Referee is a licensed Lawyer who is independent from the Crown, the Police and the conflicted Lawyer. The Referee is appointed by the Court to ensure that the search warrant and post-execution procedures are executed in a fashion that will protect solicitor-client privilege and to ensure that the mandate given by the Court is carried out according to its protective conditions[21]. The search warrant or assistance order should set out the duties of the Referee. The Referee reports to and takes direction from the Court.

[48] The Referee takes all necessary steps to protect solicitor-client privilege and to ensure that the directions given and orders made by the Court with respect to the search and post search procedures are complied with. The Referee is responsible for notifying the Clients (the owners of solicitor-client privileged documents) with respect to the law office search.

[49] If an Independent Computer Forensic Examiner is appointed by the Court, the Referee, consistent with the order of the Court, advises the Independent Computer Forensic Examiner as required and makes all necessary applications to the Court to report to and to seek directions from the Court on behalf of the Independent Computer Forensic Examiner.

Assisting the Police with searching, seizing and sealing documents

[50] The Referee or the non-conflicted Lawyer should offer to, and if requested by the Police, assist the Police by locating the documents sought in the search warrant, including locating electronic documents and electronic devices/media, placing them in packages, sealing the packages, initialing and arranging for the Police to initial the packages. Providing such assistance to the Police protects solicitor-client privilege.

Bringing the sealed documents to the Court or to an independent third party designated by the Court

[51] In accordance with the Court order the Police, the Referee or the non-conflicted Lawyer should deliver the sealed package of seized documents (including electronic devices/media) to the custody of the Court or to the party designated by the Court in a manner that protects solicitor-client privilege.

[52] If the search warrant fails to order custody of the seized sealed packages to the Court or to an independent third party, an application should be made to the Court for an order placing them in the custody of the Court or of an independent third party designated by the Court.

[53] The sealed packages should be kept in the custody of the Court or the Court designated independent third party until the Court directs that the documents (including electronic devices/media) be returned to the Client or to the Lawyer from whose office they were removed or directs that they be given to the Police or the Crown.

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[21] *Tarrabain,* at paragraph 22; See, for example, *R. v. Law Office of Simon Rosenfeld*, [2003] O.J. No.834 (S.C.J.), *per* Nordheimer J. in paragraph 15 (where the Court appointed “a referee to examine the documents and to notify all clients who can be identified for the process that will be followed respecting the documents so that those clients can, if they wish, participate in the process for the purpose of protecting their solicitor and client privilege over the documents.”)

Assistance from the conflicted Lawyer

[54] If the Lawyer, whose documents are the subject matters of the search, is a target of the investigation or otherwise conflicted, he or she may be directed by the Court to assist the Referee or the Independent Computer Forensic Examiner. [22]

SEARCH WARRANTS AND ELECTRONIC DEVICES/MEDIA

Search for and seizure of easily identifiable documents from a Law Office

[55] Subject to any terms and conditions of the search warrant, if potentially solicitor-client privileged documents stored on an electronic device/media are easily identifiable[23], after asserting solicitor-client privilege with respect to the documents, the Referee or the non-conflicted Lawyer should offer to, or if requested by the Police, assist the Police by locating the documents in the electronic device/media, printing or saving an electronic copy of the documents to an electronic device /media provided by the Police and packaging the hardcopy or electronic copy of the seized documents, sealing the packages and ensuring that the sealed packages are delivered to the custody of the Court or to an independent third party designated by the Court, in accordance with the Court order.

Search for and seizure of an Electronic Device/Media from a Law Office

[56] The search warrant may authorize the search for and seizure of one or more electronic devices/media from a law office. The Referee or the non-conflicted Lawyer should assert solicitor-client privilege with respect to all electronic devices/media subject to the search warrant that may contain solicitor-client privileged documents.

[57] The Referee or the non-conflicted Lawyer should offer to, or if requested by the Police, assist the Police by locating the electronic device/media sought in the search warrant, placing the electronic device/media in packages[24], sealing the packages, initialing the packages and ensuring that the sealed packages are delivered to the custody of the Court or an independent third party as designated by the Court and in accordance with the Court order.

Creation of a Forensic Image of an Electronic Device/Media at a Law Office

[58] A search warrant may authorize the creation of one or more forensic images of an electronic device/media without the removal of the electronic device/media from the law office.

[59] If the search warrant authorizes the Police to create one or more forensic image of an electronic device/media at the law office, the Referee or the non-conflicted Lawyer should assert solicitor-client privilege with respect to all electronic devices/media that may contain solicitor-client privileged documents and should assert solicitor-client privilege with respect to all forensic images created.

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[22] *Law Office of Simon Rosenfeld,* at paragraph 17

[23] "Easily identifiable documents" refers to documents that are stored on an electronic device/media that are simple to locate, to retrieve, to identify, to download and to print as a hardcopy without the need for particular computer skill. Often these documents are stored in the active files of an electronic device/media.

[24] Care should be taken to ensure that packaging appropriate for electronic devices/media is used to package seized electronic devices/media.

[60] The Referee or the non-conflicted Lawyer should ask the Police if the electronic device or the application to be used by the Police to create the forensic images will result in a further forensic image of the electronic device being stored on a Police electronic device/media.

[61] If the Police advise that the electronic device or the application to be used to create the forensic images will result in a forensic image being stored on a Police electronic device/media the Referee or the non-conflicted Lawyer should ask the Police to decline to conduct or to discontinue the imaging process until an electronic device or an application can be utilized that would not result in a forensic image being stored on a Police electronic device/media.

[62] The Referee or the non-conflicted Lawyer may need to tell the Police that an Independent Computer Forensic Examiner needs to be appointed by the Court and to ask the Police to return to the Court to seek such an appointment before proceeding with or continuing with the imaging process of the electronic device/media.

[63] During the creation of the forensic images the Referee or the non-conflicted Lawyer should take steps to prevent any of the screens, the documents or the data stored on the electronic device/media being visible to the Police.

[64] The process of the verification of a forensic image could reveal solicitor-client privileged documents to the Police. If the Police wish to verify the forensic image of an electronic device/media an Independent Computer Forensic Examiner needs to be appointed by the Court. If an Independent Computer Forensic Examiner has not been appointed the Referee or the non-conflicted Lawyer may need to tell the Police that an Independent Computer Forensic Examiner needs to be appointed by the Court and to ask the Police to return to the Court to seek such an appointment before proceeding with the process of verification of the forensic image.

[65] The Referee or the non-conflicted Lawyer should offer to, or if requested by the Police, assist the Police by placing all forensic images in packages, sealing the packages, initialing the packages, and ensuring that the sealed packages are delivered to the custody of the Court or an independent third party as designated by the Court in accordance with the Court order.

[66] If the Referee or the non-conflicted Lawyer ask the Police and the Police decline to conduct or discontinue the imaging process that would result in a forensic image being stored on a Police electronic device/media, or decline to conduct the verification of the forensic image or decline to return to Court to seek the appointment of an Independent Computer Forensic Examiner the Referee or the non-conflicted Lawyer should not obstruct the Police in their execution of the warrant but should note the objection. Subsequently the Referee or non-conflicted Lawyer should make an application to the Court for the Court to review and determine the issue or issues.

Custody of seized Electronic Devices/Media and Forensic Images

[67] The seized electronic devices/media and all forensic images should be packaged, sealed, initialed, brought and kept in the custody of the Court or an independent third party designated by the Court.

An Independent Computer Forensic Examiner is required but has not been appointed

[68] If an Independent Forensic Computer Examiner is required but has not been appointed, the Referee or the non-conflicted Lawyer should ask the Police to return to Court to seek the appointment of an Independent Computer Forensic Examiner before continuing with the search. If the Police decline to do so, the Referee or the non-conflicted Lawyer should not obstruct the Police in the execution of the warrant but should note the objection and should make an application to the Court to review and determine the issue.

Need for a Referee to assist the Independent Computer Forensic Examiner

[69] Whenever an Independent Computer Forensic Examiner is appointed and the Lawyer,

- Has a conflict of interest in relation to the Client,
- May be or is a target of the investigation, or
- Is unable or unavailable to act and no other Lawyer in the law firm is available to act to safeguard solicitor-client privilege

the Court should be asked to appoint a Referee in order to maintain the independence of the forensic examination process subject to Court direction.

The role of the Independent Forensic Computer Examiner

[70] The Independent Computer Forensic Examiner is independent from the Crown, the Police and the conflicted Lawyer and is appointed by the Court. The Independent Computer Forensic Examiner assists and works with the Referee or the non-conflicted Lawyer to ensure that the search warrant is executed in a fashion that will protect solicitor-client privilege and to ensure that the mandate given by the Court is carried out according to its protective conditions[25].

[71] As ordered and directed to by the Court, the role and duties of the Independent Computer Forensic Examiner could include,

- Creating the forensic images of, or otherwise preserving an electronic device/media subject to a search warrant,
- Verifying the forensic image of an electronic device/media,
- Conducting the search, including any comprehensive electronic search, of and seizure from the electronic device/media or the forensic images, and
- With the assistance of the Referee or the non-conflicted Lawyer reporting to and taking directions from the Court.

THE WARRANT HAS BEEN EXECUTED – NEXT STEPS

Comprehensive electronic searches, applications to unseal and other proceedings

Comprehensive electronic search of the forensic image

[72] After the search warrant has been executed at the law office the Court may order that a comprehensive electronic search of a forensic image of an electronic device/media take place. The Court should be asked to appoint an Independent Computer Forensic Examiner to conduct all comprehensive electronic searches of and seizures from any forensic image or any electronic devices/media that may contain solicitor-client privileged documents.

[25] *Tarrabain,* at paragraph 22

Initiate and respond to applications; participate in hearings before the Court

[73] The Crown, the Referee or the non-conflicted Lawyer may initiate and respond to applications to the Court for adjudication, direction, orders or to report to the Court in relation to:

- Concerns about the search warrant including its manner of execution,
- The appointment of a Referee or an Independent Computer Forensic Examiner,
- The custody of the sealed packages to the Court or an independent third party,
- Issues about Client notification,
- Issues of solicitor-client privilege,
- Unsealing the sealed packages of seized documents or seized electronic device/media,
- Access to seized documents, forensic images or electronic device/media,
- The examination or search of; seized documents, a forensic image or an electronic device/media,
- The return of seized documents, forensic images or electronic devices/media,
- Searches, post search and seizure processes, including timelines with respect to and management of the process, and
- Concerns about non-compliance with its orders.

Notify Clients about the execution of the search warrant

[74] The Referee or the non-conflicted Lawyer, subject to any Court order, is responsible for notifying the Clients who have been affected by the execution of the search warrant or whose documents have been seized pursuant to the search warrant.

[75] The Referee or the non-conflicted Lawyer, subject to any Court order, should advise the Clients of:

- The seizure of any of their documents,
- The risk to their privilege interests by the investigative or prosecutorial authorities,
- The existence of a conflict of interest if one has arisen,
- The right to seek and obtain legal advice and legal representation,
- How solicitor-client privilege may be asserted,
- How to require a hearing to determine any issue of privilege by the Court , and
- Any other information to assist them in protecting their interests as a result of the search for and seizure of their documents.

Difficulty in notifying Clients

[76] The Referee or the non-conflicted Lawyer should seek direction from the Court about who is to be notified and the manner of notification in cases where it is not readily apparent who the Clients are that require notification or how notification can take place. The Referee or the non-conflicted Lawyer may also seek direction from the Court as to the information that is to be conveyed as part of the notification process.

Clients cannot be notified

[77] Ultimately, if efforts to contact the Clients fail, the Referee or the non-conflicted Lawyer should take steps that will afford continued protection of the Client's solicitor-client privilege, including responding to the Crown's application to gain access to the seized material, or bringing a motion to have the privilege issues adjudicated by the Court.

Fees and disbursements

[78] The Court will determine who is to bear the fees and disbursements of the Referee and any Independent Forensic Computer Examiner appointed by the Court. It is the Law Society of Upper Canada's position that such fees and disbursements should be borne by the Attorney General or the investigating agency[26].

APPENDIX

General Principles governing the legality of searches of law offices as articulated by Arbour J. in *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209

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

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

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

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

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

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

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

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[26] *Law Office of Simon Rosenfeld*, *per* Nordheimer J. in paragraphs 18 and 20 ("It seems evident to me that the proper party upon whom to place the burden of the costs of this process is the party who has caused the need for the process in the first place, that is, the Crown. It is the Crown who has instituted the charges and it is the Crown who sought and obtained the search warrant for the documents." … "The administration of justice is a matter of public interest and the costs of the administration of justice is a matter of public expense. The Crown represents the public in the enforcement of the criminal law and it is the Crown who should, therefore, bear the costs of ensuring the protection of this fundamental principle.") See also *R. v. Harrington,* 2006 ABQB 378, *per* Veit J. at paragraphs 25 -28

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

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

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

FOR INFORMATION

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

45. The Professional Regulation Division's Quarterly Report (second quarter 2011), 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 of April to June 2011.

2011 LAWYER ANNUAL REPORT

46. The Lawyer Annual Report for the filing year 2011 appears at Appendix 10 for the information of Convocation. The Lawyer Annual Report is the form provided by the Law Society under authority of By-Law 8, as follows:

PART II

FILING REQUIREMENTS

ANNUAL REPORT

Requirement to file annual report

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

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

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

Form, format and manner of filing

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

47. The following table shows changes made to the 2011 Lawyer Annual Report.

QUESTION/ISSUE	CHANGES FOR 2011
Preamble	Sentence added: Responses to Section G (Financial Reporting) will be shared with the Law Foundation of Ontario
Section A, link for e-filing	Link removed and Portal link added.
Section A, question on Succession Planning	Question removed
Section E, Professional Development	This section is renamed Self-Study
Section E, Continuing Development Section	Removed as lawyers will be reporting CPD through the Portal

48. Two new reports for the filing year 2011 are also included. The 2011 Class L2 Licence Annual Report is found at Appendix 11 and the 2011 Class 3 Licence Canadian Legal Advisor Annual Report appears at Appendix 12.

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

(1) Copy of the Federation of Law Societies of Canada's Draft "Protocol on Law Office Searches".

(Appendixes 6, 7 and 8, pages 83 – 88)

(2) Copy of the Professional Regulation Division Quarterly Report for the period of April to June 2011.

(pages 90 – 128)

(3) Copy of the Lawyer Annual Report for the filing year 2011.

(Appendix 10, pages 131- 142)

(4) Copy of the 2011 Class L2 Licence Annual Report.

(Appendix 11, pages 143 -146)

(5) Copy of the 2011 Class 3 Licence Canadian Legal Advisor Annual Report.

(Appendix 12, pages 147 – 155)

Re: Amendments to the *Rules of Professional Conduct* and *Paralegal Rules of Conduct* Respecting Limited Scope Retainers

It was moved by Mr. Schabas, seconded by Ms. Richer, that Convocation approve the amendments to the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* at Appendix 3 of the Report.

An amendment was accepted to Rule 2.02 (6.3) (c) of the *Rules of Professional Conduct* and to Rule 3.02 (8.3) (c) of the *Paralegal Rules of Conduct* by adding the words "operated by a community-based or government funded program."

The motion as amended carried.

Re: Guidelines for Law Office Searches

It was moved by Mr. Schabas, seconded by Ms. Richer, that Convocation approve the Guidelines for Law Office Searches at Appendix 5 of the Report.

Carried

Ms. Minor and Mr. Wadden abstained from the vote.

For Information

- Professional Regulation Quarterly Report, April – June 2011
- Lawyer Annual Report 2011

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PARALEGAL STANDING COMMITTEE REPORT

Ms. Corsetti presented the Report.

Report to Convocation
September 22nd, 2011

Paralegal Standing Committee

Committee Members
Cathy Corsetti, Chair
Susan McGrath, Vice-Chair
Marion Boyd
Robert Burd
Paul Dray
Seymour Epstein
Robert Evans
Michelle Haigh
William C. McDowell
Malcolm M. Mercer
Kenneth Mitchell
James Scarfone
Baljit Sikand

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Committee met on September 8th, 2011. Committee members present were Cathy Corsetti (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd (by telephone), Paul Dray, Seymour Epstein, Robert Evans, Michelle Haigh, Malcolm M. Mercer, Ken

Mitchell and James Scarfone. Staff members in attendance were Terry Knott, Jim Varro, and Julia Bass.

FOR DECISION

AMENDMENT TO BY-LAW 4: NARROWING OF EXEMPTIONS IN PARAGRAPH 30 (1) 7

Motion

2. That By-law 4 be amended to limit the exemptions for professional associations to fully accredited members.

Background

3. The exemptions in section 30 of the by-law were designed to accommodate longstanding practice when paralegal regulation was first introduced. For example, a member of the Appraisal Institute of Canada who advises homeowners on the proper valuation of their homes for municipal taxation purposes would occasionally present a homeowner's case to the Assessment Review Board. Similarly, a member of the Human Resources Professionals Association of Ontario who advises employers on workplace safety issues would occasionally present an employer's case to the Workplace Safety & Insurance Board.

4. The current wording of the paragraph is as follows:

> 30. (1) Subject to subsection (2), the following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:[..]
> Other profession or occupation
> 7. An individual,
> i. whose profession or occupation is not the provision of legal services or the practice of law,
> ii. who provides the legal services only occasionally,
> iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
> iv. who is a member of,
> A. the Human Resources Professionals Association of Ontario,
> B. the Board of Canadian Registered Safety Professionals, or
> C. the Appraisal Institute of Canada.

5. However, two of the three organizations listed have several categories of membership. In the case of the HRPAO, a fully qualified member is called a "Certified Human Resources Professional". In the case of the AIC, the membership category for fully qualified members is called a "Designated Membership"[1] .

[1] This issue does not arise in the case of the Board of Canadian Registered Safety Professionals, which has only one category of membership.

6. The Law Society has learned that some individuals have acquired a "General" or "Associated" membership in these organizations for a small fee. These individuals have filed evidence of such membership with tribunal members in order to appear before the tribunals, purportedly under the exemption in paragraph 30 (1) 7.

The Committee's Deliberations

7. The Committee discussed the fact that the current wording, which refers to the provision of legal services being "ancillary to the carrying on of her or his profession or occupation" should make it clear that only a full time professional in one of the listed organizations can take advantage of this exception. However, to put the matter beyond doubt, a further clarification of the wording is recommended.

8. Further, the Committee directed that tribunals where this problem has arisen should be contacted to provide them with background on the by-law.

9. It is thus recommended that the wording of the by-law be amended to limit the exemption to only fully qualified members of these organizations. This would involve rewording the exemptions approximately as follows:

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

Other profession or occupation

7. An individual,

- i. whose profession or occupation is not the provision of legal services or the practice of law,
- ii. who provides the legal services only occasionally,
- iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, who is
  - A. a member of the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category,
  - B. a member of the Board of Canadian Registered Safety Professionals, or
  - C. a member of the Appraisal Institute of Canada in the designated membership category.

10. The final wording will be distributed at Convocation as a bilingual Motion.

11. The two associations have been contacted by the Law Society and have indicated that they find such an amendment acceptable.

PARALEGAL AWARD

Motion

12. That the Law Society create a paralegal award as set out in this Report.

Background

13. On April 28th, 2011, Convocation approved a Report from the Paralegal Standing Committee proposing the establishment of the Working Group. This Report is at Appendix 1. The mandate of the Working Group was "to develop appropriate criteria for a Law Society Paralegal Professional Achievement Award, recognizing a licensed paralegal who has made an outstanding contribution to the development of the profession".

14. The Working Group met on September 7th, 2011. Working Group members in attendance were, Cathy Corsetti (Chair), Paul Dray, Seymour Epstein, and Carol Hartman. Staff members Mary Shena and Julia Bass also attended. The Working Group reported to the meeting of the Paralegal Standing Committee on September 8th

Recommendations

15. Taking into account the Working Group's report, the Committee recommends the following for Convocation's consideration:
    a. An award should be established starting in 2012, to be awarded initially to up to one person per year (i.e. the award may not be made in a year where there are no suitable nominees).
    b. The appropriate criteria are,
        i) outstanding professional achievement;
        ii) outstanding contribution to the development of the profession;
        iii) devotion to professional duties;
        iv) adherence to best practices and mentoring of others in best practices;
        v) a history of community service, and
        vi) personal character that brings credit to the profession.

16. At this stage, the choice of recipients should be on merit alone, rather than reflecting regional or other criteria.

Award Name

17. The award name should be "The Law Society Distinguished Paralegal Award".

Timing

18. The award should be presented at the existing Law Society awards ceremony each spring, starting in 2012. Accordingly, the first request for nominations should be published in late 2011. The request for nominations should be advertised with the other Law Society awards.

Selection Process

19. There should be a Selection Committee of eight persons established, as follows;
    a. All five paralegal members of the Paralegal Standing Committee;
    b. The Vice-Chair of the Paralegal Standing Committee;
    c. A lay bencher member of the Paralegal Standing Committee, and
    d. The Treasurer and/or his or her nominee.
    e. The Selection Committee will select a Chair.

20. As with the other Law Society awards, there should be no set nomination form; nominators will be expected to make the case for their nominee in a letter and to seek other letters of support.

21. Staff should be requested to commission a desk award and matching lapel pin to be presented to the successful nominee.

Appendix 1

LAW SOCIETY AWARDS

Motion

1. That the Treasurer appoint a Working Group to develop appropriate criteria for the creation of a Law Society Paralegal Professional Achievement Award.

Background

2. Over the more than 200 years when the Law Society only regulated lawyers, a number of ways of recognizing outstanding professional achievement were developed. These include,

    a. the Law Society Medal;
    b. the Honorary Doctor of Laws;
    c. the Lincoln Alexander Award, created in 2002, for commitment to the public interest and the pursuit of community service, and
    d. the Laura Legge Award, created in 2007, for women lawyers who have exemplified leadership in the profession.

3. Now that the Law Society has assumed the responsibility for regulating paralegals, it is appropriate to consider whether there should also be an award recognizing outstanding achievement by paralegals.

The Committee's Deliberations

4. Since the regulated paralegal profession has only existed in its current form for a few years, rather than revisit the criteria for the existing Law Society Medal or other awards, it is appropriate to develop an award based on different criteria, emphasizing adherence to best practices and contributions to the development of the new profession.

5. It would be appropriate that the words "Law Society" appear in the title of the award. There are a number of options as to the details of such an award; accordingly the Committee favoured asking the Treasurer to establish a working group to develop appropriate criteria for a Law Society Paralegal Professional Achievement Award, recognizing a licensed paralegal who has made an outstanding contribution to the development of the profession.

FOR INFORMATION

LIMITED SCOPE RETAINERS

22. The Paralegal Standing Committee attended a joint meeting with the Professional Regulation and Access to Justice Committees to consider the proposed changes to the professional conduct rules governing both lawyers and paralegals concerning the proper use of limited scope retainers. The Paralegal Standing Committee approved the changes being presented to Convocation in the Report from the Professional Regulation Committee.

PARALEGAL ANNUAL REPORT

23. The 2010 'PAR' was distributed to the Committee, together with a list of the changes from last year's version.

24. A copy of the PAR is attached at Appendix 2. Among the minor changes made to the 2011 PAR are the following:

    a. The e-filing link has been removed and a Portal link added;
    b. A new section has been added for self-study reporting for paralegals.

C. APPLICATIONS UNDER THE PARALEGAL INTEGRATION PROCESS

25. The Office of the Registrar reports that 225 applications had been received by the end of July. The breakdown by category is as follows:

In-house legal services provider	102
Collection Agent (registered under the Collection Agencies Act)	27
Board of Canadian Registered Safety Professionals	20
Trade union and/or designated by the Ontario Federation of Labour	12
Employee of a Legal Clinic	24
Human Resources Professionals Association of Ontario	10
Appraisal Institute of Canada	6
Provide legal services in a not-for-profit organization	14
Office of the Worker and Employer Adviser	7
Injured Workers group funded by the Workplace Safety & Insurance Board	3
Total:	225

FIVE YEAR REVIEW OF PARALEGAL REGULATION

26. The Law Society Act requires the Law Society to review the implementation of paralegal regulation five years after the new provisions came into effect. The five year period runs from May 1st 2007 to April 30th 2012. Since the report must be delivered before August 1st 2012, the Law Society is commissioning background research on the issue, including public opinion research, to be conducted over the coming months, to inform the preparation of the Report.

Appendix 2

The Law Society of Upper Canada | Barreau du Haut-Canada

2011 PARALEGAL ANNUAL REPORT

DUE MARCH 31, 2012

PLEASE FILE THIS REPORT ONLINE AT: https://portal.lsuc.on.ca/wps/portal

See the enclosed **Guide to the 2011 Paralegal Annual Report** for assistance in completing this report. A French version of this report is also available (aussi disponible en français). For further assistance in the completion of Sections D and E, refer to **The Paralegal Bookkeeping Guide** available on our Resource Centre website at www.lsuc.on.ca. Your responses to Section F will be shared with The Law Foundation of Ontario.

THIS REPORT IS BASED ON THE CALENDAR YEAR ENDING DECEMBER 31, 2011 AND IS DUE BY MARCH 31, 2012. FAILURE TO COMPLETE AND FILE THIS REPORT WITHIN 120 DAYS OF THE DUE DATE WILL RESULT IN A SUMMARY ORDER SUSPENDING YOUR LICENCE UNTIL SUCH TIME AS THIS REPORT IS COMPLETED AND FILED.

A	IDENTIFICATION	To be reviewed by all paralegals. See page 4 of the enclosed "Guide" for assistance in the completion of this section.

THIS REPORT relates to the following paralegal:

[Paralegal Name
[Firm Name
[Street Address
[City, Province
[Postal Code

[Law Society Number
[E-mail address

NOTES ABOUT THIS SECTION:
The identification information to the left reflects your current mailing information from the Law Society's records. If any of this information, including your e-mail address, is incorrect or missing, changes of information should now be made through the LSUC Portal at https://portal.lsuc.on.ca/wps/portal. Alternatively, you may notify the Law Society's Resource Centre at (416) 947-3315 or Toll-Free (outside local calling area) at 1-800-668-7380 ext. 3315.

DO NOT MAKE ANY CHANGES ON THIS PAGE

MARKING INSTRUCTIONS		
Make dark marks that fill the oval completely. Use correction fluid to make changes.	CORRECT ●	INCORRECT ❍⊘⊗

Privacy Option

On occasion, the Law Society may provide paralegals' names, business addresses and e-mail addresses to professional associations, organizations and institutions (e.g. Paralegal Society of Ontario, Ontario Colleges) without charge, to facilitate the maintenance of mailing lists, and enhance communications with the profession, including information about programs, initiatives, products and services.
You have the option of instructing the Law Society not to provide your name, business address and/or e-mail address to any professional association, organization or institution.
Fill in the oval if you do not wish the Law Society to provide your name, business address and/or e-mail address to any professional association, organization or institution: ❍

1	**Client Identification – All paralegals must answer questions 1a) and 1b)**	
a)	In 2011, when you were retained to provide professional services to clients, did you obtain or were you exempt from the requirement to obtain identification information for every (each) client and any third party, in accordance with By-Law 7.1, Part III? **If "No" to a),** provide an explanation below with particulars.	Yes ❍ No ❍ N/A ❍

b)	In 2011, when you engaged in or gave instructions in respect of receiving, paying or transferring of funds, did you obtain or were you exempt from the requirement to obtain information to verify the identity of each client, and additional identification information for a client that is an organization, and any third party, in accordance with By-Law 7.1 Part III? **If "No" to b),** provide an explanation below with particulars.	Yes ❍ No ❍ N/A ❍

2	**Paralegal Standing Committee Election Privacy Option (non-mandatory response)**
	During the next election for the members of the Paralegal Standing Committee, candidates may want to communicate with voters by e-mail. **Fill in the oval if you give the Law Society permission to allow the use of your e-mail address for election campaigning purposes:** ❍

3	**Provision of Legal Services in French (non-mandatory response)**	
a)	Can you communicate with your clients and provide legal services to them in the French language?	Yes ❍ No ❍

b)	Can you communicate with your clients, provide legal services to them, and represent them in the French language?	Yes ❍ No ❍

4	**Other Languages** (non-mandatory response)			
	❍ ASL or LSQ (Sign Language)	❍ Farsi	❍ Japanese	❍ Romanian
	❍ Arabic	❍ Finnish	❍ Korean	❍ Russian
	❍ Bulgarian	❍ French	❍ Latvian	❍ Serbian
	❍ Cantonese	❍ German	❍ Lithuanian	❍ Slovak
	❍ Croatian	❍ Greek	❍ Macedonian	❍ Slovene
	❍ Czech	❍ Gujarati	❍ Mandarin	❍ Spanish
	❍ Danish	❍ Hebrew	❍ Norwegian	❍ Swedish
	❍ Dutch	❍ Hindi	❍ Polish	❍ Ukrainian
	❍ English	❍ Hungarian	❍ Portuguese	❍ Urdu
	❍ Estonian	❍ Italian	❍ Punjabi	❍ Yiddish
	Other – Please Specify			

B	**YEAR END STATUS**	**To be completed by <u>all paralegals</u>.** **See page 4 of the enclosed "Guide" for assistance in the completion of this section.**

NOTES ABOUT THIS SECTION:

1. <u>Choose only one status (your status on December 31, 2011)</u> regardless of changes in employment during the 2011 calendar year.
2. Details on changes to your employment status that occurred during 2011 should be made through the LSUC Portal at https://portal.lsuc.on.ca/wps/portal.

December 31, 2011 Status (Select only ONE)		Mandatory Sections	Complete if Applicable
A sole practitioner, providing legal services, alone (with no other paralegals)	❍	C, D, E, F, G	
A sole practitioner, providing legal services with one or more paralegals as employees	❍	C, D, E, F, G	
A sole practitioner, providing legal services with one or more paralegals and/or lawyers in shared facilities	❍	C, D E, F, G	
A partner with one or more paralegals only, in a paralegal firm providing legal services	❍	C, D, E, F, G	
A partner with a lawyer providing legal services for a paralegal firm or law firm	❍	C, D, E, F, G	
An employee/associate in a paralegal firm	❍	C, D, E, F, G	
An employee in a law firm	❍	C, D, E, F, G	
Employed by Legal Aid Ontario or a community legal clinic	❍	D, E, G	C, F
Employed in government in Ontario	❍	D, E, G	C, F
Employed in education in Ontario	❍	D, E, G	C, F

Employed other, in Ontario	❍	D, E, G	C, F
A paralegal providing legal services outside of Ontario	❍	D, E, G	C, F
Employed other, outside of Ontario	❍	D, E, G	C, F
Not working or on parental leave or unemployed	❍	D, E, G	C, F
Suspended	❍	D, E, G	C, F
In a situation not covered above (specify your status in the area below)	❍	D, E, G	C, F

C AREAS OF LEGAL SERVICES

To be completed by all paralegals providing legal services in Ontario.
See page 5 of the enclosed "Guide" for assistance in the completion of this section.

NOTES ABOUT THIS SECTION:
1. Where exact information is not available to respond to the questions under this heading, provide your **best approximation**.
2. ***** Refer to the enclosed "**Guide**" for definitions.

1	**Indicate the approximate percentage of time you devoted in 2011 to each area of legal services listed below.**	
	Ontario Court of Justice *Provincial Offences Act* matters	_ _ _
	Ontario Court of Justice - Summary Conviction offences	_ _ _
	Worker's Compensation	_ _ _
	Small Claims Court matters	_ _ _
	Property Tax Assessment	_ _ _
	Statutory Accident Benefits Schedule matters (SABS)	_ _ _
	Human Rights	_ _ _
	Landlord and Tenant	_ _ _
	Other Tribunals – Please specify in the area below	_ _ _
		Total 100%

2	**In what primary area do you provide legal services? Choose only one.**	
	Ontario Court of Justice *Provincial Offences Act* matters	❍
	Ontario Court of Justice - Summary Conviction offences	❍
	Worker's Compensation	❍
	Small Claims Court matters	❍
	Property Tax Assessment	❍
	Statutory Accident Benefits Schedule matters (SABS)	❍
	Human Rights	❍
	Landlord and Tenant	❍
	Other Tribunals – Please specify in the area below	❍

3	**Lawyer Supervision**	
a)	Do you work under the supervision* of a lawyer? **If "Yes" to a), answer 3b).**	Yes ❍ No ❍

b)	Indicate the percentage of time you spend in the following areas:	
	Advocacy*	_ _ _ %
	Non-advocacy*	_ _ _ %

		Total 100%

D	**SELF-STUDY**	**To be completed by all paralegals regardless of status.** **See page 5 of the enclosed "Guide" for assistance in the completion of this section.**

NOTE ABOUT THIS SECTION:

1. The annual minimum expectation is 50 hours of self-study.

1	**Self-Study**	
a)	Did you undertake any self-study during 2011? **If "Yes" to a),** answer b) to d) below. **If "No" to a),** you may provide an explanation in the area at the end of this section.	Yes ❍ No ❍

b)	Approximate total number of self-study hours spent on **file specific** reading or research:	_ _ _ _
c)	Approximate total number of self-study hours spent on **general** reading or research:	_ _ _ _
d)	Indicate below the tools used, overall, for all types of self-study. Fill in all that apply. ❍ Printed Material ❍ Internet ❍ Video ❍ CD ROM ❍ Audio ❍ DVD ❍ Other	

If required, use the area below to provide further information on your self-study (Section D).

E	**INDIVIDUAL PARALEGAL QUESTIONS**	**To be completed by all paralegals regardless of status.** **Questions 1 through 3 inclusive must be answered.** **See page 5 of the enclosed "Guide" for assistance in the completion of this section.**

NOTES ABOUT THIS SECTION:

1. For further assistance in the completion of this section, refer to **The Paralegal Bookkeeping Guide** available on our Resource Centre website at www.lsuc.on.ca.
2. * Refer to the enclosed "Guide" for definitions.

1	**Cash Transactions – All paralegals must report on large cash transactions regardless of jurisdiction where legal services were provided.**	
a)	Did you receive cash* in an aggregate amount equivalent to $7,500 CDN or more in respect of any one client file in 2011? **If "Yes" to a):**	
b)	Was the cash solely for legal services fees and/or client disbursements*? **If "No" to b),** provide full particulars below with respect to compliance with By-Law 9, Part III (Cash Transactions).	Yes ❍ No ❍

2	**Trust Funds** – 2a), 2b), and 2c) must be answered.	
a)	In 2011, did you receive* trust funds* (money for deposit into your trust account) from or on behalf of a client, **in connection with** the provision of legal services?	Yes ❍ No ❍
b)	In 2011, did you disburse* (pay out) client trust funds* (money paid out from your trust account) or did you have signing authority on a client trust account?	Yes ❍ No ❍
c)	Do you require retainers* from your clients?	Yes ❍ No ❍

3	**Borrowing from Clients -** 3a) must be answered and 3b) if applicable.	
	Note: If your borrowing was/is from a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, answer **"No" to a).** *See subrules 3.06 (5)(a)(b) of the* Paralegal Rules of Conduct.	
a)	At any time in 2011, were you personally indebted to a client or person who at the time of borrowing was or had been your client or a client of a firm of which you were then providing legal services? **If "Yes" to a):**	Yes ❍ No ❍
b)	Was the client or person a related* person as defined in the *Income Tax Act (Canada)*? **If "Yes" to a) or b),** provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal advice or independent legal representation obtained by the lender.	Yes ❍ No ❍

If required, use the area below to provide further information on your Individual Paralegal Questions (Section E).

F	**FINANCIAL REPORTING**	**To be completed by:** **-All paralegal sole practitioners;** **-Paralegals who are partners/employees/associates of either a paralegal firm, or a law firm;** **-All other paralegals who held or continued to hold client monies or property from a former legal services practice in Ontario as at December 31, 2011.** **See page 6 of the enclosed "Guide" for assistance in the completion of this section.**

NOTES ABOUT THIS SECTION:

1. For further assistance in the completion of this section, refer to **The Paralegal Bookkeeping Guide** available on our Resource Centre website at www.lsuc.on.ca.
2. * Refer to the enclosed "Guide" for definitions.

1	**Trust and General (Non-Trust) Accounts** – 1a) and 1b) must be answered.	
a)	As at December 31, 2011, did either you or your firm operate a trust account in Ontario?	Yes ❍ No ❍

b)	As at December 31, 2011, did either you or your firm operate a general* (non-trust) account in Ontario?	Yes ❍ No ❍

If "Yes" to a), proceed to question 2;

OR

If "No" to a) and "Yes" to b) proceed to question 4 (page 6), and then proceed to Section G (page 9);

OR

If "No" to both a) and b) proceed to Section G (page 9).

2		
	As at December 31, 2011, were you a sole practitioner, or were you the paralegal responsible for filing the trust account information on behalf of your paralegal firm in Ontario? **If "Yes" to 2, proceed to questions 4 through 10 (pages 6 to 8).** **If "No" to 2, complete the "Designated Financial Filing Option" (question 3) below.** **NOTE: If you are reporting financial information on behalf of other members of your firm, you must also submit a Financial Filing Declaration.** *The declaration is enclosed with your Paralegal Annual Report package.* *Your report is not considered complete without the submission of the Financial Filing Declaration.*	Yes ❍ No ❍

3	**Designated Financial Filing Option** **This option is available to you if you are not responsible for filing trust account information.**

	Indicate on lines a) and b) below, who will be reporting the firm financial information on your behalf. **Then proceed to Section G (page 9).** **PRINT DESIGNATED FINANCIAL FILING PARTNER'S NAME & LAW SOCIETY NUMBER** **a)** _ **Given Name** **Surname** **b)** _ _ _ _ _ _ **Law Society Number** **(e.g. P12345 or 12345A)** ➔ The filing partner you have named is responsible to file the Financial Filing Declaration to report the firm financial information on your behalf. Your filing will not be considered complete without the submission of the **Financial Filing Declaration by the person you have named**.

4	**Firm Records**	
	Were financial records for all your firm's **trust** accounts (mixed*, separate*, and other interest generating investments*) and/or **general*** (non-trust) bank accounts maintained throughout 2011, on a current basis, in accordance with all applicable sections in By-Law 9? (enclosed)? **If "No" to 4, indicate below which areas were deficient and provide an explanation for each.** **If "Yes" to 4, leave the following chart blank**.	Yes ❍ No ❍

COMPLETE THIS CHART <u>ONLY</u> IF YOU ANSWERED "NO" ABOVE. COMPLETE ONLY THOSE AREAS WHERE YOU WERE DEFICIENT.			
<u>By-Law 9:</u> Financial Transactions and Records	**By-Law 9 *Sections 18 & 19* (Maintain)**	**By-Law 9 *Section 22* (Current)**	**Explanation for Deficiency**
1. **Trust Receipts Journal** *Section 18(1)*	❍	❍	
2. **Trust Disbursements Journal** *Section 18(2)*	❍	❍	

3. **Clients' Trust Ledger** *Section 18(3)*	❍	❍	
4. **Trust Transfer Journal** *Section 18(4)*	❍	❍	
5. **General Receipts Journal** *Section 18(5)*	❍	❍	
6. **General Disbursements Journal** *Section 18(6)*	❍	❍	
7. **Fees Book or Chronological Billing File** *Section 18(7)*	❍	❍	
8. **Trust Bank Comparison**◆ *Section 18(8)*	❍	❍	
9. **Valuable Property Record** *Section 18(9)*	❍	❍	
10. **Source documents including deposit slips, bank statements and cashed cheques** *Section 18(10)*	❍	❍	
11. **Electronic Trust Transfer Requisitions and Confirmations** *Section 18(11)* (Form 9A)	❍	❍	
12. **Duplicate Cash Receipts Book for all cash received** *Section 19*	❍	❍	

◆ Trust comparisons are to be completed within 25 days of the effective date of the monthly trust reconciliation.

5	**Comparison of Trust Bank Reconciliations and Trust Listing of Client Liabilities as at December 31, 2011**

Name and address of financial institution(s) where trust account(s) is (are) held and account number(s):

FINANCIAL INSTITUTION NAME:	ADDRESS:	TRANSIT/ACCOUNT NUMBER:

Reconciliation Refer to the sample reconciliation found on pages 7 and 8 of the enclosed "Guide".		December 31, 2011 Balances
a) The total dollar value of mixed* trust bank accounts		$_ _ _, _ _ _, _ _ _. _ _
b) The total dollar value of separate* interest bearing trust accounts or income generating trust accounts/investments*	+	$_ _ _, _ _ _, _ _ _. _ _
c) **TOTAL** of a) and b)	=	$_ _ _, _ _ _, _ _ _. _ _
d) Total outstanding deposits (if any)	+	$_ _ _, _ _ _, _ _ _. _ _
e) Total bank/posting errors (if any)	+/-	$_ _ _, _ _ _, _ _ _. _ _

	f) Total outstanding cheques (if any)	-	$_ _ _, _ _ _, _ _ _. _ _
	g) **Reconciled Bank Balance**	=	$_ _ _, _ _ _, _ _ _. _ _
	h) **Total Client Trust Liabilities** (Client Trust Listing)	-	$_ _ _, _ _ _, _ _ _. _ _
	i) **Difference between Reconciled Bank Balance and Total Client Trust Liabilities**	=	$_ _ _, _ _ _, _ _ _. _ _

If there is no difference enter "0.00".
If there is a difference between the Reconciled Bank Balance **(g)** and the Total Client Trust Liabilities **(h)**, provide a written explanation below.

6	**Answer all questions as at December 31, 2011.**	
a)	What is the total number of mixed* trust bank accounts referred to in 5a)?	_ _ _ _
b)	What is the total number of separate* interest bearing trust accounts or income generating trust accounts/investments* referred to in 5b)?	_ _ _ _

7	**Overdrawn Accounts**	
a)	During 2011, did your records, at any month end, disclose **overdrawn** clients' trust ledger account(s)?	Yes ❍ No ❍
	If "Yes" to a):	
b)	Were the account(s) corrected by December 31, 2011?	Yes ❍ No ❍
	If "No" to b):	
c)	The total **dollar value** of overdrawn clients' trust ledger account(s) as at December 31, 2011 was:	$_ _ _, _ _ _, _ _ _. _ _
d)	The total **number** of overdrawn clients' trust ledger account(s) as at December 31, 2011 was:	_ _ _ _

8	**Outstanding Deposits**	
a)	During 2011, did your records, at any month end, disclose **outstanding** trust account deposits, not deposited the following business day?	Yes ❍ No ❍
	If "Yes" to a):	
b)	Were the account(s) corrected by December 31, 2011?	Yes ❍ No ❍
	If "No" to b):	
c)	The total **dollar value** of outstanding trust account deposits as at December 31, 2011 was:	$_ _ _, _ _ _, _ _ _. _ _
d)	The total **number** of outstanding trust account deposits as at December 31, 2011 was:	_ _ _ _

9	**Unchanged Client Trust Ledger Account Balances**	
a)	Were there client trust ledger account balances that were **unchanged* (i.e. had no activity)** for the entire year?	Yes ❍ No ❍
	If "Yes" to a):	
b)	The total **dollar value** of these account balances as at December 31, 2011 was:	$_ _ _, _ _ _, _ _ _. _ _
c)	The total **number** of client trust ledger accounts that remained unchanged* for the entire year as at December 31, 2011 was:	_ _ _ _

10	**Unclaimed Client Trust Ledger Account Balances**	
a)	Of the amounts identified in question 9, were any **unclaimed*** for two years or more? *(Refer to section 59.6 of the Law Society Act)*	Yes ❍ No ❍ N/A ❍
	If "Yes" to a):	
b)	The total **dollar value** of the unclaimed* client trust ledger account balances was:	$_ _ _, _ _ _, _ _ _. _ _
c)	The total **number** of unclaimed* client trust ledger accounts was:	_ _ _ _

If required, use the area below to provide further information on your Financial Reporting (Section F).

Proceed to Section G on page 9 for your Certification and Signature.
Remember to file your **Form 1: Report to The Law Foundation of Ontario** which is enclosed in your Annual Report Package.

G	CERTIFICATION AND SIGNATURE	To be completed by all paralegals.

I am the paralegal filing this 2011 Paralegal Annual Report. I have reviewed the matters reported, and the information contained herein is complete, true and accurate. I acknowledge that it is professional misconduct to make a false or misleading reporting to The Law Society of Upper Canada.

Paralegal's Signature **Date**

THIS COMPLETED REPORT AND ANY REQUIRED ENCLOSURES ARE DUE BY MARCH 31, 2012.

Ensure the following before filing your report:

- ☐ All relevant sections are complete.
- ☐ Pages 1-9 are included.
- ☐ Your full name and Law Society number appear on all enclosures.
- ☐ Submit your Annual Report by one of the following options:

Fax to:	**Email to:**	**Mail to:**
416-947-3408	**bylawadmin@lsuc.on.ca**	By-Law Administration Services
By-Law Administration Services	By-Law Administration Services	The Law Society of Upper Canada
The Law Society of Upper Canada	The Law Society of Upper Canada	Osgoode Hall
		130 Queen Street West
		Toronto ON M5H 2N6

P12345

Assistance with the completion of this report and definitions can be found in the enclosed **Guide to the 2011 Paralegal Annual Report**.

Status and address changes can be made online using the LSUC Portal at https://portal.lsuc.on.ca or direct your inquiries to lawsociety@lsuc.on.ca, or call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Law Society Resource Centre.

For further assistance in the completion of Sections A, B, C, D, and G, direct your inquires to bylawadmin@lsuc.on.ca, or call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the By-Law Administration Services department.

For further assistance in the completion of Sections E and F, refer to **The Paralegal Bookkeeping Guide** available on our Resource Centre website at www.lsuc.on.ca. Paralegals may also call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Practice Management Helpline.

Re: Amendment to By-Law 4 Respecting Exemptions

It was moved by Ms. Haigh, seconded by Ms. McGrath, that By-Law 4 be amended to limit the exemptions for professional associations to fully accredited members, as set out in the motion distributed under separate cover.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 4
[LICENSING]

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010, October 28, 2010, April 28, 2011 and June 23, 2011, be further amended as follows:

1. Subparagraph iv of paragraph 7 of subsection 30 (1) of the English version of the By-Law is revoked and the following substituted:

iv. who is,

A. a member of the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category,

B. a member of the Board of Canadian Registered Safety Professionals, or

C. a member of the Appraisal Institute of Canada in the designated membership category.

2. Subparagraph iv of paragraph 7 of subsection 30 (1) of the French version of the By-Law is revoked and the following substituted:

iv. qui est membre,

A. de la *Human Resources Professionals Association of Ontario* dans la catégorie des professionnels en ressources humaines agréés,

B. du Conseil canadien des professionnels en sécurité agréés,

C. de l'Institut canadien des évaluateurs dans la catégorie des membres accrédités.

Re: Paralegal Award

It was moved by Ms. Haigh, seconded by Ms. McGrath, that the Law Society create a paralegal award as set out in the Report.

Carried

For Information

- Amendments to the *Rules of Professional Conduct* and *Paralegal Rules of Conduct* Respecting Limited Scope Services
- Paralegal Annual Report
- Applications Under the Integration Process
- Five Year Review of Paralegal Regulation

ARTICLING TASK FORCE INTERIM REPORT

Mr. Conway presented the Report.

Interim Report to Convocation
September 22, 2011

ARTICLING TASK FORCE

TASK FORCE MEMBERS

Treasurer, Laurie Pawlitza
Thomas Conway (Chair)
Raj Anand
Adriana Doyle
Jacqueline Horvat
Vern Krishna
Dow Marmur
Janet Minor

Barbara Murchie
Paul Schabas
Joe Sullivan
Peter Wardle

Purpose of Report: Decision and Information

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

FOR DECISION

MOTION

1. That Convocation amend paragraph 3 of the Articling Task Force's Terms of Reference to read as follows:

> 3. Since the adoption in September 2008 of the recommendations of the Licensing & Accreditation Task Force concerning articling, pressures continue to mount on the articling system, necessitating further consideration of the issue. The Articling Task Force will,
>
> a. consider the competency-related principles that articling is intended to address, and its effectiveness in addressing those principles,
> b. examine the historic and current approaches to articling,
> c. identify the challenges facing the current program, including the increasing number of unplaced candidates,
> d. consider the articling program in the context of the licensing process overall,
> e. consider additional/alternative approaches to articling and any proposed changes to the licensing process overall as a consequent of those additional/alternative approaches to articling, and
> f. make recommendations to Convocation respecting the articling system, including any recommended changes to the licensing process overall that are appropriate.
>
> (amendments underlined)

Introduction and Background

2. On June 23, 2011 Convocation established the Articling Task Force. Its terms of reference are set out at Appendix 1. To date the Task Force has met three times on June 24, 2011, August 2, 2011, and August 11, 2011.

3. In its initial meetings the Task Force has identified the challenges facing the current program, including the increasing number of unplaced candidates. It has also discussed the competency-related principles that articling is intended to address and its effectiveness in addressing those principles. This enables the Task Force to consider the objectives of articling and analyze whether these objectives may be achieved through means other than the traditional articling model.

4. The Task Force has, as well, begun its discussion of
   a. various options by which to achieve the goals of articling; and
   b. how best to engage the profession, law schools and the Federation of Law Societies of Canada in considering some of these options.

5. In considering the competency-related principles that articling is intended to address, it is essential to consider how recommendations related to articling may affect the licensing process overall. If the Task Force is to be able to consider the full range of recommendations it must be able to consider how the licensing process might be altered to enhance the effectiveness of those recommendations and enable their implementation.

6. The Task Force is requesting that its terms of reference be amended to ensure they are broad enough to encompass recommendations affecting the licensing process overall.

APPENDIX 1

ARTICLING TASK FORCE

TERMS OF REFERENCE

JUNE 2011

1. Convocation authorizes the establishment of a task force to consider the articling system in Ontario.

2. The members of the Task Force are the Treasurer, Laurie Pawlitza, Tom Conway (Chair), Raj Anand, Adriana Doyle, Jacqueline Horvat, Vern Krishna, Dow Marmur, Janet Minor, Barbara Murchie, Paul Schabas, Joseph Sullivan and Peter Wardle.

3. Since the adoption in September 2008 of the recommendations of the Licensing & Accreditation Task Force concerning articling, pressures continue to mount on the articling system, necessitating further consideration of the issue. The Articling Task Force will,

    a. consider the competency-related principles that articling is intended to address, and its effectiveness in addressing those principles,

    b. examine the historic and current approaches to articling,

    c. identify the challenges facing the current program, including the increasing number of unplaced candidates,

    d. consider additional/alternative approaches to articling, and

    e. make recommendations to Convocation respecting the future of the articling system.

4. The Task Force will have a budget of up to $75,000 to be funded from the Licensing Process budget in Professional Development and Competence for 2011, to be used for research, consultation, travel and related expenses to May 2012.

5. The Task Force will report to Convocation no later than May 2012. It will provide periodic interim reports to Convocation, including a brief report in September 2011 to further refine its terms of reference, if necessary.

Re: Amendment to Terms of Reference

It was moved by Mr. Conway, seconded by Ms. Doyle, that Convocation amend paragraph 3 of the Articling Task Force's Terms of Reference as set out in paragraph 1 of the Report.

Carried

COMPENSATION FUND COMMITTEE REPORT

Ms. McGrath presented the Report.

Report to Convocation
September 22, 2011

Compensation Fund Committee

Committee Members
Susan McGrath (Chair)
Michelle Haigh
Jack Rabinovitch
Catherine Strosberg
Peter Wardle

Purpose of Report: Decision and Information

Prepared by the Professional Regulation Division
(Dan Abrahams 416.947.7626 / Zeynep Onen 416.947.3949)

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Committee met on September 7, 2011. Committee members in attendance were Susan McGrath (Chair), Michelle Haigh, Jack Rabinovitch, Cathy Strosberg and Peter Wardle. Staff members Malcolm Heins, Zeynep Onen, Dan Abrahams, Paul McCormick and Fred Grady also attended.

FOR DECISION

AMENDMENT TO BY-LAW 12
TO FACILITATE GRANT APPROVAL PROCESS

2. Convocation is asked to amend By-Law 12, as follows:

THAT By-Law 12 [Compensation Fund], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007 and May 27, 2010, be further amended as follows:

1. Section 3.2 of the By-Law is amended by adding the following subsection:

Resolution in writing

(2) A resolution in writing signed by at least three members of the Compensation Fund Committee entitled to vote on the resolution at a meeting of the Committee is as valid as if it had been passed at a meeting of the Committee.

2. Section 5 of the By-Law is revoked.

3. Section 6 of the By-Law is renumbered as section 5.

Background

3. Prior to the amendment of By-Law 12 [Compensation Fund] in May 2010, the functions currently assigned to the Compensation Fund Committee were performed by a Committee, which dealt with policy and oversight issues, and by a smaller Review Subcommittee, drawn from the membership of the larger Committee, which addressed staff recommendations for grants in excess of $5000 (for lawyers). The 2010 amendments had the effect of eliminating the Review Subcommittee and assigning all policy, oversight and grant approval functions to a single, streamlined Compensation Fund Committee. The Committee has had a year of experience with the amended by-law and now wishes to propose amendments to better facilitate the grant approval function.

4. As presently worded, By-Law 12 requires that, absent unanimous consent to a written recommendation, the business of the Committee must be transacted at a meeting of the Committee.

5. There are also provisions that require lawyer or paralegal members of the Committee to approve grants in respect of lawyer or paralegal dishonesty, as the case may be.

6. From time to time, however, there is some urgency associated with the matters put before the Committee, particularly in connection with the approval of grant recommendations.

7. It is therefore proposed that, to better serve claimants who have suffered a loss and may be facing pressing financial issues as a result, such matters be put to the Committee by way of faxed copies of the recommendation memoranda in question and the return to staff of initialled copies of those recommendations. This is a practice that was used successfully at the Fund for a number of years prior to the May 2010 amendment of By-Law 12. It is also proposed that the requirements described in paragraph 5 above be removed from the By-Law.

8. The current version of By-Law 12 is attached as Appendix 1 and a copy of the by-law reflecting the proposed amendment is attached as Appendix 2.

APPENDIX 1

BY-LAW 12

Made: May 1, 2007
Amended: June 28, 2007
May 27, 2010
June 2, 2010 (editorial changes)

COMPENSATION FUND

EXERCISE OF POWERS

Exercise of powers, *etc*.

1. The holders of the following offices may exercise the powers and perform the duties under subsection 51 (11.1) of the Act:

1. The office of Director, Professional Regulation.

2. The office of Senior Counsel, Professional Regulation.

COMPENSATION FUND COMMITTEE

Compensation Fund Committee

2. The standing committee known as the Lawyers Fund for Client Compensation Committee is continued as the Compensation Fund Committee.

Application of By-Law

3. The following provisions of By-Law 3 [Benchers, Convocation and Committees] apply to the Compensation Fund Committee:

1. Section 107, except that in the application of subsection 107 (3) the reference to "under this Part" shall be read as a reference to "under By-Law 12 [Compensation Fund]".

2. Sections 109 to 116.

Composition

3.1. Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Committee shall consist of five persons appointed by Convocation, of whom,

(a) two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors;

(b) two shall be lay benchers; and

(c) one shall be a bencher who is licensed to provide legal services in Ontario.

Quorum

3.2. (1) Despite subsection 114 (1) of By-Law 3 [Benchers, Convocation and Committees], three members of the Compensation Fund Committee shall constitute a quorum for the purposes of the transaction of business.

Mandate

4. (1) The Compensation Fund Committee is responsible to Convocation for the administration of the Compensation Fund.

Grants over $5000 re dishonesty of lawyers

(1.1) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over $5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

Grants over $1500 re dishonesty of paralegals

(1.2) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over $1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

Powers

(2) The Compensation Fund Committee may make such arrangements and take steps as it considers advisable to carry out its responsibilities.

Grants re dishonesty of lawyers

5. (1) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to practise law in Ontario as a barrister and solicitor.

Grants re dishonesty of paralegals

(2) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a person licensed to provide legal services in Ontario shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to provide legal services in Ontario.

Resolution in writing

(3) A resolution to make or not make a grant from the Compensation Fund that is in writing and is signed by all members of the Compensation Fund Committee is as valid as if it had been passed at a meeting of the Committee.

REFEREES

Appointment

6. (1) Every employee of the Society who is a licensee and who holds any of the following offices is a referee for the purposes of subsection 51 (10) of the Act:

1. Manager, Compensation Fund.

2. Compensation Fund Counsel.

APPENDIX 2

BY-LAW 12 WITH PROPOSED AMENDMENTS

COMPENSATION FUND

EXERCISE OF POWERS

Exercise of powers, *etc*.

1. The holders of the following offices may exercise the powers and perform the duties under subsection 51 (11.1) of the Act:

3. The office of Director, Professional Regulation.

4. The office of Senior Counsel, Professional Regulation.

COMPENSATION FUND COMMITTEE

Compensation Fund Committee

2. The standing committee known as the Lawyers Fund for Client Compensation Committee is continued as the Compensation Fund Committee.

Application of By-Law

3. The following provisions of By-Law 3 [Benchers, Convocation and Committees] apply to the Compensation Fund Committee:

3. Section 107, except that in the application of subsection 107 (3) the reference to "under this Part" shall be read as a reference to "under By-Law 12 [Compensation Fund]".

4. Sections 109 to 116.

Composition

3.1. Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Committee shall consist of five persons appointed by Convocation, of whom,

(a) two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors;

(b) two shall be lay benchers; and

(c) one shall be a bencher who is licensed to provide legal services in Ontario.

Quorum

3.2. (1) Despite subsection 114 (1) of By-Law 3 [Benchers, Convocation and Committees], three members of the Compensation Fund Committee shall constitute a quorum for the purposes of the transaction of business.

Resolution in writing

(2) A resolution in writing signed by at least three members of the Compensation Fund Committee entitled to vote on the resolution at a meeting of the Committee is as valid as if it had been passed at a meeting of the Committee.

Mandate

4. (1) The Compensation Fund Committee is responsible to Convocation for the administration of the Compensation Fund.

Grants over $5000 re dishonesty of lawyers

(1.1) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over $5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

Grants over $1500 re dishonesty of paralegals

(1.2) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over $1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

Powers

(2) The Compensation Fund Committee may make such arrangements and take steps as it considers advisable to carry out its responsibilities.

~~Grants re dishonesty of lawyers~~

~~5. (1) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to practise law in Ontario as a barrister and solicitor.~~

~~Grants re dishonesty of paralegals~~

~~(2) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a person licensed to provide legal services in Ontario shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to provide legal services in Ontario.~~

~~Resolution in writing~~

~~(3) A resolution to make or not make a grant from the Compensation Fund that is in writing and is signed by all members of the Compensation Fund Committee is as valid as if it had been passed at a meeting of the Committee.~~

REFEREES

Appointment

~~6~~5. (1) Every employee of the Society who is a licensee and who holds any of the following offices is a referee for the purposes of subsection 51 (10) of the Act:

1. Manager, Compensation Fund.

2. Compensation Fund Counsel.

Grants up to $5000 re dishonesty of lawyers

(2) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to $5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

Grants up to $1500 re dishonesty of paralegals

(3) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to $1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

INFORMATION

COMPENSATION FUND LEVY, 2012

Background

9. At its September 2011 meeting, the Compensation Fund Committee considered various budget and levy matters, including the required levy from lawyers and paralegals to pay grants from the Fund in 2012. The Committee had before it two reports from the Fund's actuary, Brian Pelly of Eckler Ltd., as well as a memorandum from the Finance Department.

10. The actuary's report concludes that the indicated 2012 levy for lawyers would be approximately $262, while the same figure for paralegals would be $164. The latter calculation, however, does not take into account the projected additional budgetary requirements for Spot Audit. Spot Audit is funded entirely from the Compensation Fund levies. Increased Spot Audit activity in relation to paralegal practices in 2012 will likely bring the paralegal Compensation Fund levy over $200.

11. The Finance Department calculation would permit the lawyer fund levy to be reduced by a certain sum in 2012, as it was in 2011, through a contribution from the Fund Balance, which in 2011 is projected to be approximately $25 million. This approach is supported by the actuary's stochastic analysis. That analysis concludes that, even with a reduction in the amount of the Fund Balance, the Fund is very well positioned withstand a major claims event.

12. The Committee's recommendations concerning the 2012 Compensation Fund levies for lawyers and for paralegals have been forwarded to the Finance Committee in the normal course. They will be considered as part of the 2012 budget process.

GRANTS APPROVED BY THE FUND

13. A number of grant recommendations were submitted to the Committee for approval, in accordance with the changes to By-Law 12 approved by Convocation in May 2010. These grants will be reported to Convocation when paid.

GRANTS PAID FROM THE FUND

14. The Committee wishes to report that the following grants were approved and paid from the Fund between May 1, 2011 and August 19, 2011. (Licensees whose discipline proceedings are completed, or who are not subject to discipline, are identified by name.) Additional information about specific claims is available to the Committee upon request.

Lawyers	Number of Claimants	Total Grants Paid
Solicitor #212 (Suspended April 11, 2011)	2	$ 4,000.00
Robert Deane (Deceased May 25, 2009)	1	$ 14,090.00
Mariano Mazzucco (Licence Revoked November 9, 2010)	4	$ 310,667.08
Stephen Winchie (Deceased July 27, 2009)	2	$ 1,771.54
Sub-total (Lawyers)	9	$330,528.62
Paralegals		
Oleg Kryvenko (Licence Revoked March 1, 2011)	1	$ 1,500.00
Paralegal #4 (Suspended March 30, 2010)	1	$ 800.00
Sub-total (Paralegals)	2	$ 2,300.00
TOTAL GRANTS PAID	11	$332,828.62

Re: Amendment to By-Law 12

It was moved by Ms. McGrath, seconded by Ms. Haigh, that Convocation amend By-Law 12 to facilitate the grant approval process, as set out in the motion distributed under separate cover.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 12
[COMPENSATION FUND]

THAT By-Law 12 [Compensation Fund], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007 and May 27, 2010, be further amended as follows:

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

Resolution in writing

(2) A resolution in writing signed by at least three members of the Compensation Fund Committee entitled to vote on the resolution at a meeting of the Committee is as valid as if it had been passed at a meeting of the Committee.

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

Résolution par écrit

(2) Une résolution, écrite et signée par au moins trois membres du Comité du Fonds d'indemnisation qui sont habilités à voter aux réunions du Comité, a la même valeur que si elle avait été adoptée à une réunion du Comité.

3. Section 5 of the By-Law is revoked.

4. Section 6 of the By-Law is renumbered as section 5.

For Information
- 2012 Compensation Fund Levy
- Grants Approved by the Fund
- Grants Paid from the Fund

AUDIT COMMITTEE REPORT

Mr. Brett presented the financial statements for the six months ended June 30, 2011 for the Law Society of Upper Canada and LAWPRO for information.

Report to Convocation
September 22, 2011

Audit Committee

Committee Members

Christopher Bredt (Chair)
Jack Braithwaite
Seymour Epstein
Susan Elliott
Robert Evans
Vern Krishna
Malcolm Mercer
Kenneth Mitchell
Barbara Murchie
Jack Rabinovitch
James Scarfone
Bradley Wright

Purpose of Report: Information

Prepared by the Finance Department
Fred Grady, Manager, Finance, 416-947-3439

COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on September 7, 2011. Committee members in attendance were Chris Bredt (chair), Susan Elliott (teleconference), Seymour Epstein, , Robert Evans, Malcolm Mercer, Kenneth Mitchell (teleconference), Jack Rabinovitch, James Scarfone, and Bradley Wright (teleconference).

2. Staff in attendance: Malcolm Heins, Laura Cohen, Fred Grady, Brenda Albuquerque-Boutilier, Andrew Cawse and Felicia North.

3. Also in attendance were Kathleen Waters and Steve Jorgensen of LAWPRO, Brian White of Aon Hewitt and Susan Nickerson of Hicks Morley.

FOR INFORMATION

LAW SOCIETY OF UPPER CANADA FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2011

4. Convocation is requested to receive the 2011 second quarter financial statements for The Law Society of Upper Canada for information.

Law Society of Upper Canada Financial Statements
For the six months ended June 30, 2011

Fund Descriptions

General Fund

- The General Fund is the Society's operating fund representing the bulk of its revenues and expenses relating to the licensing and regulation of lawyers and paralegals. At June 30, 2011 the lawyer General Fund balance was $9.5 million and the paralegal fund balance was $1.4 million. The appropriate size of the Fund balance is currently being assessed by the Finance Committee.

Restricted Funds

- The Compensation Fund is restricted by statute. The Fund exists in order to mitigate losses sustained by clients as a result of the dishonesty of a lawyer or paralegal. The fund is financed primarily through annual levies on lawyers and paralegals, investment income and recoveries for grants previously paid. The annual Compensation Fund levy for the 2011 year was set at $222 for lawyers and $171 for paralegals. The respective figures for the 2010 year were $257 and $183.

  At June 30, 2011 the lawyer Compensation Fund balance was $25.3 million and the paralegal fund balance was $176,000. The appropriate size of the Compensation Fund balance is currently being assessed by the Finance Committee.

- The Errors and Omissions Insurance (E&O) Fund accounts for the mandatory professional liability insurance program of the Society which is administered by LAWPRO. Insurance premium expense, as well as related levies and income from their investment are tracked within this fund. In March 2011, $2 million in cumulative investment income was transferred to the Law Society General Fund and is reported on the Statement of Changes in Fund Balances. The Society is insured for lawyers' professional liability and recovers annual premium costs from lawyers through a combination of annual base levies and additional levies that are charged based on a lawyer's claims history, status, and real estate and litigation levies.

The current composition of the E&O Fund balance is:

Investment in LAWPRO	$35,642,000
Cumulative excess investment income	3,034,000
Backstop for Endorsement Retention	15,000,000
E&O Fund Contribution (accrued for 1st quarter)	1,250,000
Available for future operating expenses, transaction levy shortfall and premium contributions etc.	5,686,000
TOTAL	$60,612,000

The appropriate size of the Fund balance is currently being assessed by the Finance Committee.

- The Capital Allocation Fund is the source of funding for the Society's acquisition of major capital assets and the repair and upgrade of Osgoode Hall. The fund is replenished by a dedicated annual levy, on all lawyers and paralegals of $75 in 2011, increased from $65 in 2010.

- The Invested in Capital Assets Fund represents the net book value of the Society's physical assets. Additions to the fund are made by the capitalization of assets acquired through the Capital Allocation Fund. Additions are recorded annually by means of an inter-fund transfer on the Statement of Changes in Fund Balances. Amortization is reported as an expense of the fund.

- The County Libraries Fund reports the transactions between LibraryCo Inc. and the Law Society. The Law Society levies an amount on lawyers as approved by Convocation in the annual budget; $196 in 2011 and $203 in 2010. This levy is reported as income of the fund and payments to LibraryCo Inc. are reported as an expense of the fund.

- The Working Capital Reserve is maintained by policy of Convocation to ensure cash is available to meet the operating needs of the Society. By policy, the fund is maintained at a balance of up two months' operating expenses.

- Other Restricted Funds:

    - Under the Parental Leave Assistance Plan (PLAP), which commenced in March 2009 as a three year pilot plan, the Law Society provides parental leave benefits to sole and small firm practitioners. Eligible applicants may receive payments of $750 per week for up to twelve weeks to cover, among other things, expenses associated with maintaining practice expenses during a maternity, parental or adoption leave. For 2011, as of June 30, $162,000 has been expensed compared to $239,000 in the same period last year. In the first six months of 2011, 24 applications were approved with three in progress. During the same period in 2010, 30 applications were approved with four in progress. Funding of $540,000 is budgeted for 2011.

- The Repayable Allowance Fund is used to provide financial assistance to those enrolled in the Society's Lawyer Licensing Process. The fund is replenished annually through the budget process by a $100,000 annual contribution from the lawyer general fund.
- The Society's Endowment Fund is the J. Shirley Denison Fund, administered under the terms of Mr. Denison's will by Convocation for the relief of poverty, for lawyers and licensing process lawyer candidates and their spouses.
- The Special Projects Fund is used to carry forward funding to a future fiscal period for a program or activity yet to be completed, for which funding is not provided in the future year's budget. For 2011, the fund is primarily comprised of funding for the Civil Needs Project and the Heritage Committee's Diversifying the Bar: Lawyers Make History Project. Also included is the balance of a contribution from Canada Life for the ongoing maintenance of the Society's lawns, gardens and trees.

Financial Statement Highlights

The Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit organizations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.

The Financial Statements for the six months ended June 30, 2011 comprise the following statements with comparative numbers for June 30, 2010:

- Balance Sheet
- Statement of Revenues and Expenses. Detailed results of operations for lawyers and paralegals are combined on the Statement of Revenue and Expenses. Summarized results for both lawyers and paralegals are reported on the Statement of Changes in Fund Balances. Supplementary schedules comparing actual results to budget are also provided for lawyers and paralegals.
- Statement of Changes in Fund Balances

Supplemental schedules include Schedules of Revenues and Expenses for the Lawyer and Paralegal General Funds, the Compensation Fund and the Errors and Omissions Insurance Fund.

Balance Sheet

- Current assets at the end of June 2011 have increased to $137.5 million from $125.2 million. Cash and short-term investment balances have increased due to a year-to-date surplus in the Lawyer Fund which is mainly attributable to increased CPD course registration revenues. Accounts receivable balances have increased due to higher member levies and premiums in the current year. Most of the prepaid expense balance relates to annual E&O insurance premiums paid or payable for the year, which are expensed over the full year.

- The Investment in LAWPRO totaling $35.6 million is made up of two parts. The investment represents the share capital of $4,997,000 purchased in 1991 when LAWPRO was established plus contributed capital of $30,645,000 accumulated between 1995 and 1997 from a special capitalization levy by the Law Society.

- Portfolio investments are shown at fair value of $69.3 million, a decrease from $72.3 million in 2010 due to transfers from the E&O Fund. Approximately 13% of the portfolio is held in equity investments, limiting exposure to the latest stock market volatility in August. Investments are held in the following funds:

Fund ($ 000's)	June 30, 2011	June 30, 2010
Errors & Omissions Insurance	$27,490	$32,149
Compensation Fund	29,020	27,831
General Fund	12,800	12,295
Total	$69,310	$72,275

- Accounts Payable has decreased to $4.5 million from $5.2 million. This is mainly attributable to the timing of accruals.

- Deferred Revenue has increased to $75.7 million from $68 million. This is largely the result of increased annual fees, in both the E&O Fund and the General Fund. Full recognition of these revenues will occur over the remaining six months of the year.

- The amount due to LAWPRO has increased to $36.0 million from $35.1 million. The payable will decline by year-end as insurance premiums and levies collected are paid to LAWPRO. Any balance owing to LAWPRO at year end is paid by March 31 of the following year.

- The provision for unpaid grants / claims comprises the provision for unpaid grants – Compensation Fund and the provision for unpaid claims – E&O Fund with balances at the end of June 2011 of $10.5 million and $689,000 respectively. Provisions have decreased from the prior year balances of $12.1 million and $1.1 million. The provision for unpaid grants in the Compensation Fund represents the estimate for unpaid claims and inquiries against the Compensation Fund, supplemented by the costs for processing these claims. The provision for unpaid claims in the E&O Fund represents claims liabilities for 1995 and prior. Effective 1995, 100% of the risk above the individual member deductible was insured through LAWPRO so the E&O Fund is in run-off mode.

- The Law Society Act permits a member who has dormant trust funds, to apply for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. At the end of June, unclaimed money held in trust amounts to $2.2 million, compared to $2.0 million in the prior year.

- Fund Balances have increased to $128.3 million from $126.4 million with 2011 activity analyzed on the Statement of Changes in Fund Balances.

Statement of Revenues and Expenses

- The General Fund incurred a surplus of $2.6 million at the end of the second quarter of 2011, compared with a deficit of $1.8 million in 2010. As discussed below, this is due to an increase in revenues of $5.6 million partly offset by an increase in net expenses of $1.2 million. The 2011 budget incorporated the use of $2.5 million in funding from the Unrestricted Fund and $920,000 from the Paralegal Fund balances to provide for a budgeted operating deficit. Actual use of funds is contingent on a deficit occurring.

- The Society's restricted funds report a deficit of $2.5 million for the period. The deficit is primarily in the E&O Fund in the amount of $1.7 million. The deficit in the E&O Fund is mainly due to insurance costs exceeding premiums.

- General Fund annual fee revenue is recognized on a monthly basis. Annual fees recognized in the first half of the year have increased to $22.6 million in 2011 from $19.9 million in 2010. This is a consequence of the fee increase of $81 per lawyer and $26 per paralegal, in 2011, compounded by an increase in the number of lawyers and paralegals billed.

- Restricted fund annual fees comprising county library, Compensation Fund and capital allocation levies decreased by a total of $32 per lawyer in 2011. However, expenses for the Compensation Fund have increased over the same period last year. Year-over-year changes reflect a higher provision for unpaid claims and the increased spot audit staffing complement budgeted in 2010. Maintaining adequate funding for the Compensation Fund while decreasing member fees was facilitated by the budgeted use of $1.5 million in accumulated fund balances.

- Insurance premiums and levies have increased to $48.5 million from $43.6 million. This increase is primarily a result of the increase in base premiums charged to lawyers in 2011. The base premium in 2011 is $3,350 compared to $2,950 in 2010.

- Professional development and competence revenues have increased to $8.8 million from $6.5 million in 2010. This is mainly due to increased continuing education course registration revenue, which, if current trends continue, is projected to reach a total of $7 million by year-end, against a budget of $4.7 million and compared to total 2010 revenues of $3.4 million. A secondary factor in the increased revenues is the higher number of lawyer and paralegal licensing process candidates.

- Total investment income has remained stable at $2.0 million. The interest and dividend income component has decreased from $1.5 million to $1.2 million due to an increasing portion of bond holdings being exposed to relatively lower interest rates as term renewals occur. Total realized and unrealized gains have increased from $517,000 to $824,000 reflecting capital market conditions at the end of June.

  Investment income for the Compensation Fund for the first half was $756,000 compared to the budget for the year of $1 million. Investment income for the General Fund for the first half was $484,000 compared to the budget for the year of $700,000. E&O Fund investment income totaled $772,000, a decrease from $947,000 earned during the same period last year.

- Other income in the restricted funds has decreased to $447,000 from $8.1 million as the first quarter of 2010 saw the settlement of the E&Y/Tillinghast litigation.

- Regulatory expenses of $10.2 million are marginally higher than the same period in 2010 by $290,000.

- Professional development and competence expenses are $923,000 higher than for the same period in 2010 ($9.9 million versus $9.0 million). Increases were budgeted in Continuing Professional Development, where additional resources, including six staff hired in the first quarter, are required to support the newly implemented compulsory CPD requirement. In addition, year-to-date Spot Audit salary expenses are higher than the prior year due to 2010 budgeted staffing increases.

- Client Service Centre expenses have increased by $251,000, to $2.8 million from $2.5 million. Increases were budgeted in Membership Services, Call Centre and Administrative Compliance to support increased workload, including that arising from administration of the Continuing Professional Development requirement.

- Increased activity in Tribunals has resulted in expenses of $763,000 in the first half, compared to expenses of $468,000 during the same period in 2010. The 2011 budget saw an increase in staffing, by one FTE, plus incremental costs for adjudicator expenses and remuneration; however, the length and complexity of tribunals has resulted in higher than anticipated costs.

- Expenses in the Errors and Omissions Insurance Fund have increased to $50.9 million from $46.9 million. This is largely due to the increase in insurance premiums.

- Compensation Fund expenses have increased to $5.6 million from $3.6 million. The main contributor to this increase has been the provision for unpaid grants with a balance of $1.5 million. The provision is adjusted monthly based on the number of new inquiries and open claims and cases closed. Costs for spot audit have increased over 2010, as budgeted.

- County Libraries Fund expenses have remained stable at $3.4 million.

- As noted in the Fund Balance section, expenses for the Parental Leave Assistance Plan were $162,000 in the first six months of 2011 compared with $239,250 in the same period during the prior year.

Statement of Changes in Fund Balances

- This statement reports the continuity of the Society's various funds from the beginning of the year to the end of the current period. Details related to the revenues, expenses and interfund transfers summarized on this statement are reported in detail in the accompanying Statement of Revenues and Expenses as well as supporting schedules relating to the Lawyer and Paralegal General Funds, the Compensation Fund and the Errors and Omissions Insurance Fund.

Compensation Fund – Schedule of Revenues and Expenses & Change in Fund Balances

- Total annual fee revenue has decreased by $488,000 primarily as a result of a decrease in the lawyer and paralegal levies to $222 from $257 and to $171 from $183 respectively.

- Expenses have increased by $2 million primarily as a result of the increased provision for unpaid grants. Also contributing to the increase are spot audit costs and administrative expenses as approved in the 2011 budget.

Errors and Omissions Insurance Fund – Schedule of Revenues and Expenses & Change in Fund Balance

- Insurance premiums and levies have increased $4.9 million primarily due to the increased base premium for Ontario lawyers. Premium revenue comprises base premiums and claims history surcharges prorated for the year and transaction levies.

- Other income is nil, compared with $8 million in the prior year from a one-time inflow of cash from the settlement of outstanding E&Y/Tillinghast litigation.

- Administrative expenses have decreased by $456,000 as the prior year experienced the final litigation expenses incurred in relation to the above-noted settlement.

- The trend in insurance expenses is in line with premium revenues as the E&O Fund acts as a conduit to LAWPRO for this funding. The insurance expense represents the prorated annual policy premium set up in LAWPRO's insurance report to Convocation last September.

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FOR INFORMATION

LAWYERS PROFESSIONAL INDEMNITY COMPANY
FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2011

5. Convocation is requested to receive the 2011 second quarter financial statements for LAWPRO for information.

FOR INFORMATION

INVESTMENT COMPLIANCE REPORTS

6. Convocation is requested to receive the Investment Compliance Statements for the General Fund, Compensation Fund, and Errors & Omissions Insurance Fund portfolios as at June 30, 2011 for information.

FOR INFORMATION

INVESTMENT PERFORMANCE REPORT

7. The Committee reviewed a report on the performance of our long-term investments for the six months to June 30, 2011 from our consultants AON Hewitt.

8. The Law Society's long-term investments are divided into three portfolios for the General Fund, the Compensation Fund, and the Errors & Omissions Insurance Fund. All the investments are managed by Foyston Gordon & Payne under the same investment policy.

9. At June 30, 2011, portfolio investments totaled $69 million broken down as follows:

Fund	$ 000's
Errors & Omissions Insurance	$27,490
Compensation	29,020
General	12,800
Total	$69,310

10. The benchmark portfolio comprises:

S&P / TSX Composite Index (Canadian Equities)	15%
DEX Short Term Bond Index (Canadian Short Term Bonds)	85%
Total	100%

11. Returns for the period January 1, 2011 to June 30, 2011 outperformed the benchmark:

	Actual Return	Benchmark Return
Canadian Equities	3.1%	0.2%
Canadian Short Term Bonds	2.0%	1.8%
Total	2.3%	1.6%

FOR INFORMATION

OTHER COMMITTEE WORK

Education on Pension Fund Governance

12. According to By-Law 3: "The Audit Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society." The Audit Committee received a presentation on pension fund governance from Susan Nickerson of Hicks Morley who provides the pension fund with legal advice concerning regulatory compliance.

Litigation Report

13. The Committee reviewed a copy of the latest Litigation Report.

Governance Expenses

14. The Committee reviewed the Bencher and Paralegal Standing Committee Expense Summary, Bencher Attendance and Remuneration Summary and Treasurer Expense Summary for the bencher year June 1, 2010 to May 31, 2011.

Law Society Insurance Coverage

15. As part of its risk assessment responsibilities, the Committee reviewed a summary of the Law Society insurance coverage.

Finance Committee and Audit Committee Working Group

16. The Committee received an update on the working group which is assessing the structure of the two committees.

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

(1) Copy of the Law Society of Upper Canada Financial Statements for the six months ended June 30, 2011.

(pages 11 -15 (pages 16 – 19 in camera))

(2) Copy of the Lawyers Professional Indemnity Company Financial Statements for the six months ended June 30, 2011.

(pages 21 – 36)

(3) Copy of the Investments Compliance Statements for the General Fund, Compensation Fund, and Errors & Omissions Insurance Fund portfolios as at June 30, 2011.

(pages 38 – 42)

For Information
Assessment of Investment Performance

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FINANCE COMMITTEE REPORT

Ms. Hartman presented the Report.

Report to Convocation
September 22, 2011

Finance Committee

Committee Members
Carol Hartman (Chair)
Alan Silverstein (Vice-Chair)
Bob Aaron
John Callaghan
Mary Louise Dickson
Paul Dray
Larry Eustace
Susan Hare
Vern Krishna
Janet Leiper
Michael Lerner
Dan Murphy
Ross Murray
Judith Potter
Gerald Swaye
Robert Wadden
Peter Wardle

Purpose of Report: Decision and Information

Prepared by the Finance Department
Fred Grady, Manager, Finance, 416-947-3439

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on September 8, 2011. Committee members in attendance were Carol Harman (Chair), Alan Silverstein (Vice-Chair), John Callaghan, Larry Eustace (teleconference), Susan Hare, Janet Leiper, Michael Lerner, Dan Murphy, Ross Murray, Judith Potter (teleconference), Gerald Swaye, Robert Wadden (teleconference), and Peter Wardle.

2. Others in attendance were Treasurer Laurie Pawlitza and benchers Constance Backhouse, Larry Banack, Chris Bredt, Thomas Conway, Derry Millar, Janet Minor and Catherine Strosberg.

3. Also in attendance were Patricia Hughes, Executive Director of the Law Commission of Ontario, Bruce Hutchison, Chair, LibraryCo Inc, Kathleen Waters, President and CEO of LAWPRO, Steve Jorgensen Chief Financial Officer of LAWPRO.

4. Staff in attendance: Malcolm Heins, Diana Miles, Terry Knott, Fred Grady, David Whelan and Andrew Cawse.

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FOR INFORMATION

LAW COMMISSION OF ONTARIO

16. In June, the Committee reviewed the financial implications of the request from the Law Commission of Ontario ("LCO") to renew funding by the Law Society at $137,000 per year for their second mandate running from 2012 to 2017. This annual amount will be considered in the 2012 budget.

17. Dr. Patricia Hughes, Executive Director of the LCO, Larry Banack, bencher and Chair of the LCO's Board of Governors and Chris Bredt, bencher and board member of the LCO assisted the Committee in considering this financial commitment.

18. The Law Commission of Ontario is an independent organization that researches issues and recommends law reform measures to make the law accessible to all Ontario communities.

19. The LCO was established by 5 partners, the Ministry of the Attorney General, Osgoode Hall Law School, the Law Deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada. The LCO was formally launched in 2007. In June 2010, Convocation reaffirmed the Law Society's support in principle for the mandate of the LCO for a further five years subject to budgetary considerations.

20. In their first five-year mandate the Law Society committed $100,000 per annum to the LCO. The LCO is requesting $137,000 per annum for their second five year mandate, a 37% increase with funding from all partners increasing by over 26%.

21. The Law Society's contribution of $137,500 will be considered in our budget for 2012. Depending on membership numbers used in the final version of the budget, the LCO funding of $137,500 equates to approximately $4 per member.

FOR INFORMATION

2012 BUDGET PROCESS

22. In April and June 2011, Convocation reviewed the process for the preparation of the 2012 Budget. To ensure benchers have time and information to provide input into the budget, the final stages of the budget process are:

- Finance Committee discussions and review of preliminary Law Society budget in September 2011
- Bencher planning session in September 2011
- Finance Committee budget discussions and review of draft budget in October 2011
- A budget information session for all benchers after Convocation on October 27, 2011
- A recommendation to Convocation on the budget by the Finance Committee in November 2011.

23. Under the By-Laws, and to allow sufficient time for member billings, the budget must be approved by Convocation prior to the end of November.

24. At the September meeting, the Committee:
- received the operational reviews for Legal Information and the Client Service Centre, which are available on BencherNet
- reviewed the preliminary Law Society budget
- and reviewed the draft LibraryCo Inc. budget for 2012 for the approval of Convocation in November.

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FINANCE COMMITTEE REPORT

Items for Information

- Law Commission of Ontario
- 2012 Budget Process

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LAW FOUNDATION OF ONTARIO

Mr. Schabas presented a report on the Law Foundation of Ontario for information.

ONTARIO JUSTICE EDUCATION NETWORK

The Honourable Madam Justice Gloria Epstein, Co-Chair of the Ontario Justice Education Network Board and Sarah McCoubrey, Executive Director, presented a report on the Ontario Justice Education Network for information.

The Treasurer expressed thanks to OJEN for all its work.

REPORTS FOR INFORMATION

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

- Discrimination and Harassment Counsel Semi-Annual Report
- Human Rights Monitoring Group Intervention
- Equity Public Education Calendar

Report to Convocation
September 22, 2011

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

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Susan Hare, Vice Chair
Constance Backhouse
Paul Copeland
Cathy Corsetti
Mary Louise Dickson
Adriana Doyle
Seymour Epstein
Julian Falconer
Howard Goldblatt
Janet Leiper
Dow Marmur
Wendy Matheson

Judith Potter
Susan Richer
Heather Ross
Paul Schabas
Baljit Sikand
Beth Symes

Purpose of Report: Information

Prepared by the Equity Initiatives Department
(Josée Bouchard – 416-947-3984)

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (Equity Committee) met on September 7, 2011. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Susan Hare, Vice-Chair, Constance Backhouse, Cathy Corsetti, Mary Louise Dickson, Seymour Epstein, Howard Goldblatt, Janet Leiper, Dow Marmur, Wendy Matheson, Judith Potter, Susan Richer, Paul Schabas and Beth Symes participated. Bencher Nicholas Pustina also participated. Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, also participated. Cynthia Petersen, Discrimination and Harassment Counsel (DHC), attended to present the Report of the Activities of the Discrimination and Harassment Counsel – January 1, 2011 to June 30, 2011. Staff members Josée Bouchard, Jim Varro and Mark Andrew Wells attended.

FOR INFORMATION

REPORT OF THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL – JANUARY 1, 2011 TO JUNE 30, 2011

2. Subsection 20 (1) (b) of By-law 11 – *Regulation of Conduct, Capacity and Professional Competence* provides "unless the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) directs otherwise, the DHC shall make a report to the Committee not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year."

3. Subsection 20(2) of By-law 11 provides "The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting".

4. The Committee presents the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada - January 1, 2011 to June 30, 2011* to Convocation for information pursuant to subsection 20(2) of By-law 11, (Appendix 1).

HUMAN RIGHTS MONITORING GROUP INTERVENTION

Background

5. In June and July 2011, the Human Rights Monitoring Group (the Monitoring Group) considered a request from an Ontario lawyer, Mr. Robert Amsterdam. The request is presented at Appendix 2. The Monitoring Group decided that a letter of intervention was warranted. In light of the urgency of the matter and the fact that Convocation does not meet over the summer, Treasurer Pawlitza, on the recommendation of the Monitoring Group, signed and sent the letter of intervention in accordance with the mandate of the Monitoring Group outlined below. The letter is presented at Appendix 3.

Mandate of the Monitoring Group

6. The mandate of the Monitoring Group is,
   a. to review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
   b. to determine if the matter is one that requires a response from the Law Society; and,
   c. to prepare a response for review and approval by Convocation.

7. The mandate further states that where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps, as he or she deems appropriate. In such instances, the Monitoring Group shall report on the matters at the next meeting of Convocation.

8. On September 20, 2007, Convocation approved the following recommendations, which expanded the Monitoring Group's mandate:

   a. That the Monitoring Group explore the possibility of developing a network of organizations, and work collaboratively with them, to address human rights violations against judges and lawyers.

   b. That the Monitoring Group be authorized to collaborate with the Law Society of Zimbabwe (the "LSZ") to assist it in strengthening its self-regulation capabilities and the independence of the profession.

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR 2011 – 2012

9. The list of Public Education Equality and Rule of Law Series events is presented at Appendix 4.

Appendix 1

REPORT ON THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL FOR THE LAW SOCIETY OF UPPER CANADA

For the period from January 1, 2011 to June 30, 2011

Prepared By Cynthia Petersen
Discrimination and Harassment Counsel

A. DESCRIPTION OF DHC SERVICES

1. The DHC provides confidential information, advice and services to individuals who report discriminatory or harassing behaviour by lawyers or paralegals in Ontario. The Program's mandate is restricted to complaints based on the prohibited grounds of discrimination enumerated in the *Ontario Human Rights Code* and the Law Society's *Rules of Professional Conduct.*

2. Complaints arise in a variety of different contexts and are based on a wide spectrum of grounds. For example, over the years, the DHC has received complaints from clients who reported sexual harassment and/or sexual assault by their own lawyer, from paralegals who have alleged discriminatory behaviour by opposing counsel in litigation, from lawyers who reported discrimination based on pregnancy and/or who encountered workplace difficulties upon returning from a maternity leave, and from articling students with disabilities who confronted challenges in obtaining appropriate workplace accommodation.

3. The DHC provides complainants with information, coaching, safe counsel, referrals to other agencies and resources, informal mentoring and general advice – some on an ongoing basis. The DHC does not provide legal advice. The DHC does not have any investigative powers and does not engage in fact-finding.

4. Complainants who contact the DHC are advised of various avenues of redress open to them, including:

   - speaking to their union representative (where applicable);
   - filing an internal complaint within their workplace;
   - making a complaint to the law firm, company, union, government agency or legal clinic that employs the respondent lawyer;
   - filing an Application with the Human Rights Tribunal of Ontario;
   - filing a complaint with the Law Society;
   - where appropriate, contacting the police; and
   - contacting a lawyer for advice regarding possible legal claims.

5. Complainants are also provided with information about their options, including:

- what (if any) disbursements (eg. filing fees) might be involved in pursuing a particular course of action;
- referral to resources on how to obtain legal representation (actual referrals to lawyers are not made by the DHC);
- how to file a complaint, Application or report (eg. whether it can be done electronically, whether particular forms are required, etc);[1]
- the steps and processes involved in each option (eg. investigation, conciliation, mediation, hearing, etc.);
- what types of remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, public interest remedies); and
- the existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to applicable limitation periods).

6. Complainants are informed that the options available to them are not mutually exclusive.

7. In some cases, upon request, strategic tips and coaching are provided to complainants about how to handle a situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).

8. Some complainants are referred to other agencies/organizations (such as the Ontario Lawyer's Assistance Plan or the Human Rights Legal Support Centre) or are directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

9. In addition to being advised about the above-noted options, where appropriate, complainants are offered the mediation or conciliation services of the DHC Program.

10. Whenever formal mediation is offered, the nature and purpose of mediation is explained to the complainant, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in negotiating the terms of a mutually satisfactory resolution of the complaint. When a complainant opts for mediation, s/he is given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass his/her willingness to participate.[2] If both parties are willing to participate, they are required to sign a mediation agreement prior to entering into discussions with the DHC (confirming, among other things, their understanding that the process is confidential, voluntary, and without prejudice). Parties frequently attend mediation sessions with representatives.

[1] The DHC does not assist complainants in drafting complaints.
[2] Written consent must be provided before the DHC contacts the respondent.

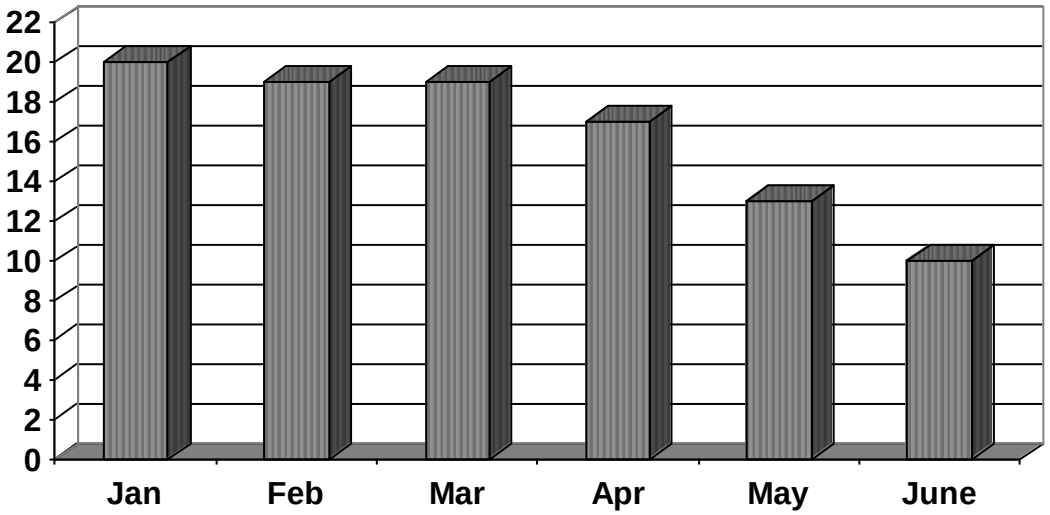
11. Where informal conciliation services are offered, the complainant is advised that the DHC could contact the respondent confidentially to discuss the complainant's concerns, in the hope of achieving a resolution to the complaint. Where such an intervention in requested, both the complainant and respondent are advised that the DHC is not acting as the complainant's representative, but rather as a go-between to facilitate constructive dialogue between the parties.

B. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

12. During this six month reporting period (January 1 to June 30, 2011), 98 individuals contacted the DHC Program with a new matter. [3]

13. Not every contact involved a complaint of discrimination or harassment within the Program mandate (i.e., some complaints were outside the Program mandate and some new contacts consisted of general inquiries, rather than complaints). A breakdown of the new matters is provided below, including data with respect to those matters that involved discrimination and harassment complaints.

14. During this reporting period, there was an average of 16.3 new contacts per month, which is slightly higher than the average (14.7 per month) over the past 8 years. The volume of new contacts was distributed as follows:



15. Of the 98 individuals who contacted the DHC, 63 (64%) used the telephone to make t heir initial contact, 34 (35%) used email, and one person used a fax transmission.

16. During this reporting period, one individual was provided services in French. All of the other clients were served in English.

[3] Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same matter are not counted in this number.

C. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

17. Despite the higher volume of new contacts with the Program, there was no increase in the number of discrimination and harassment complaints received. Of the 98 new contacts with the Program, 20 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal. This is below the average volume of complaints (28.6 complaints per 6 month period) over the past 8 years, but fluctuation in the number of complaints received is typical,[4] so this does not necessarily represent a downward trend in complaints.

18. Of the 20 complaints received, 3 were about paralegals. The remaining 17 complaints were about lawyers.

19. Of the 3 complaints regarding paralegals, one was made by a lawyer, one was made by a paralegal, and one was made by a member of the public.

20. Of the 17 complaints against lawyers, 8 (47%) were made by members of the public and 9 (53%) were made by members of the Law Society.

D. COMPLAINTS AGAINST LAWYERS FROM MEMBERS OF THE BAR

21. In this reporting period, there were 9 complaints against lawyers by members of the Law Society. Eight (8) of these complaints were made by lawyers and 1 was made by an articling student. None was made by a paralegal.

22. Of the 9 complaints by members of the legal profession, 5 (56%) were made by women and 4 (44%) were made by men. The articling student complaint was made by a man.

23. Six (6) of the 8 complaints by lawyers (75%) arose in the context of the complainant's employment (or search for employment). The other 2 complaints arose between lawyers who were professionally acquainted but did not work together. The articling student complaint arose in the context of the complainant's employment.

24. There were 5 complaints based (in whole or in part) on sex. Of these,
- three (3) involved allegations of sexual harassment,
- one (1) included pregnancy as a ground of discrimination, and
- one (1) involved allegations of discrimination based on gender.

25. Two (2) of the sexual harassment complaints were made by female lawyers. Both women complained about the conduct of male co-workers who were senior to them in the context of their employment. One of the complaints included allegations that the respondent was spreading false rumours about the complainant within their workplace,

[4] There was a total of 66 complaints in 2003, 78 complaints in 2004, 60 complaints in 2005, 56 complaints in 2006, 35 complaints in 2007, 43 complaints in 2008, 66 complaints in 2009 and 54 complaints in 2010.

to the effect that she was having an "affair" with a male partner in their law firm and was thereby achieving undeserved progress within the firm. The third sexual harassment complaint was made by a male lawyer who alleged that a female lawyer (not a workplace colleague) was harassing him since he terminated a consensual sexual relationship with her. The alleged harassment included disparaging comments posted on the internet, which the complainant believed could adversely impact his legal career.

26. The female lawyer who complained about pregnancy-related discrimination at work also complained about discrimination based on family status (i.e., discriminatory practices and systemic barriers to career advancement for mothers in her workplace).

27. A male lawyer complained about comments made by a female lawyer (not a workplace colleague), which he characterized as sexist (anti-male) and which he believed to be damaging to his legal career.

28. There were 2 complaints based on race. Both complainants were men from racialized minorities; one was a lawyer and the other was an articling student. Both complained about disrespectful treatment in their workplace and about systemic barriers to advancement within their employment.

29. There was 1 complaint based on disability. An unemployed lawyer with a disability complained about systemic barriers to obtaining employment and about inappropriate/discriminatory questions asked by prospective employers (lawyers) during job interviews.

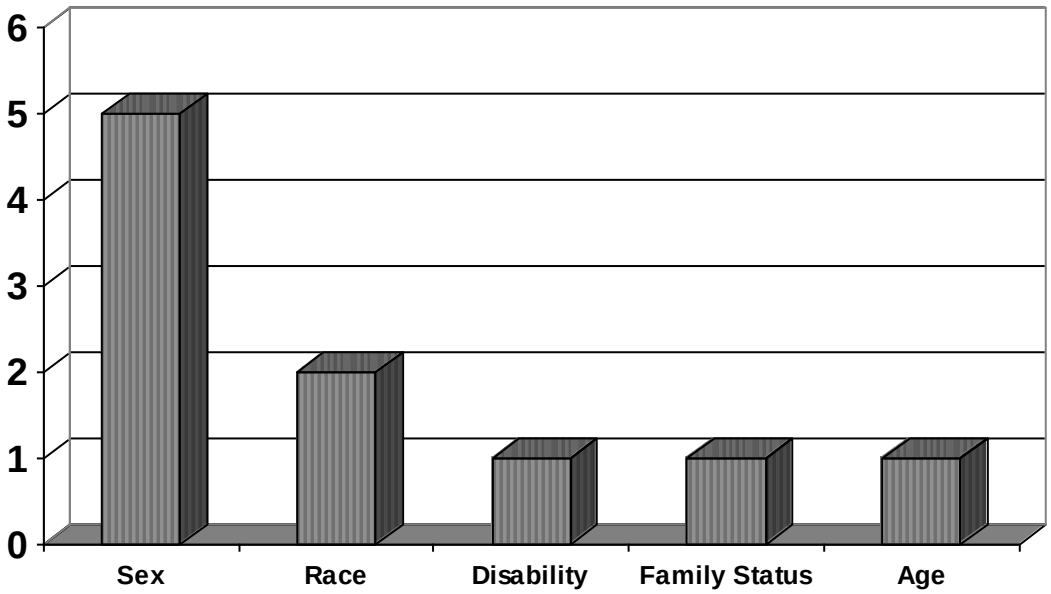
30. There was also 1 discrimination complaint made by a lawyer based on age. The complainant alleged that she was being forced to retire from work because of her age.

31. In summary, the number of complaints[5] by lawyers and law students in which each of the following prohibited grounds of discrimination was raised are:

•	sex	5	(3 sexual harassment; 1 pregnancy)
•	race	2	
•	disability	1	
•	family status	1	
•	age	1	

[5] The total number exceeds 9 because some complaints involved multiple grounds of discrimination.

Grounds Raised in Complaints by Members of the Bar



E. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

32. During this reporting period, there were 8 complaints against lawyers made by members of the public.

33. Six (6) of the public complaints (75%) were made by women and 2 (25%) were made by men.

34. Of the 8 public complaints:

- five (5) involved clients complaining about their own lawyer (or a lawyer that they attempted to retain);
- one (1) involved an employee complaining about a lawyer in her workplace;
- one (1) involved a litigant who was complaining about the conduct of opposing counsel in his case; and
- one (1) involved a litigant who was complaining about the conduct of a lawyer appointed to mediate his case.

35. There were 4 complaints based on sex. All of the sex discrimination complaints were made by women and all were complaining about the conduct of male lawyers.

36. Two (2) of the sex discrimination complaints were made by clients. One woman reported that her male lawyer used profanities and sexist language, including calling a female judge a “bitch”. The other woman complained that her lawyer engaged in gender-based bullying and spoke to her in a demeaning and sexist manner.

37. Two (2) of the sex discrimination complaints included allegations of sexual harassment. One of the sexual harassment complaints was made by a legal assistant in the context of her employment (i.e., she reported that her male boss was making unwelcome sexual comments and advances). The other sexual harassment complaint was made by a woman who alleged that a male lawyer offered to provide pro bono legal services to her while they were involved in a consensual sexual relationship, then subsequently billed her for the services after she terminated their relationship. She reported that he was pressuring her to resume their relationship and offering to waive payment of his account if she agreed.

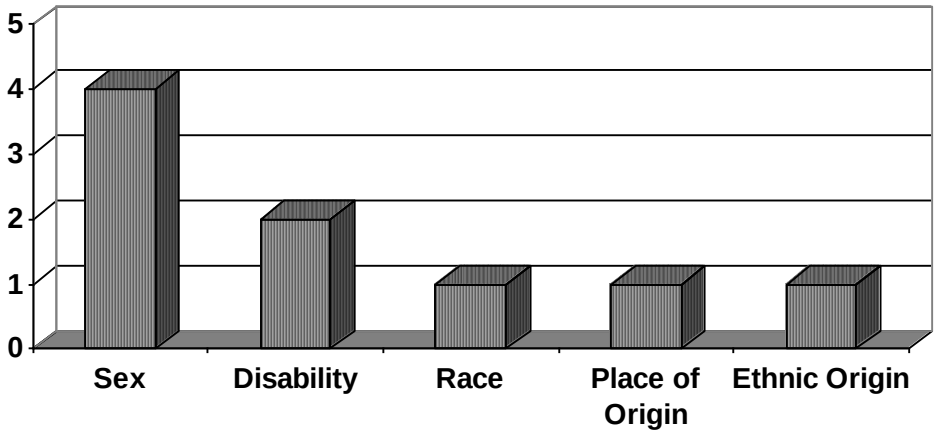
38. There were 2 public complaints based (in whole or in part) on race, ethnic origin and/or place of origin. Both were client complaints. One woman reported that her lawyer provided her with inadequate services and treated her disrespectfully; she believed that she was being mistreated by the lawyer based on her race and ethnicity. Another woman reported that a lawyer at a legal clinic made inappropriate comments that reflected negative stereotypical thinking based on her country of origin.

39. There were 2 complaints based on disability. One litigant with a disability complained about disparaging discriminatory remarks allegedly made by a lawyer appointed to mediate his case. Another litigant with a disability reported that demeaning discriminatory remarks were made by opposing counsel in his case.

40. In summary, the number of public complaints[6] in which each of the following grounds of discrimination was raised are as follows:

- sex 4 (2 sexual harassment)
- disability 2
- race 1
- ethnic origin 1
- place of origin 1

Grounds Raised in Public Complaints



[6] The total exceeds 8 because some complaints were based on multiple grounds of discrimination.

F. COMPLAINTS AGAINST LAWYERS BY PARALEGALS

41. In this reporting period, there were no complaints against lawyers by paralegals.

G. COMPLAINTS AGAINST PARALEGALS

42. In this reporting period, the DHC received 3 complaints about paralegals. Two (2) of the complaints were about the same paralegal. A male lawyer and a male member of the public both independently complained about racist hate speech published by a male paralegal.

43. The third complaint was made by a self-identified lesbian paralegal about a male colleague, who was also a paralegal. She reported that he "outed" her (i.e., disclosed her sexual orientation) in her workplace without her consent. She believed he had done this in a deliberate effort to undermine her professional relationships with clients and co-workers.

H. MEDIATION / CONCILIATION

44. Complainants often decline the offer of the DHC's mediation and conciliation service, notwithstanding that the service is free, confidential, and in the case of formal mediation, is subject to a mutual "without prejudice" undertaking by both parties. The reasons why complainants decline mediation are varied and include: the complainant prefers to have a fact-finding investigation, the complainant believes that the respondent will not participate in good faith, the complainant wants to create a formal record of the respondent's misconduct through an adjudicative process, and the complainant wants discipline imposed upon the Respondent.

45. During this reporting period, only 5 complainants requested mediation and/or conciliation services. The respondents agreed to participate in every case.

46. Two (2) formal in-person mediation sessions were conducted. One was successful (involving a sexual harassment complaint by a legal assistant against her boss) and the other did not produce a resolution to the complaint (involving allegations of anti-male sexist remarks by a female lawyer).

47. In addition to the 2 mediation sessions described above, 3 informal interventions were conducted by the DHC during this reporting period.

- Upon the request of a male lawyer complaining about harassment by a female lawyer with whom he had had a consensual sexual relationship, the DHC contacted the respondent to discuss the complainant's concerns, including his allegations of on-line harassment. The respondent denied responsibility for the alleged conduct, so no mutually agreed upon resolution was reached, but the complainant subsequently reported that the harassment had ceased.
- Upon the request of a woman who reported that her ex-boyfriend was trying to pressure her into resuming a romantic relationship with him by offering to waive his legal fees for work that he had previously agreed to perform pro bono, the DHC contacted the respondent lawyer to discuss the complainant's concerns. A satisfactory resolution to the situation was achieved through the DHC's intervention.

- Upon the request of a woman who complained about inappropriate remarks made by a clinic lawyer (based on her place of origin), the DHC contacted the respondent and conveyed the complainant's concerns. A satisfactory resolution was achieved through the DHC 's intervention.

G. SUMMARY OF GENERAL INQUIRIES

48. Of the 98 new contacts with the DHC during this reporting period, 24 involved general inquiries. These contacts included:

- inquiries by law firms about how to handle internal harassment complaints;
- questions about the scope of the DHC Program's mandate;
- questions about the services offered by the DHC and confidentiality;
- requests for promotional materials about the DHC Program;
- inquiries about the data collected by the DHC;
- inquiries about the Law Society's complaints process;
- questions from law firms about the availability of model policies on equity issues ; and
- questions from lawyers with disabilities and pregnant lawyers about how to handle disclosure of their condition to their employer.

H. MATTERS OUTSIDE THE DHC MANDATE

49. During this reporting period, the DHC received 54 calls and emails relating to matters outside the Program's mandate.

50. These contacts included a few cases of workplace harassment that did not involve complaints about a lawyer or paralegal.

51. Most of these cases involved harassment complaints against lawyers that did not relate to any human rights issues or prohibited grounds of discrimination (eg. bullying, demeaning and intimidating behaviour by co-workers, employers, and opposing counsel). There were also a number of complaints of unprofessional conduct by lawyers that did not involve allegations of discrimination or harassment (eg. lack of civility, unethical practices, breach of client confidentiality, failure to make appropriate disclosure, failure to act on client instructions, failure to keep client informed, sharp practice, etc.).

52. In addition, some individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case. (These individuals were referred to the Law Society's Lawyer Referral Sevice.)

53. An explanation of the scope of the DHC Program's mandate was provided to each person.

54. Although there is a high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

I. PROMOTIONAL AND EDUCATIONAL ACTIVITIES

55. The LSUC maintains a bilingual website for the DHC Program.

56. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.

57. Throughout this reporting period, periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program.

58. The *Law Times* published a couple of articles about the DHC Program's activities (upon its own initiative).

59. The DHC delivered an annual lecture to all first year students at the University of Windsor Law School, on the topic of Promoting Equity within a Self-Regulated (Legal) Profession.

60. The DHC works closely with the Law Society's Equity Advisor (Josée Bouchard) to design and deliver Workplace Discrimination and Harassment Prevention and Workplace Violence Prevention workshops to law firms across the province. In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the DHC Program's services.

61. This past spring (May 2011), the DHC and Josée Bouchard also delivered a half-day CLE workshop on preventing and responding to discrimination and harassment in the workplace, designed specifically for small firms and sole practitioners. The workshop was co-sponsored by the OBA and LSUC and was approved for CPD credits by the Law Society.

Appendix 4

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR
2011 – 2012

JOURNÉE FRANCO-ONTARIENNE
September 22, 2011
Convocation Hall (6:00 p.m. – 8:00 p.m.)

LOUIS RIEL DAY
November 16, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

BLACK HISTORY MONTH
February 7, 2012
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

INTERNATIONAL WOMEN'S DAY
March 2, 2012
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

LA JOURNEE DE LA FRANCOPHONIE
Wednesday, March 21, 2012
Convocation Hall (6:00 p.m. – 8:00 p.m.)

RULE OF LAW SERIES
March 28 or 29, 2012 (tentative)
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

HOLOCAUST REMEMBRANCE DAY
April 17, 2012
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ASIAN AND SOUTH ASIAN HERITAGE MONTH
May 17, 2012
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ACCESS AWARENESS – LEGAL SYMPOSIUM ON DISABILITY ISSUES
June 6, 2012
Lamont Learning Centre (4:00 p.m. – 8:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

NATIONAL ABORIGINAL HISTORY MONTH
June 2012
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

PRIDE WEEK
June 21, 2012
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

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

(1) Copies of two letters from Mr. Robert Amsterdam dated May 31, 2011 Re Urgent Appeal, Threat against legal counsel to the Thai political opposition.
(Appendix 2, pages 21 – 33)

(2) Copy of letter from Treasurer Laurie H. Pawlitza to Pol. Gen. Pracha Promnok, Minister of Justice, Kingdom of Thailand dated August 16, 2011 Re Lawyer Robert Amsterdam.
(Appendix 3, pages 34 – 35)

Professional Development and Competence Committee Report
- Certified Specialist Board Appointments

Report to Convocation
September 22, 2011

Professional Development & Competence Committee

COMMITTEE MEMBERS

Thomas Conway (Chair)
Mary Louise Dickson (V-Chair)
Alan Silverstein (V-Chair)
Constance Backhouse
Larry Banack
Jack Braithwaite
John Callaghan
Cathy Corsetti
Adriana Doyle
Larry Eustace
Alan Gold
Howard Goldblatt
Susan Hare
Jacqueline Horvat
George Hunter
Vern Krishna
Michael Lerner
Dow Marmur
Wendy Matheson
Susan McGrath
Janet Minor
Barbara Murchie
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Linda Rothstein

Catherine Strosberg
Joseph Sullivan
Robert Wadden
Peter Wardle

Purpose of Report: Information

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

COMMITTEE PROCESS

1. The Committee considered the issue discussed in this report in July 2011. The following Committee members participated: Thomas Conway (Chair), Mary Louise Dickson, Alan Silverstein (V-Chair), Constance Backhouse, Larry Banack, Jack Braithwaite, John Callaghan, Cathy Corsetti, Adriana Doyle, Larry Eustace, Alan Gold, Howard Goldblatt, Susan Hare, Jacqueline Horvat, Michael Lerner, Dow Marmur, Wendy Matheson, Susan McGrath, Janet Minor, Barbara Murchie, Judith Potter, Nicholas Pustina, Jack Rabinovitch, Linda Rothstein, Catherine Strosberg, Joseph Sullivan, Robert Wadden and Peter Wardle.

INFORMATION

APPOINTMENTS TO CERTIFIED SPECIALIST BOARD

2. By-law 15 establishes the Certified Specialist Board. The by-law is set out at http://www.lsuc.on.ca/media/bylaw15.pdf.

3. The Professional Development & Competence Committee is specifically authorized in section 3(2) of the By-law to appoint the members of the Certified Specialist Board.[1] The Board is to consist of not fewer than eight and not more than 12 persons as follows:

   - Two benchers who are certified specialists
   - One lay bencher
   - Not fewer than five and not more than nine persons who are certified specialists who are not benchers.

4. The persons appointed to the Certified Specialist Board hold office for a term not exceeding three years and are eligible for re-appointment.

5. There was a vacancy for one bencher member of the Board. In July 2011 the PD&C Committee appointed bencher Joseph Sullivan, a Certified Specialist in Civil Litigation, to the Board. Mr. Sullivan fills the vacancy left by the late Bonnie Tough.

[1] In addition, section 2 of By-law 15 also sets out the Committee's exercise of powers as follows:

Exercise of powers by Committee

2. The performance of any duty, or the exercise of any power, given to the Committee under this By-Law is not subject to the approval of Convocation.

6. The PD&C Committee was also asked to appoint a new Certified Specialist Board Chair. The previous chair was Gerald Swaye, who has been an important contributor to the Board for many years and has in depth knowledge of the Certified Specialist program. Mr. Swaye is now a life bencher. He has agreed to remain on the Board for a period of time as a non-voting liaison.

7. Bencher Janet Leiper, a Certified Specialist in Criminal Law, is already on the Certified Specialist Board. In July 2011 the PD&C Committee appointed Ms. Leiper as Chair.

Tribunals Committee Report
- Tribunals Office Quarterly Statistics

Report to Convocation
September 22, 2011

Tribunals Committee

Committee Members
Raj Anand (Chair)
Adriana Doyle (Vice-Chair)
Jack Braithwaite
Christopher Bredt
Paul Dray
Howard Goldblatt
Jennifer Halajian
Dow Marmur
Wendy Matheson
Linda Rothstein
Mark Sandler
Beth Symes
Robert Wadden
Peter Wardle

Purposes of Report: Information

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

COMMITTEE PROCESS

1. The Committee met on September 8, 2011. Committee members Raj Anand (Chair), Jack Braithwaite, Christopher Bredt, Paul Dray, Howard Goldblatt, Jennifer Halajian, Dow Marmur, Wendy Matheson, Linda Rothstein, Mark Sandler, Beth Symes, Robert Wadden and Peter Wardle attended. Staff members Grace Knakowski, Lisa Mallia, Elliot Spears, Sophia Sperdakos and Jim Varro also attended.

INFORMATION

TRIBUNALS OFFICE QUARTERLY STATISTICS

2. The Tribunals Office's first and second quarter reports for the period ending January 1-March 31, 2011 and April 1, 2011 - June 30, 2011 are set out at Appendices 1 and 2.

APPENDIX 1

TRIBUNALS
OFFICE
STATISTICS

2011

The Law Society of Upper Canada
January 1 to March 31

First Quarter Report

TABLE OF CONTENTS

FILES OPENED

The Tribunals Office opens a file when it is issued upon the filing of an originating process that has been served on the parties. An originating process includes a notice of application, a notice of referral for hearing, a notice of motion for interlocutory suspension or practice restriction, and a notice of appeal.

Files related to the same lawyer or paralegal that are heard concurrently are counted as separate files.

	Q1	Q2	Q3	Q4	Cumulative
Total Files	**36** (39)[1]				**36** (39)
Lawyer	34				34
Paralegal	2				2
Hearing Files	**29** (30)				**29** (30)
Lawyer	27				27
Paralegal	2				2
Appeal Files	**7** (9)				**7** (9)
Lawyer	7				7
Paralegal	0				0

[1] Numbers in parentheses are 2010 figures.

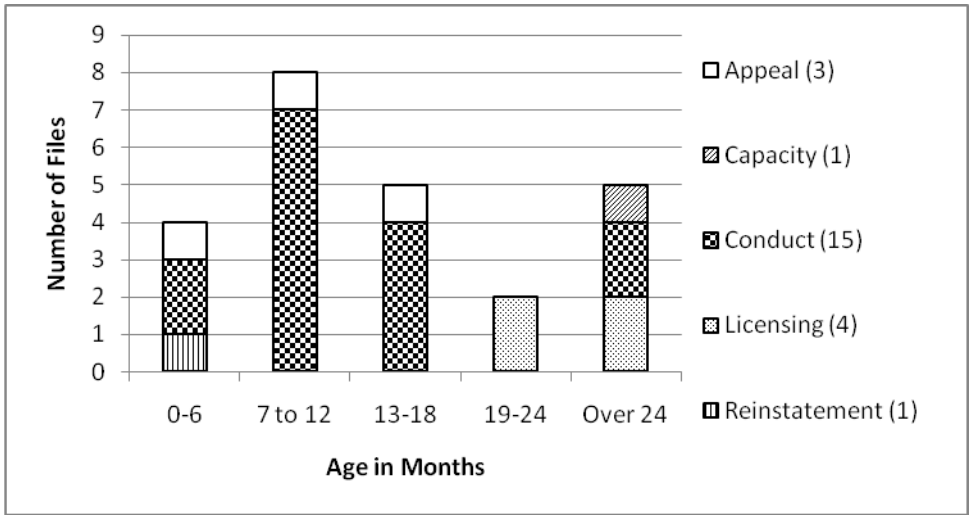
FILES CLOSED

The Tribunals Office closes a file after the final decision and order, and reasons if any, have been sent to the parties or published. A file that is closed in a quarter may have been opened in that same quarter or anytime prior.

	Q1	Q2	Q3	Q4	**Cumulative**
Total Files	**24** (38)[2]				**24** (38)
Lawyer	17				17
Paralegal	7				7
Hearing Files	**21** (34)				**21** (34)
Lawyer	15				15
Paralegal	6				6
Appeal Files	**3** (4)				**3** (4)
Lawyer	2				2
Paralegal	1				1

[2] Numbers in parentheses are 2010 figures.

AGE OF FILES CLOSED

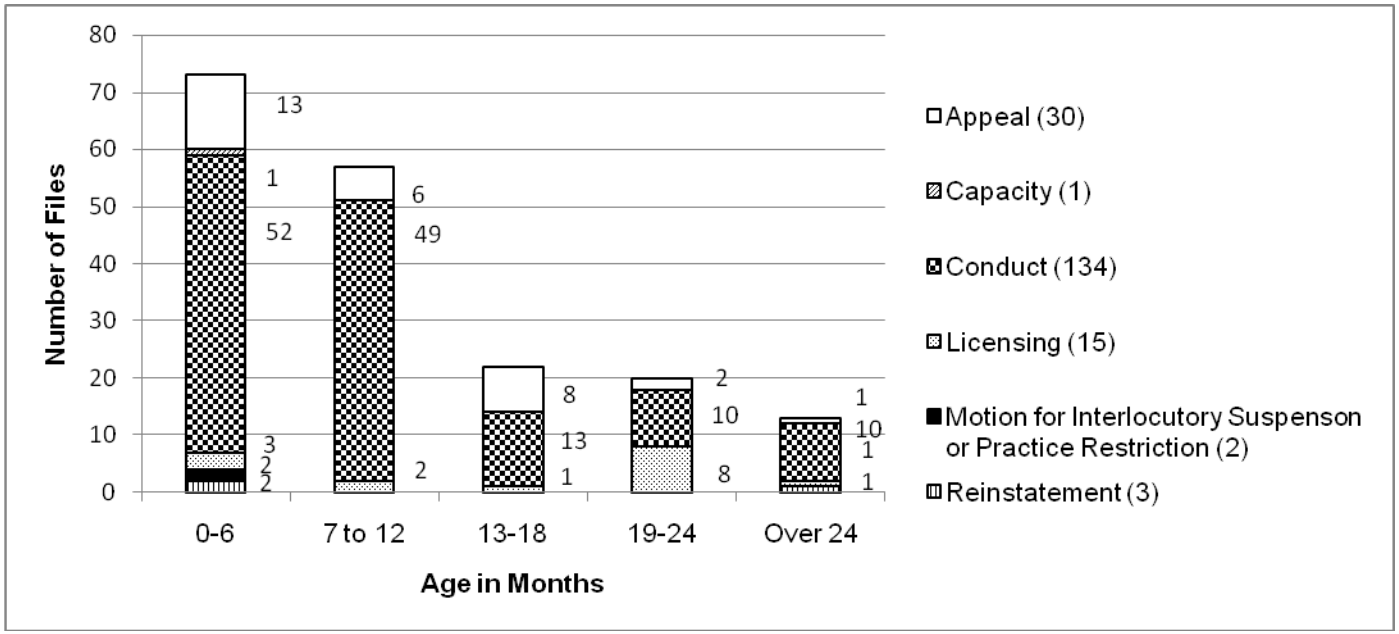


OPEN FILES AT QUARTER-END

	Q1	Q2	Q3	Q4
Total Files	**185** (155)[3]			
Lawyer	157			
Paralegal	28			
Hearing Files	**155** (134)			
Lawyer	134			
Paralegal	21			
Appeal Files	**30** (21)			
Lawyer	23			
Paralegal	7			

[3] Numbers in parentheses are 2010 figures.

OPEN FILES BY AGE



OPEN FILES BY AGE – OVER 24 MONTHS

A File A, a reinstatement application, was filed with the Tribunals Office in April 2000, but the lawyer did not pursue the application until February 2008. A proceeding management conference ("PMC") is scheduled for June 2011. Age of file: 131 months.

B File B, an admission application, was filed with the Tribunals Office in September 2006. The matter was held down pending the outcome of a court matter in which the applicant is a witness. Hearing commenced in March 2011 and was adjourned to continue in April 2011. Age of file: 55 months.

C File C, a conduct application, was filed with the Tribunals Office in October 2006. The matter concluded in November 2008 and was appealed. The appeal was allowed. A PMC is scheduled for April 2011. Age of file: 53 months.

D File D, a conduct application, was filed with the Tribunals Office in February 2007. The hearing panel's March 5, 2009 decision and order was appealed. The appeal panel's June 18, 2010 decision set aside the hearing panel's finding of professional misconduct and ordered a new hearing before a differently constituted hearing panel. The matter was heard in February 2011. The hearing panel reserved its decision on penalty. Age of file: 49 months.

E File E, a conduct application, was filed with the Tribunals Office in March 2007. The hearing panel heard a number of motions and began hearing the merits in 2009. The matter is scheduled to be heard in May 2011. Age of file: 49 months.

F File F, an appeal, was filed with the Tribunals Office in April 2008. The appeal was filed before the merits were determined. Once the merits were determined, the appellant advanced the appeal. The appeal was heard in November 2010. The appeal panel reserved its decision. Age of file: 35 months.

G File G, a conduct application, was filed with the Tribunals Office in December 2008. The hearing panel's reasons on finding were sent in July 2010. A hearing on penalty was heard in November 2010 and in February 2011. The hearing panel rendered its decision and order, but is preparing written reasons. Age of file: 28 months.

H File H, a conduct application, was filed with the Tribunals Office in January 2009. The lawyer brought a motion seeking to dismiss or stay the conduct application permanently. The motion was dismissed on March 17, 2010. The lawyer brought a judicial review application to the Superior Court of Justice which was dismissed. The hearing is to be scheduled. Age of file: 26 months.

I File I, a conduct application, was filed with the Tribunals Office in January 2009. The hearing is scheduled to proceed in April 2011. Age of file: 26 months.

J File J, a conduct application, was filed with the Tribunals Office in February 2009. The hearing panel reserved on finding in February 2011. Age of file: 25 months.

K File K, a conduct application, was filed with the Tribunals Office in March 2009. The hearing panel reserved on disposition in February 2011 and is preparing written reasons. Age of file: 24 months.

SUMMARY[4] FILES OPENED AND CLOSED[5]

	Q1	Q2	Q3	Q4	**Cumulative**
Total Opened	**8** (13)[6]				**8** (13)
Lawyer	**7** (11)				**7** (11)
Paralegal	**1** (2)				**1** (2)

[4] A summary file is a proceeding that is first returnable to a hearing panel and bypasses the PMC in accordance with Rule 11.01 (2) of the Rules of Practice and Procedure. These files are heard by a single adjudicator.
[5] This is a subset of the information provided in the chart, "Files Opened" on page 3 and "Files Closed" on page 4.
[6] Numbers in parentheses are 2010 figures for the same quarter.

Total Closed	**3** (5)				**3** (5)
Lawyer	**3** (5)				**3** (5)
Paralegal	**0** (0)				**0** (0)

OPEN SUMMARY FILES AT QUARTER END

	Q1	Q2	Q3	Q4
Total Files	**27** (24)			
Lawyer	**24** (21)			
Paralegal	**3** (3)			

NUMBER OF LAWYERS AND PARALEGALS AND NUMBER OF APPEARANCES BEFORE THE TRIBUNALS

Some lawyers and paralegals appear before the tribunal more than once in a quarter. The lawyer or paralegal is counted only once in the "No. of Lawyers / Paralegals" column, but each appearance is captured in the "No. of Appearances" column.

	Q1		Q2		Q3		Q4		Yearly Total	
	No. of Lawyers / Paralegals	No. of Appearances	No. of Lawyers / Paralegals	No. of Appearances	No. of Lawyers / Paralegals	No. of Appearances	No. of Lawyers / Paralegals	No. of Appearances	No. of Lawyers / Paralegals	No. of Appearances

PMC	**68** (70)[7]	**141** (149)							**68** (70)	**141** (149)
Lawyers	58	119							58	119
Paralegals	10	22							10	22
Hearing Panel	**60** (53)	**91** (55)							**60** (53)	**91** (55)
Lawyers	50	73							50	73
Paralegals	10	18							10	18
AMT	**11** (7)	**17** (7)							**11** (7)	**17** (7)
Lawyers	9	14							9	14
Paralegals	2	3							2	3
Appeal Panel	**13** (8)	**17** (9)							**13** (8)	**17** (9)
Lawyers	8	12							8	12
Paralegals	5	5							5	5

NUMBER OF FILES AND FREQUENCY BEFORE THE TRIBUNALS

Files heard on more than one occasion by a tribunal within a quarter are counted each time the file proceeds before the tribunal.

	Q1		Q2		Q3		Q4		Yearly Total	
	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered
PMC	**73** (70)[8]	**143** (149)							**73** (70)	**143** (149)
Lawyer	60	121							60	121
Paralegal	13	22							13	22

[7] Numbers in parentheses are 2010 figures.
[8] Numbers in parentheses are 2010 figures.

Hearing Panel	**69** (54)	**91** (55)							**69** (54)	**91** (55)
Lawyer	57	73							57	73
Paralegal	12	18							12	18
AMT	**11** (7)	**17** (7)							**11** (7)	**17** (7)
Lawyer	9	14							9	14
Paralegal	2	3							2	3
Appeal Panel	**15** (8)	**17** (9)							**15** (8)	**17** (9)
Lawyer	10	12							10	12
Paralegal	5	5							15	5

TOTAL HEARINGS[9] SCHEDULED AND VACATED

A hearing is counted as scheduled when the date the hearing is to proceed falls within the quarter. A hearing is counted as vacated when it does not proceed on the scheduled date. Reasons for vacated hearings are noted on page 11.

	Q1	Q2	Q3	Q4	**Cumulative**
Hearing Panel hearings scheduled	**112** (81)[10]				**112** (81)
Lawyer	90				90
Paralegal	22				22
Hearing Panel hearings vacated	**25** (26) **22%** (32%)				**25** (26) **22%** (32%)
Lawyer	20				20
Paralegal	5				5

[9] Files scheduled on more than one occasion within a quarter are counted each time the file is scheduled.
[10] Numbers in parentheses are 2010 figures.

Appeal Panel hearings scheduled	**18** (12)				**18** (12)
Lawyer	13				13
Paralegal	5				5
Appeal Panel hearings vacated	**2** (4) **11%** (33%)				**2** (4) **11%** (33%)
Lawyer	2				2
Paralegal	0				0

REASON FOR VACATED HEARINGS[11]

Reason	**Q1**[12]		Q2		Q3		Q4	
	L[13]	**P**	L	P	L	P	L	P
Party to bring motion	5							
Party to obtain / provide additional evidence	3							
Licensee counsel newly retained / unprepared	3							
Application abandoned	2							
Party illness	2							
Party unavailable	2							
Panel member conflicted	1							
To permit pre-hearing conference	1							
Seized panel member unavailable	1							
Law Society required time to investigate new complaint	1							
Request to have applications heard together	1	2						

[11] A hearing may have been vacated for more than one reason.
[12] This column represents the number of times the reason resulted in a vacated hearing.
[13] L = lawyer, P = paralegal

Party is subject of other conduct / court matters		2						
Matter not reached		1						

LONG MATTER HEARINGS SCHEDULED AND VACATED[14]

Long matter hearings are hearings that the parties estimate will require more than one day to complete. A long matter hearing is counted as vacated when the first attendance does not proceed on the or all of the scheduled date(s).

Reasons for vacated long matter hearings are noted on pages 13 and 14.

	Q1	Q2	Q3	Q4	**Cumulative**
Long Matter hearings – scheduled	**37** (39)[15]				**37** (39)
Lawyer	28				28
Paralegal	9				9
All hearing time requested used	**11** (16) **30%** (41%)				**11** (16) **30%** (41%)
Lawyer	8				8
Paralegal	3				3
All hearing time requested vacated	**15** (16) **40%** (41%)				**15** (16) **40%** (41%)
Lawyer	11				11
Paralegal	4				4
Some hearing time requested vacated	**11** (7) **30%** (18%)				**11** (7) **30%** (18%)
Lawyer	9				9
Paralegal	2				2

[14] This is a subset of the information provided in the chart, "Total Hearings Scheduled and Vacated" on page 10.
[15] Numbers in parentheses are 2010 figures.

REASON FOR VACATED LONG MATTER HEARINGS[16]

All hearing time requested vacated	**Q1**[17]		Q2		Q3		Q4	
	L[18]	**P**	L	P	L	P	L	P
Licensee counsel newly retained / unprepared	3							
Party to obtain / provide additional evidence	2							
Party to bring a motion	2							
Application abandoned	2							
Party illness	1							
Party unavailable	1							
Party is subject of other conduct / court matters		2						
Matter not reached		1						
Hearing time used for a motion(s)		1						

[16] A hearing may have been vacated for more than one reason.
[17] This column represents the number of times the reason resulted in a vacated hearing.
[18] L = lawyer, P = paralegal

Some hearing time requested vacated	**Q1**		Q2		Q3		Q4	
	L	**P**						
ASF expected / signed	4	2						
Hearing completed ahead of time estimated	1							
Party to obtain / provide additional evidence	1							
Seized panel member(s) unavailable	1							
Party to bring a motion	1							
Licensee counsel newly retained / unprepared	1							
Key witness unavailable	1							
Abandoned / withdrawn	1							
Counsel unavailable	1							

CALENDAR DAYS SCHEDULED AND VACATED

A vacated calendar day is a day on which no scheduled hearings proceeded. The day an adjournment request is heard is not counted as a vacated calendar day. For example, if a request to adjourn a long matter hearing was granted on the first day, only the remaining days are counted as vacated. Or, if a short matter hearing was vacated, but other hearings proceeded, that day is not counted as vacated. Some hearings and appeals were heard on the same calendar day.

Reasons for vacated calendar days are noted on page 16.

	Q1	Q2	Q3	Q4	**Cumulative**
Number of available calendar days	**62** (62)[19]				**62** (62)
Hearing Panel calendar days scheduled	**52** (48)				**52** (48)
Hearing Panel calendar days vacated	**5** (5) **10%** (10%)				**5** (5) **10%** (10%)
Appeal Panel calendar days scheduled	**25** (16)				**25** (16)
Appeal Panel calendar days vacated	**2** (3) **8%** (19%)				**2** (3) **8%** (19%)

[19] Numbers in parentheses are 2010 figures.

REASON FOR AND RESULTING VACATED CALENDAR DAYS

Reason	**Q1**[20]	Q2	Q3	Q4
Party ill	**7-3**			
Licensee counsel newly retained / unprepared	**4-4**			
Party to obtain / provide additional evidence	**3-3**			
ASF expected / signed	**3-3**			
Party to bring a motion	**3-2**			
Counsel unavailable	**1-1**			
Panel member conflicted	**1-1**			
Investigation of new complaint	**1-1**			

[20] The first figure in this column represents the number of times a panel accepted this reason. The second figure represents the resulting vacated calendar days. The number of calendar days vacated shown on this page is greater than the calendar days vacated as reported on page 15 because more than one matter may have been scheduled to be heard on the same day and all were vacated; so one calendar day may have been vacated for more than one reason and for more than one matter.

ADJOURNMENT REQUESTS

The following table lists the number of adjournment requests to Law Society tribunals in this quarter. Adjournment requests reported below may relate to matters scheduled to be heard during this quarter or in a subsequent quarter.

Adjournment requests made to		**Requests**								
		Q1[21]		Q2		Q3		Q4		**Cumulative**
		L	**P**	L	P	L	P	L	P	
PMC	Granted	**15** (6)	**2** (4)							**17** (10)[22]
	Denied	**4** (0)	**1 (**2)							**5** (2)
Hearing Panel	Granted	**17** (12)	**3** (7)							**20** (19)
	Denied	**2** (0)	**1** (2)							**3** (2)
Appeal Management Tribunal (AMT)	Granted	**1** (0)	**0** (0)							**1** (0)
	Denied	**0** (0)	**1** (0)							**1** (0)
Appeal Panel	Granted	**1** (4)	**0** (1)							**1** (5)

[21] L = lawyer, P = paralegal
[22] Numbers in parentheses are 2010 figures.

	Denied	**0** (0)	**1** (0)							**1** (0)

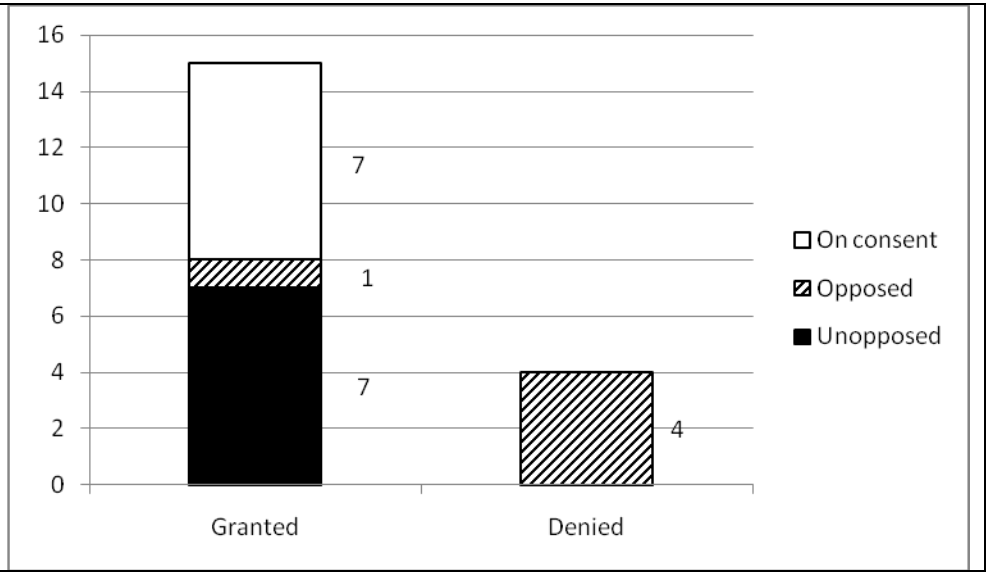
PARTIES' POSITION ON ADJOURNMENT REQUESTS (LAWYER MATTERS)

Adjournment Requests Granted by the PMC
Total: 15

On Consent	7
Opposed	1
Unopposed	7

Adjournment Requests Denied by the PMC
Total: 4

On Consent	0
Opposed	4
Unopposed	0

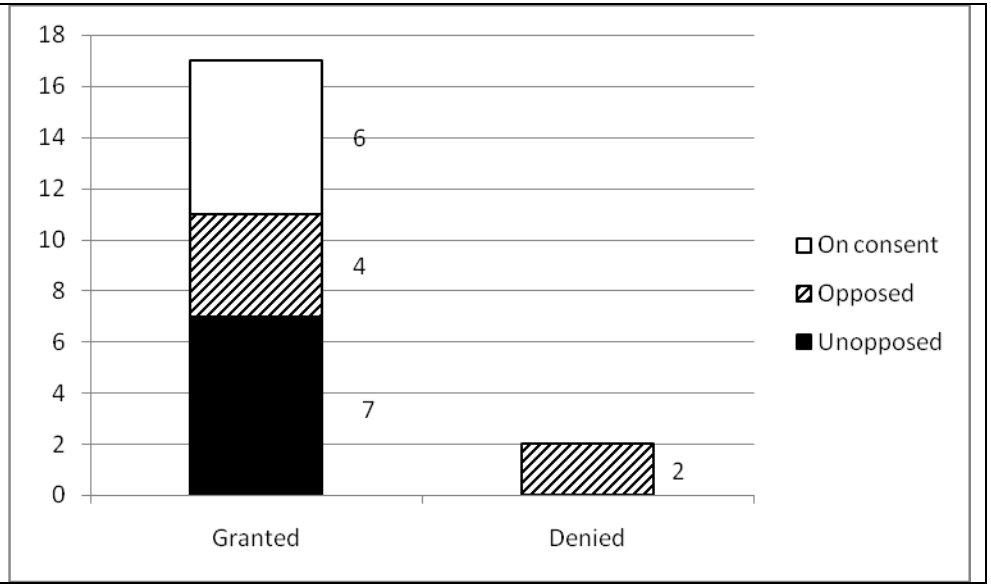


Adjournment Requests Granted by the Hearing Panel
Total: 17

On Consent	6
Opposed	4
Unopposed	7

Adjournment Requests Denied by the Hearing Panel
Total: 2

On Consent	0
Opposed	2
Unopposed	0



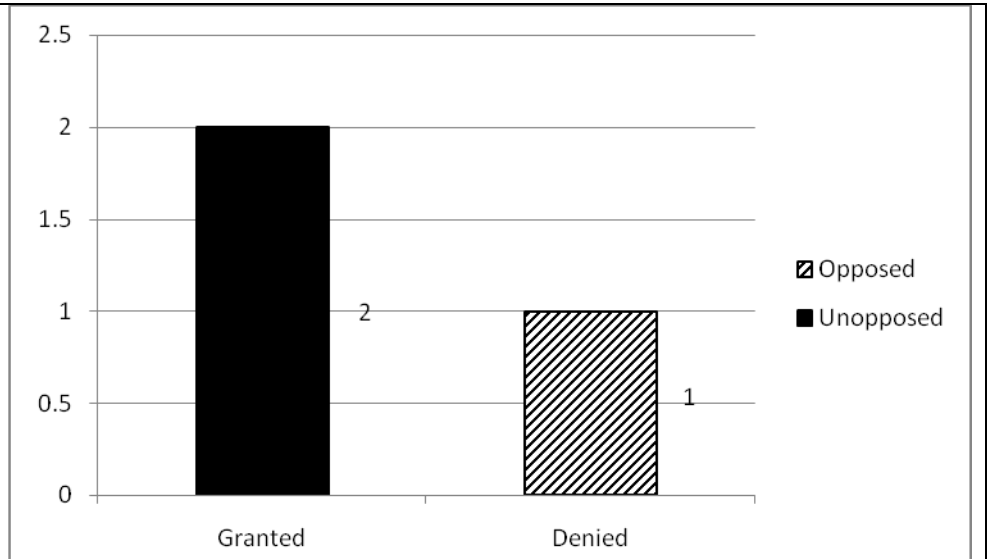
PARTIES' POSITION ON ADJOURNMENT REQUESTS (PARALEGAL MATTERS)

Adjournment Requests Granted by the PMC
Total: 2

On Consent	0
Opposed	0
Unopposed	2

Adjournment Requests Denied by the PMC
Total: 1

On Consent	0
Opposed	1
Unopposed	0

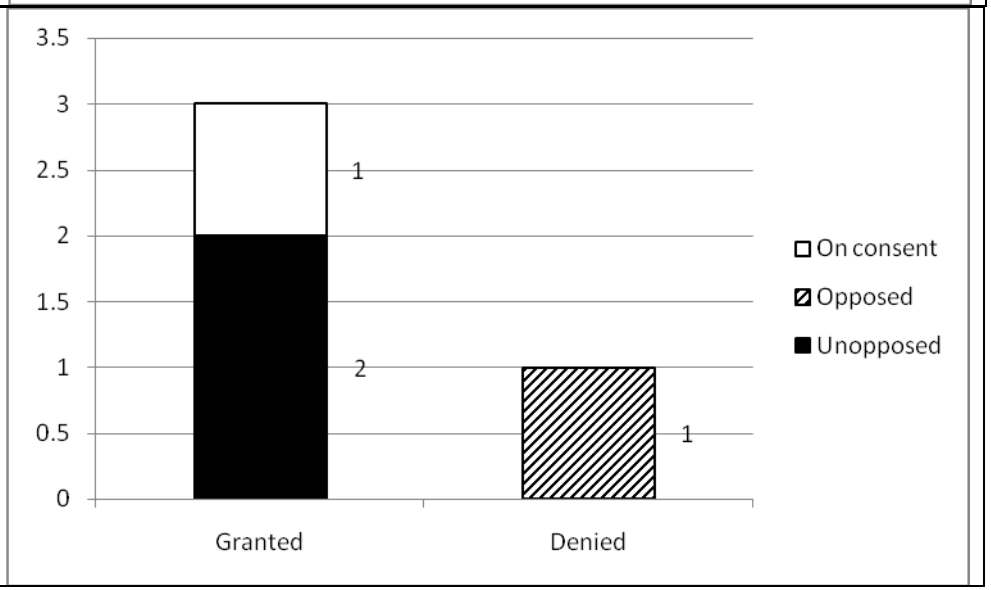


Adjournment Requests Granted by the Hearing Panel
Total: 3

On Consent	1
Opposed	0
Unopposed	2

Adjournment Requests Denied by the Hearing Panel
Total: 1

On Consent	0
Opposed	1
Unopposed	0



TRIBUNAL REASONS PRODUCED AND PUBLISHED[23]

	Q1	Q2	Q3	Q4	**Cumulative**
Written reasons produced	**33** (32)[24]				**33** (32)
Lawyer	24				24
Paralegal	9				9
Written reasons published	**32** (32)				**32** (32)
Lawyer	23				23
Paralegal	9				9
Oral reasons produced	**46** (15)				**42** (15)
Lawyer	39				39
Paralegal	7				7
Oral reasons published	**5** (1)				**5** (1)
Lawyer	5				5
Paralegal	0				0

[23] The number of reasons produced does not equal the number of reasons published because some reasons produced in a quarter may not be published or will be published in a subsequent quarter.
[24] Numbers in parentheses are 2010 figures.

APPENDIX 2

TABLE OF CONTENTS

Tribunals Office Statistics

2011

The Law Society of Upper Canada
April 1 to June 30

Second Quarter Report

FILES OPENED

The Tribunals Office opens a file when it is issued upon the filing of an originating process that has been served on the parties. An originating process includes a notice of application, a notice of referral for hearing, a notice of motion for interlocutory suspension or practice restriction, and a notice of appeal.

Files related to the same lawyer or paralegal that are heard concurrently are counted as separate files.

	Q1	**Q2**	Q3	Q4	**Cumulative**
Total Files	36 (39)	**42** (42)[25]			**78** (81)
Lawyer	34	33			67
Paralegal	2	9			11
Hearing Files	29 (30)	**36** (37)			**65** (67)
Lawyer	27	29			56

[25] Numbers in parentheses are 2010 figures.

Paralegal	2	7			9
Appeal Files	7 (9)	**6** (5)			**13** (14)
Lawyer	7	4			11
Paralegal	0	2			2

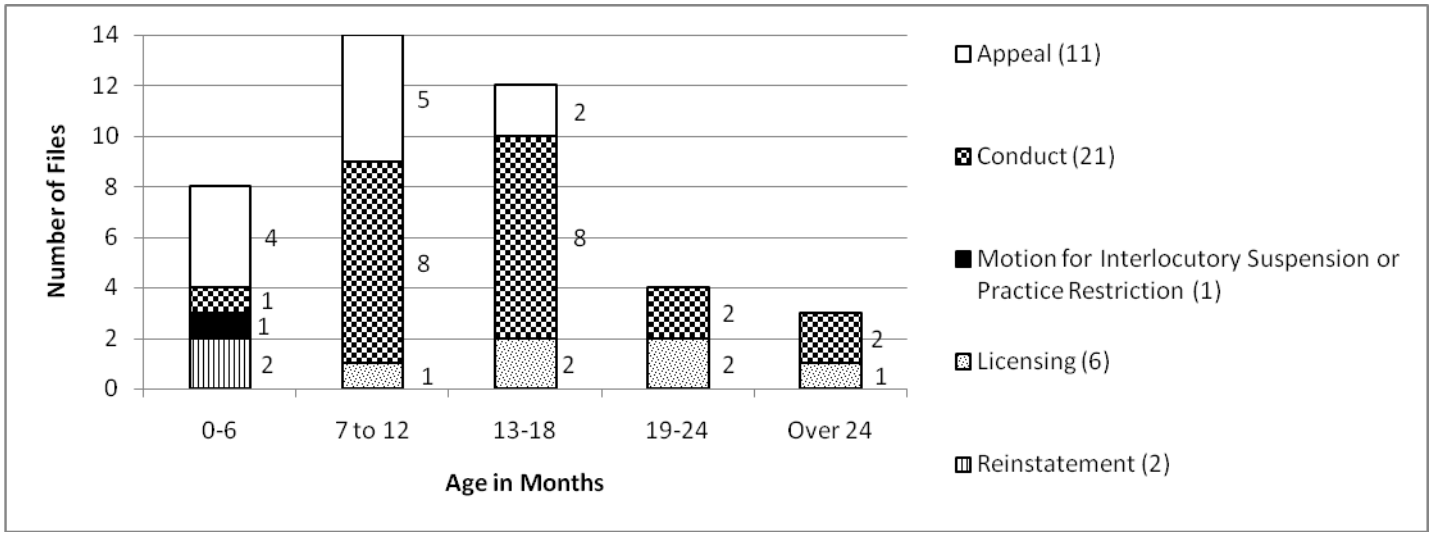
FILES CLOSED

The Tribunals Office closes a file after the final decision and order, and reasons if any, have been sent to the parties or published. A file that is closed in a quarter may have been opened in that same quarter or anytime prior.

	Q1	**Q2**	Q3	Q4	**Cumulative**
Total Files	24 (38)	**41** (38)[26]			**65** (76)
Lawyer	17	31			48
Paralegal	7	10			17
Hearing Files	21 (34)	**30** (31)			**51** (65)
Lawyer	15	24			39
Paralegal	6	6			12
Appeal Files	3 (4)	**11** (7)			**14** (11)
Lawyer	2	7			9
Paralegal	1	4			5

[26] Numbers in parentheses are 2010 figures.

AGE OF FILES CLOSED



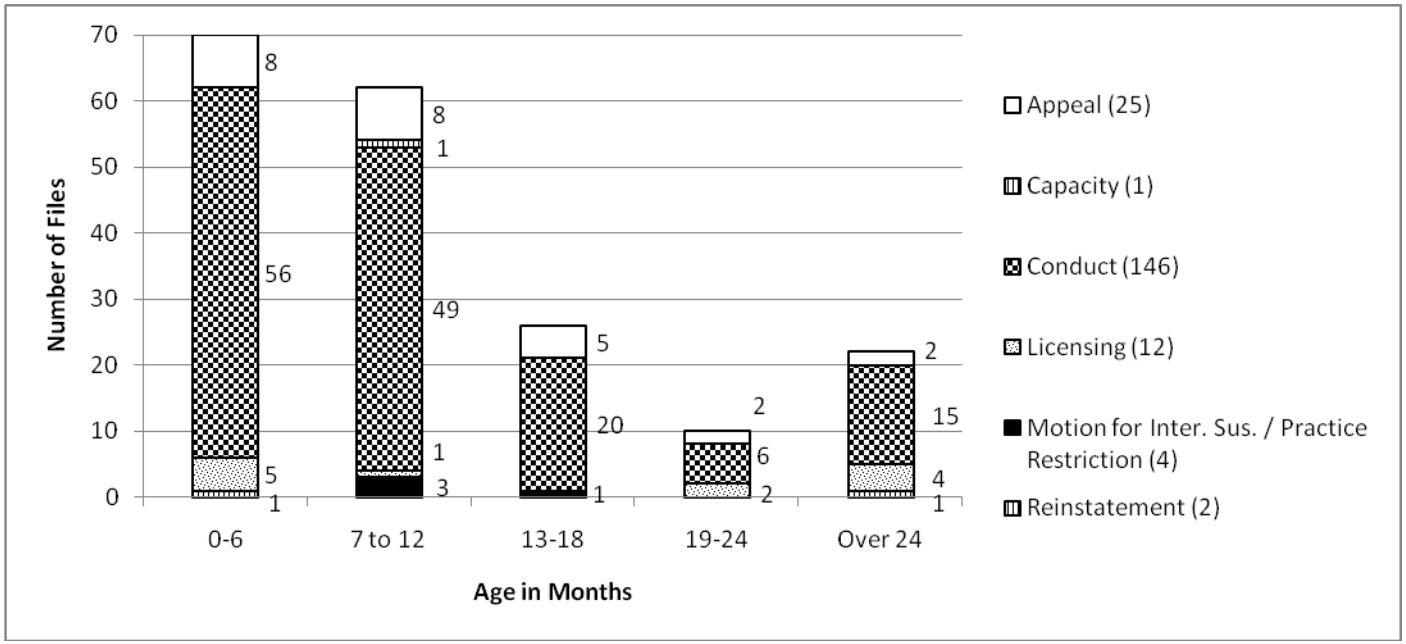
OPEN FILES AT QUARTER-END

	Q1	**Q2**	Q3	Q4
Total Files	185 (155)	**190** (167)[27]		
Lawyer	157	164		
Paralegal	28	26		
Hearing Files	155 (134)	**165** (148)		
Lawyer	134	144		
Paralegal	21	21		
Appeal Files	30 (21)	**25** (19)		

[27] Numbers in parentheses are 2010 figures.

Lawyer	23	20		
Paralegal	7	5		

OPEN FILES BY AGE



OPEN FILES BY AGE – OVER 24 MONTHS

A File A, a reinstatement application, was filed with the Tribunals Office in April 2000, but the lawyer did not pursue the application until February 2008. The parties are awaiting updated medical information. A proceeding management conference ("PMC") is scheduled for September 2011. Age of file: 134 months.

B File B, a conduct application, was filed with the Tribunals Office in August 2006. The hearing panel's December 10, 2009 decision and order was appealed. The appeal panel's May 4, 2011 decision allowed the appeal on certain particulars and upheld the findings in relation to other particulars. A new hearing was ordered before a newly constituted hearing panel. The hearing is scheduled for September 2011.

C File C, an admission application, was filed with the Tribunals Office in September 2006. The matter was held down pending the outcome of a court matter in which the applicant was a witness. The hearing commenced in March 2011 and concluded in April 2011. The hearing panel reserved its decision. Age of file: 58 months.

D File D, a conduct application, was filed with the Tribunals Office in October 2006. The matter concluded in November 2008 and was appealed. The appeal was allowed. A new hearing is scheduled to commence in July 2011. Age of file: 56 months.

E File E, a conduct application, was filed with the Tribunals Office in February 2007. The hearing panel's March 5, 2009 Decision and Order was appealed. The appeal panel's June 18, 2010 decision set aside the hearing panel's finding of professional misconduct and ordered a new hearing before a differently constituted hearing panel. The matter was heard in February 2011. The hearing panel made a finding of professional misconduct and reserved its decision on penalty. Age of file: 52 months.

F File F, a conduct application, was filed with the Tribunals Office in March 2007. The hearing panel heard a number of motions and began hearing the merits in 2009. The panel ordered the matter to be case managed. A newly comprised hearing panel heard the matter in May and June 2011. Continuation dates are set for October and November 2011. Age of file: 52 months.

G File G, an appeal, was filed with the Tribunals Office in April 2008. The appeal was filed before the merits were determined. Once the merits were determined, the appellant advanced the appeal. The appeal was heard in November 2010. The appeal panel reserved its decision. Age of file: 38 months.

H File H, a conduct application, was filed with the Tribunals Office in December 2008. The hearing panel's reasons on finding were released in July 2010. A hearing on penalty was heard in November 2010 and February 2011. The hearing panel rendered its Decision and Order dated February 25, 2011 and is preparing written reasons. Age of file: 31 months.

I File I, a conduct application, was filed with the Tribunals Office in January 2009. The lawyer brought a motion seeking to dismiss or stay the conduct application permanently. The motion was dismissed on March 17, 2010. The lawyer brought a judicial review application to the Superior Court of Justice which was dismissed. The conduct hearing is scheduled for October 2011. Age of file: 29 months.

J File J, a conduct application, was filed with the Tribunals Office in February 2009. The hearing panel reserved on finding in February 2011. Age of file: 28 months.

K & L Files K and L, conduct applications, are being heard together. They were filed with the Tribunals Office in May 2009. Several motions regarding proceeding in the absence of the public and waiving privilege were heard. The hearing on the merits has commenced and dates are scheduled into January 2012. Age of files: 26 months.

M File M, a licensing application, was commenced in May 2009. The hearing panel's March 31, 2010 Decision and Order dismissing the application for licensing was appealed. The appeal panel's October 6, 2010 decision set aside the hearing panel's decision and order and ordered a new hearing before a differently constituted hearing panel. The hearing occurred in June 2011 and the panel reserved its decision. Age of file: 26 months.

N File N, a conduct application, was commenced in May 2009. The hearing panel rendered its Decision and Order in December 2010 and is preparing written reasons. Age of file: 25 months.

O File O, a conduct application was commenced in May 2009. Following two motions, the matter was completed and the hearing panel rendered its decision and order on the merits in July 2010. Submissions on costs and further submissions regarding the agreed statement of facts were heard in September and November 2010 and January 2011. The panel ruled on costs in January 2011 and is preparing written reasons. Age of file: 25 months.

P File P, a licensing application, was commenced in June 2009. The applicant is waiting for the decision of another tribunal before continuing with this application. The matter is scheduled to attend before a PMC in September 2011. Age of file: 25 months.

Q File Q, an appeal, was commenced in June 2009. There have been several motions on the appeal and numerous appearances before the Appeals Management Tribunal ("AMT"), who is case managing the proceeding, most recently in May 2011. Age of file: 24 months.

R File R, a licensing application, was commenced in June 2009. Several motions were brought by the applicant and one by the Law Society. The hearing on the merits is scheduled to commence in July 2011.

S File S, a conduct application, was commenced in June 2009. The parties spent considerable time working on an agreed statement of facts and the matter was being case-managed including several appearances at pre-hearing conferences. Additional matters requiring investigation came to the attention of the Law Society in January 2011. The hearing on the merits is scheduled to commence in September 2011.

SUMMARY[28] FILES OPENED AND CLOSED[29]

	Q1	**Q2**	Q3	Q4	**Cumulative**
Total Opened	8 (13)	**11** (6)[30]			**19** (19)
Lawyer	7 (11)	10 (6)			17
Paralegal	1 (2)	1 (0)			2
Total Closed	3 (5)	**8** (7)			**11** (12)
Lawyer	3 (5)	8 (6)			11
Paralegal	0 (0)	0 (1)			0

OPEN SUMMARY FILES AT QUARTER END

	Q1	**Q2**	Q3	Q4
Total Files	27 (24)	**30** (23)		
Lawyer	24 (21)	26 (21)		
Paralegal	3 (3)	4 (2)		

[28] A summary file is a proceeding that is first returnable to a hearing panel and bypasses the PMC in accordance with Rule 11.01 (2) of the Rules of Practice and Procedure. These files are heard by a single adjudicator.
[29] This is a subset of the information provided in the chart, “Files Opened” on page 3 and “Files Closed” on page 4.
[30] Numbers in parentheses are 2010 figures for the same quarter.

NUMBER OF LAWYERS AND PARALEGALS AND NUMBER OF APPEARANCES BEFORE THE TRIBUNALS

Some lawyers and paralegals appear before the tribunal more than once in a quarter. The lawyer or paralegal is counted only once in the "No. of Lawyers / Paralegals" column, but each appearance is captured in the "No. of Appearances" column.

	Q1		**Q2**		Q3		Q4		**Yearly Total**[31]	
	No. of Lawyers / Paralegals	No. of Appearances	No. of Lawyers / Paralegals	No. of Appearances	No. of Lawyers / Paralegals	No. of Appearances	No. of Lawyers / Paralegals	No. of Appearances	No. of Lawyers / Paralegals	No. of Appearances
PMC	68 (70)[32]	141 (149)	**65** (71)	**110** (120)					**102** (99)	**251** (269)
Lawyers	58	119	59	98					88	217
Paralegals	10	22	6	12					14	34
Hearing Panel	60 (53)	91 (55)	**64** (51)	**103** (81)					**99** (89)	**194** (136)
Lawyers	50	73	54	89					83	162
Paralegals	10	18	10	14					16	32
AMT	11 (7)	17 (7)	**7** (5)	**15** (7)					**14** (10)	**32** (14)
Lawyers	9	14	6	12					11	26
Paralegals	2	3	1	3					3	6

[31] The Yearly Total of the "No. of Lawyers / Paralegals" will not equal the sum of the "No. of Lawyers / Paralegals" in Q1 to Q2 because this figure excludes lawyers and paralegals that appeared in more than one quarter.
[32] Numbers in parentheses are 2010 figures.

Appeal Panel	13 (8)	17 (9)	**8** (8)	**9** (8)					**20** (14)	**26** (17)
Lawyers	8	12	7	8					14	20
Paralegals	5	5	1	1					6	6

NUMBER OF FILES AND FREQUENCY BEFORE THE TRIBUNALS

Files heard on more than one occasion by a tribunal within a quarter are counted each time the file proceeds before the tribunal.

	Q1		Q2		Q3		Q4		Yearly Total[33]	
	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered
PMC	73 (70)	143 (149)	**68** (75)[34]	**114** (127)					**110** (102)	**257** (276)
Lawyer	60	121	62	102					93	223
Paralegal	13	22	6	12					17	34
Hearing Panel	69 (54)	91 (55)	**66** (52)	**108** (81)					**112** (92)	**199** (136)
Lawyer	57	73	54	92					92	165
Paralegal	12	18	12	16					20	34
AMT	11 (7)	17 (7)	**7** (5)	**15** (7)					**14** (10)	**32** (14)
Lawyer	9	14	6	12					11	26
Paralegal	2	3	1	3					3	6
Appeal Panel	15 (8)	17 (9)	**8** (8)	**9** (8)					**22** (14)	**26** (17)
Lawyer	10	12	7	8					16	20
Paralegal	5	5	1	1					6	6

[33] The Yearly Total of "No. of Files" will not equal the sum of the "No. of Files" in Q1 to Q2 because this figure excludes files that were considered in more than one quarter.
[34] Numbers in parentheses are 2010 figures.

TOTAL HEARINGS[35] SCHEDULED AND VACATED

A hearing is counted as scheduled when the date the hearing is to proceed falls within the quarter. A hearing is counted as vacated when it does not proceed on the scheduled date. Reasons for vacated hearings are noted on page 12.

	Q1	**Q2**	Q3	Q4	**Cumulative**
Hearing Panel hearings scheduled	112 (81)[36]	**134** (120)			**246** (201)
Lawyer	90	112			202
Paralegal	22	22			44
Hearing Panel hearings vacated	25 (26) 22% (32%)	**23** (39) **17%** (33%)			**48** (65) **20%** (33%)
Lawyer	20	19			39
Paralegal	5	4			9
Appeal Panel hearings scheduled	18 (12)	**9** (9)			**27** (21)
Lawyer	13	8			21
Paralegal	5	1			6
Appeal Panel hearings vacated	2 (4) 11% (33%)	**1** (1) **11%** (11%)			**3** (5) **11%** (24%)
Lawyer	2	1			3
Paralegal	0	0			0

[35] Files scheduled on more than one occasion within a quarter are counted each time the file is scheduled.
[36] Numbers in parentheses are 2010 figures.

REASON FOR VACATED HEARINGS[37]

Reason	Q1		Q2[38]		Q3		Q4	
	L	P	**L**[39]	**P**	L	P	L	P
Party to bring motion	5		**4**					
Party to obtain / provide additional evidence	3		**4**					
Licensee counsel newly retained / unprepared	3		**2**					
Party / counsel illness	2		**3**					
Application abandoned	2			**1**				
Party unavailable	2		**1**					
Request to have applications heard together	1	2		**1**				
Seized panel member unavailable	1							
Party is subject of other conduct / court matters		2						
Matter not reached		1	**1**					
Panel member conflicted	1							
To permit pre-hearing conference	1							
Law Society required time to investigate new complaint	1			**1**				
Party to retain counsel			**2**					
Agreed statement of facts ("ASF") expected / signed			**1**					
Vacated hearing at request of seized panel			**1**					
Witness unavailable				**1**				

[37] A hearing may have been vacated for more than one reason.
[38] This column represents the number of times the reason resulted in a vacated hearing.
[39] L = lawyer, P = paralegal

LONG MATTER HEARINGS SCHEDULED AND VACATED[40]

Long matter hearings are hearings that the parties estimate will require more than one day to complete. A long matter hearing is counted as vacated when the first attendance does not proceed on the or all of the scheduled dates.

Reasons for vacated long matter hearings are noted on pages 14 and 15.

	Q1	**Q2**	Q3	Q4	**Cumulative**
Long Matter hearings – scheduled	37 (39)	**30** (32)[41]			**67** (71)
Lawyer	28	23			51
Paralegal	9	7			16
All hearing time requested used	11 (16) 30% (41%)	**7** (5) **23%** (15%)			**18** (21) **27%** (30%)
Lawyer	8	5			13
Paralegal	3	2			5
All hearing time requested vacated	15 (16) 40% (41%)	**12** (19) **40%** (60%)			**27** (35) **40%** (49%)
Lawyer	11	9			20
Paralegal	4	3			7
Some hearing time requested vacated	11 (7) 30% (18%)	**11** (8) **37%** (25%)			**22** (15) **33%** (21%)
Lawyer	9	9			18
Paralegal	2	2			4

[40] This is a subset of the information provided in the chart, "Total Hearings Scheduled and Vacated" on page 11.
[41] Numbers in parentheses are 2010 figures.

REASON FOR VACATED LONG MATTER HEARINGS[42]

All hearing time requested vacated	**Q1**		**Q2**[43]		Q3		Q4	
	L	**P**	**L**[44]	**P**	L	P	L	P
Licensee counsel newly retained / unprepared	3		**1**					
Party to bring a motion	2		**3**					
Party to obtain / provide additional evidence	2							
Application abandoned	2							
Party / counsel illness	1		**2**					
Party unavailable	1							
Party is subject of other conduct / court matters		2						
Matter not reached		1	**1**					
Hearing time used for a motion(s)		1						
Party to retain counsel			**1**					
ASF expected / signed			**1**					
Witness unavailable				**1**				
Hearing completed ahead of time estimated				**1**				

[42] A hearing may have been vacated for more than one reason.
[43] This column represents the number of times the reason resulted in a vacated hearing.
[44] L = lawyer, P = paralegal

Some hearing time requested vacated	Q1		**Q2**		Q3		Q4	
	L	P	**L**	**P**	L	P	**L**	**P**
ASF expected / signed	4	2	**4**					
Hearing completed ahead of time estimated	1		**2**					
Party to obtain / provide additional evidence	1							
Seized panel member(s) unavailable	1		**2**					
Party to bring a motion	1		**1**					
Licensee counsel newly retained / unprepared	1			**1**				
Witness unavailable	1							
Abandoned / withdrawn	1							
Counsel unavailable	1							
Party / counsel illness			**1**	**1**				
Party unavailable			**2**					

CALENDAR DAYS SCHEDULED AND VACATED

A vacated calendar day is a day on which no scheduled hearings proceeded. The day an adjournment request is heard is not counted as a vacated calendar day. For example, if a request to adjourn a long matter hearing was granted on the first day, only the remaining days are counted as vacated. Or, if a short matter hearing was vacated, but other hearings proceeded, that day is not counted as vacated. Some hearings and appeals were heard on the same calendar day.

Reasons for vacated calendar days are noted on page 17.

	Q1	**Q2**	Q3	Q4	**Cumulative**
Number of available calendar days	62 (62)	**63** (63)[45]			**125** (125)
Hearing Panel calendar days scheduled	52 (48)	**63** (58)			**115** (106)
Hearing Panel calendar days vacated	5 (5) 10% (10%)	**3** (9) **5%** (16%)			**8** (14) **7%** (13%)
Appeal Panel calendar days scheduled	25 (16)	**19** (10)			**44** (26)
Appeal Panel calendar days vacated	2 (3) 8% (19%)	**3** (1) **16%** (10%)			**5** (4) **11%** (15%)

[45] Numbers in parentheses are 2010 figures.

REASON FOR AND RESULTING VACATED CALENDAR DAYS

Reason	Q1	Q2[46]	Q3	Q4
Party / counsel illness	7-3	**2-2**		
Licensee counsel newly retained / unprepared	4-4			
Party to obtain / provide additional evidence	3-3			
ASF expected / signed	3-3	**2-2**		
Party to bring a motion	3-2			
Counsel unavailable	1-1			
Panel member conflicted	1-1			
Investigation of new complaint	1-1			

[46] The first figure in this column represents the number of times a panel accepted this reason. The second figure represents the resulting vacated calendar days. The number of calendar days vacated shown on this page is greater than the calendar days vacated as reported on page 16 because more than one matter may have been scheduled to be heard on the same day and all were vacated; so one calendar day may have been vacated for more than one reason and for more than one matter.

Hearing completed ahead of time estimated		**2-2**		
Seized panel member(s) unavailable		**2-2**		
Abandoned / withdrawn		**2-2**		
Party unavailable		**1-1**		

ADJOURNMENT REQUESTS

The following table lists the number of adjournment requests to Law Society tribunals in this quarter. Adjournment requests reported below may relate to matters scheduled to be heard during this quarter or in a subsequent quarter.

Adjournment requests made to		Requests								
		Q1		Q2[47]		Q3		Q4		Cumulative
		L	P	L	P	L	P	L	P	
PMC	Granted	15 (6)	2 (4)	**6** (14)	**1** (6)					**24** (30)
	Denied	4 (0)	1 (2)	**4** (0)	**1** (2)					**10** (4)
Hearing Panel	Granted	17 (12)	3 (7)	**27** (40)	**6** (9)					**53** (68)
	Denied	2 (0)	1 (2)	**5** (3)	**2** (2)					**10** (7)
Appeal Management Tribunal (AMT)	Granted	1 (0)	0 (0)	**1** (1)	**0** (0)					**2** (1)
	Denied	0 (0)	1 (0)	**0** (1)	**0** (0)					**2** (1)
Appeal Panel	Granted	1 (4)	0 (1)	**2** (0)	**0** (0)					**3** (5)
	Denied	0 (0)	1 (0)	**0** (0)	**0** (0)					**1** (0)

[47] L = lawyer, P = paralegal

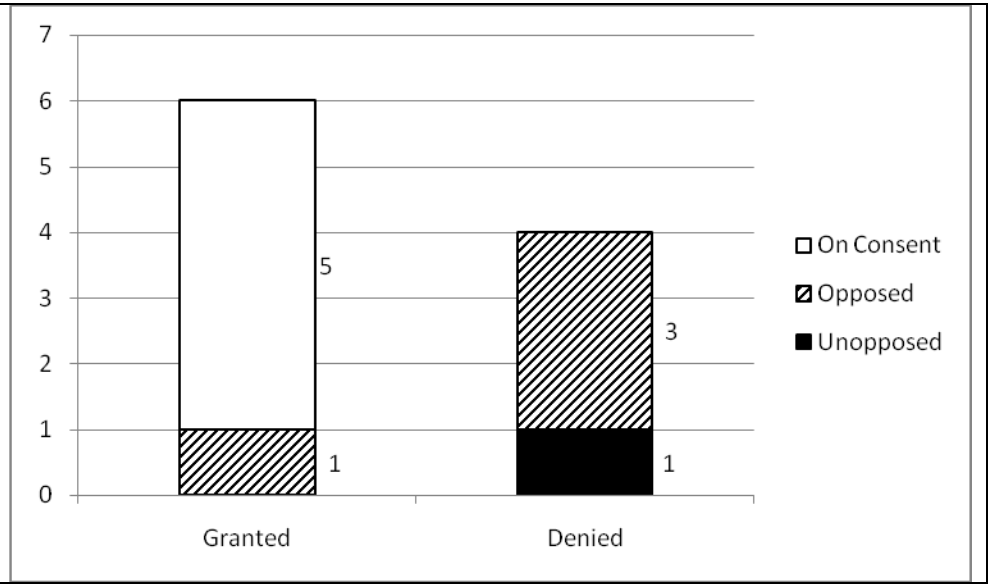
PARTIES' POSITION ON ADJOURNMENT REQUESTS (LAWYER MATTERS)

Adjournment Requests Granted by the PMC
Total: 6

On Consent	5
Opposed	1
Unopposed	0

Adjournment Requests Denied by the PMC
Total: 4

On Consent	0
Opposed	3
Unopposed	1

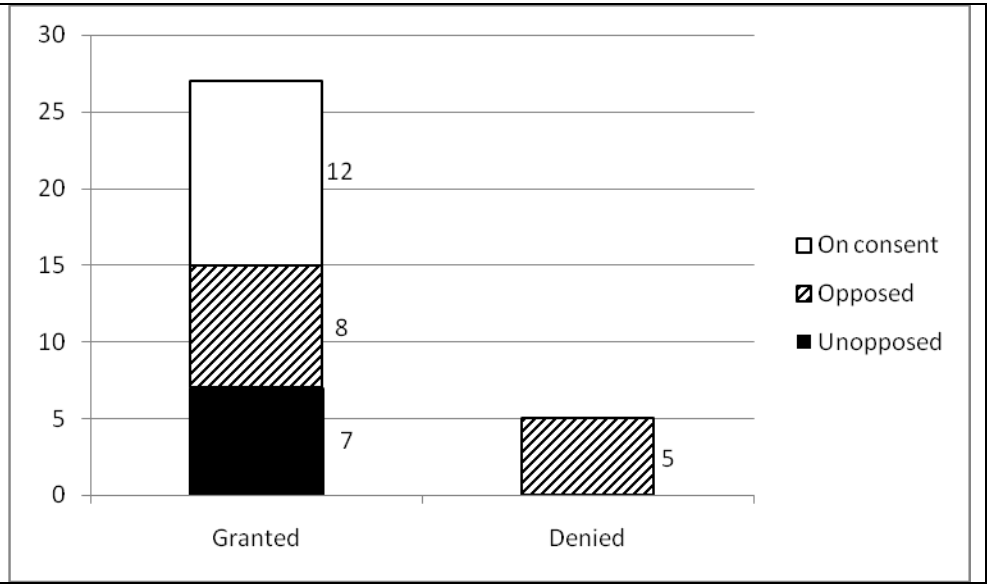


Adjournment Requests Granted by the Hearing Panel
Total: 27

On Consent	12
Opposed	8
Unopposed	7

Adjournment Requests Denied by the Hearing Panel
Total: 5

On Consent	0
Opposed	5
Unopposed	0



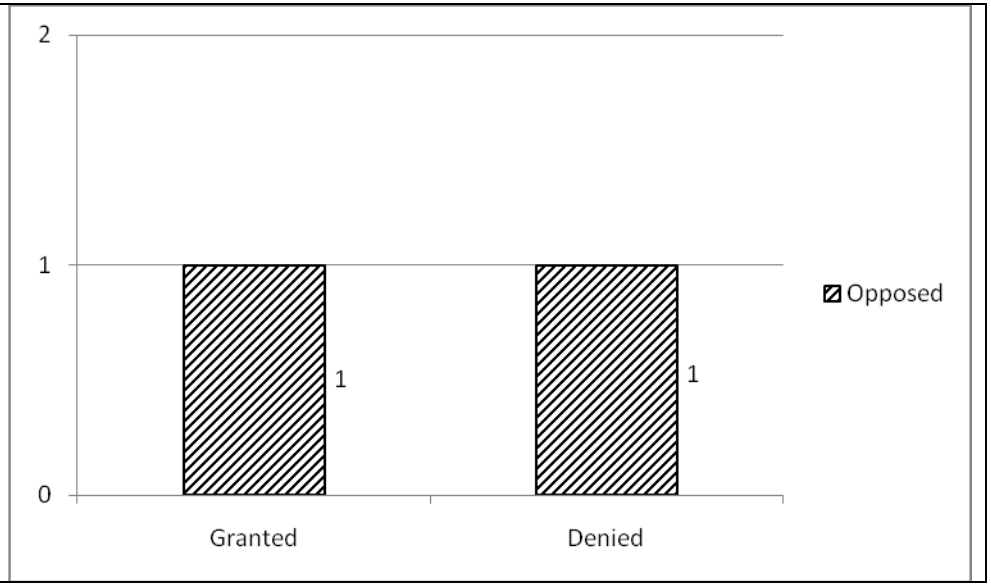
PARTIES' POSITION ON ADJOURNMENT REQUESTS (PARALEGAL MATTERS)

Adjournment Requests Granted by the PMC
Total: 1

On Consent	0
Opposed	1
Unopposed	0

Adjournment Requests Denied by the PMC
Total: 1

On Consent	0
Opposed	1
Unopposed	0

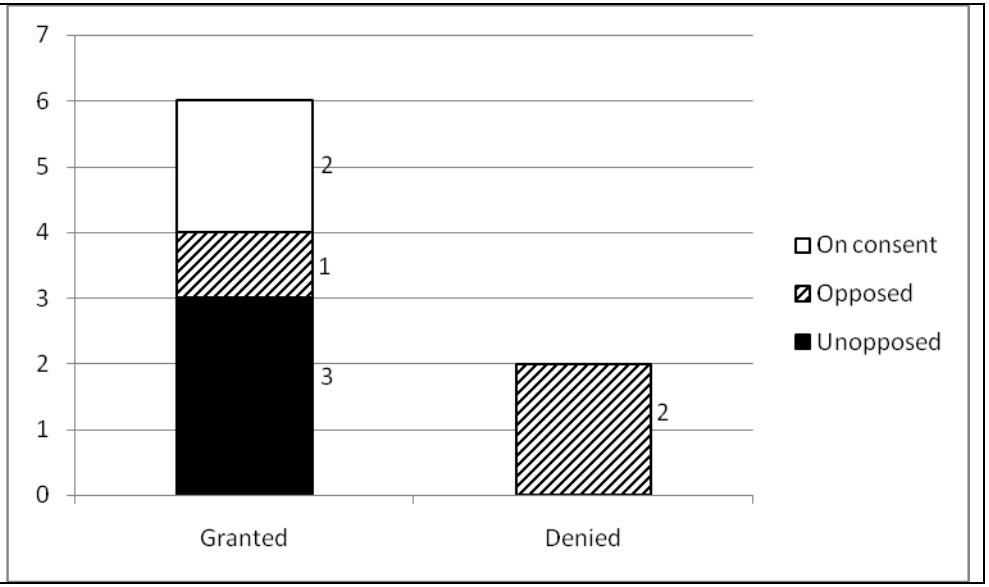


Adjournment Requests Granted by the Hearing Panel
Total: 6

On Consent	2
Opposed	1
Unopposed	3

Adjournment Requests Denied by the Hearing Panel
Total: 2

On Consent	0
Opposed	2
Unopposed	0



TRIBUNAL REASONS PRODUCED AND PUBLISHED[48]

	Q1	Q2	Q3	Q4	Cumulative
Written reasons produced	33 (32)	**36** (30)[49]			**69** (62)
Lawyer	24	24			48
Paralegal	9	12			21
Written reasons published	32 (32)	**30** (28)			**62** (60)
Lawyer	23	19			42

[48] The number of reasons produced does not equal the number of reasons published because some reasons produced in a quarter may not be published or will be published in a subsequent quarter.
[49] Numbers in parentheses are 2010 figures.

Paralegal	9	11			20
Oral reasons produced	46 (15)	**40** (15)			**86** (30)
Lawyer	39	31			70
Paralegal	7	9			16
Oral reasons published	5 (1)	**7** (10)			**12** (11)
Lawyer	5	6			11
Paralegal	0	1			1

CONVOCATION ROSE AT 12:40 P.M.

Confirmed in Convocation this 27th day of October, 2011.

Treasurer