MINUTES OF CONVOCATION

Thursday, 23rd October, 2003
9:00 a.m.

PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Alexander, Arnup, Backhouse, Bobesich, Bourque, Boyd, Campion, Carpenter-Gunn, Caskey, Cass, Chahbar (by telephone), Cherniak, Coffey, Copeland, Dickson, Doyle, Dray, Ducharme, Eber, Feinstein, Filion, Finkelstein, Finlayson, Gold, Gotlib, Gottlieb, Harris, Heintzman, Hunter, Lawrence, Legge, MacKenzie, Murphy, Murray, O'Brien, Pattillo, Pawlitza, Porter, Potter, Ross, Ruby, St. Lewis, Silverstein, Simpson, Swaye, Symes, Topp, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick

The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer thanked Gerry Swaye for his work as the Law Society's delegate to the Federation of Law Societies of Canada.

On October 16, the Treasurer met with the committee chairs and vice-chairs to allow everyone to get a sense of all of the work being done and to allow Malcolm Heins to indicate the resources available to do the work.

A letter of congratulations was sent to Regina Tait who was appointed a member of the Order of Canada. Mrs. Tait served as a lay bencher from 1974 to 1987.

The Treasurer congratulated Mr. Heins and asked him to extend congratulations to all members of the Senior Management Team on having the Law Society named as one of the top 100 employers in Canada by Maclean's Magazine.

SUPPLEMENTARY REPORT OF THE SPECIAL COMMITTEE ON THE LL.D. PROGRAM

Mr. Arnup presented the Supplementary Report of the Special Committee on the LL.D. Program to Convocation.

SUPPLEMENTARY REPORT OF THE
SPECIAL COMMITTEE ON THE LL.D. PROGRAM
October 23, 2003

Report to Convocation

Purpose of Report: Decision

Prepared by
John D. Arnup, Q.C., LSM

SUPPLEMENTARY REPORT OF THE SPECIAL COMMITTEE ON THE LL.D. PROGRAM

This Committee is composed of John Arnup (Chair), Laura Legge, Sydney Robins, Susan Elliott, Marion Boyd and Gavin MacKenzie. It reported to Convocation on April 25, 2003.

Background:
An amendment to the wording of the criteria for the award of the honorary degree of Doctor of Laws was proposed in Convocation and accepted by Mr. Arnup, Chair of the Committee. Convocation approved the report with one exception.

The criteria for the award proposed by the Committee and not changed in this regard by the amendment would have required that the accomplishment of the recipient be connected to law or the legal profession. It was pointed out that such a provision would not have permitted the granting of the degree to persons such as the Governor General of Canada or Bishop Tutu of South Africa. Convocation referred back to the Committee the criteria proposed so that the degree could be granted in recognition of outstanding achievements for public benefit not necessarily related to law.

Recommendation:

In accordance with the direction of Convocation, the Special Committee proposes that there be added to the amended criteria the following underlined words:

> The granting of the degree is in recognition of outstanding achievements in service and benefits to the legal profession, the rule of law or the cause of justice. <u>Notwithstanding that this general rule would require that the accomplishments of a recipient be related to law or the legal profession, Convocation may in exceptional circumstances confer the degree upon a person whose extraordinary accomplishments national or international were for the public benefit.</u>

John D. Arnup, Q.C., LSM
Chair
October 23, 2003

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

A copy of the Report to Convocation of the Special Committee on the Society's Doctor of Laws Program dated April 25, 2003.

(pages 4 – 9)

It was moved by Mr. Arnup, seconded by Mrs. Legge that the criteria for the granting of LL.D. be amended to add the following:

> "Notwithstanding that this general rule would require that the accomplishments of a recipient be related to law or the legal profession, Convocation may in exceptional circumstances confer the degree upon a person whose extraordinary accomplishments national or international were for the public benefit."

Carried Unanimously

Mr. Arnup expressed his gratitude to the Treasurer's Executive Assistant, Deidre Rowe Brown for her help.

MOTION – DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Hunter, seconded by Ms. Ross that the Draft Minutes of September 24 and 25, 2003 be confirmed.

Carried

MOTION – APPOINTMENTS TO LAW SOCIETY APPEAL PANEL

It was moved by Mr. Hunter, seconded by Ms. Ross THAT, pursuant to section 49.29 of the *Law Society Act*,

(1) Kim Carpenter-Gunn be removed from the Law Society Appeal Panel; and

(2) Andrew Coffey and Holly Harris be appointed to the Law Society Appeal Panel for a term of two years.

Carried

MOTION – APPOINTMENT OF ALTERNATE SUMMARY DISPOSITION BENCHER

It was moved by Mr. Hunter, seconded by Ms. Ross THAT Carole Curtis be appointed for the purpose of making orders under sections 46, 47 and 48 of the *Law Society Act*. (Summary Disposition Bencher)

Carried

MOTION – AMENDMENT TO BY-LAW 12 – DELETION OF "10-YEAR" RULE (English and French Versions)

It was moved by Mr. Hunter, seconded by Ms. Ross THAT By-Law 12 [Bar Admission Course], made by Convocation on January 28, 1999 and amended by Convocation on March 26, 1999, December 10, 1999, June 22, 2000, April 25, 2002 and October 31, 2002, be further amended as follows:

BY-LAW 12

[BAR ADMISSION COURSE]

1. Section 3 of By-Law 12 [Bar Admission Course] is revoked and the following substituted:

Academic requirements for admission to Bar Admission Course

3. A person may be admitted to the Bar Admission Course as a student-at-law if he or she has,

(a) graduated from a law course that is offered by a university in Canada and is approved by Convocation; or

(b) received a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans.

Études exigées en vue de l'admission au Cours de formation professionnelle

3. Est admissible au Cours de formation professionnelle l'étudiante ou l'étudiant au barreau qui est titulaire,

a) soit d'un diplôme en droit, reconnu par le Conseil, d'une université canadienne;

b) soit d'un certificat de compétence délivré par le Comité national sur les équivalences des diplômes de droit, constitué par la Fédération des ordres professionnels de juristes du Canada et le Conseil des doyens et des doyennes des facultés de droit du Canada.

Carried

MOTION – AMENDMENTS TO BY-LAWS 4 AND 31 – OFFICE OF THE SECRETARY (English & French Versions)

It was moved by Mr. Hunter, seconded by Ms. Ross THAT by-laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on October 23, 2003 be amended as follows:

BY-LAW 4

[OFFICE OF SECRETARY]

1. Subsection 3 (5) of By-Law 4 [Office of Secretary] is amended by deleting "Client Service Centre" / "du service à la clientèle" and substituting "Membership Services" / "des services aux membres".

2. Subsection 3 (6) of the By-Law is deleted and the following substituted:

Delegation of powers and duties of Secretary: Professional Regulation Counsel or Senior Counsel, Discipline

(6) If the Secretary is unable to do so, an officer or employee of the Society who holds the office of Professional Regulation Counsel or Senior Counsel, Discipline may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under section 51 of the Act.

Délégation des pouvoirs et fonctions du ou de la secrétaire à l'avocat de la réglementation professionnelle ou à l'avocat principal du service de la discipline

(6) Si le ou la secrétaire est dans l'incapacité de le faire pour une raison quelconque, la personne qui occupe la charge d'avocat de la réglementation professionnelle ou d'avocat principal du service de la discipline peut exercer les pouvoirs et les fonctions que l'article 51 de la Loi attribue au ou à la secrétaire, sous réserve des conditions qu'il ou elle impose.

BY-LAW 31
[UNCLAIMED TRUST FUNDS]

3. Section 0.1 of By-Law 31 [Unclaimed Trust Funds] is deleted and the following substituted:

Delegation of powers and duties of Secretary: Professional Regulation Counsel or Senior Counsel, Discipline

0.1 If the Secretary is unable to do so, an officer or employee of the Society who holds the office of Professional Regulation Counsel or Senior Counsel, Discipline may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under sections 59.6, 59.8 and 59.9 of the Act and under this By-Law.

Délégation des pouvoirs et fonctions du ou de la secrétaire à l'avocat de la réglementation professionnelle

ou à l'avocat principal du service de la discipline

0.1 Si le ou la secrétaire est dans l'incapacité de le faire pour une raison quelconque,

la personne qui occupe la charge d'avocat de la réglementation professionnelle ou d'avocat principal du service de la discipline peut exercer les pouvoirs et les fonctions que les paragraphes 59.6, 59.8 et 59.9 de la Loi et le présent règlement administratif attribuent au ou à la secrétaire, sous réserve des conditions qu'il ou elle impose.

Carried

MOTION – APPOINTMENT TO BICENTENNIAL REPORT WORKING GROUP

It was moved by Mr. Hunter, seconded by Ms. Ross THAT Constance Backhouse be appointed to the Bicentennial Report Working Group to replace Allan Lawrence who has resigned due to his other commitments.

Carried

FINANCE & AUDIT COMMITTEE REPORT

Mr. Ruby commenced the presentation of the Law Society's Budget for 2004 to Convocation.

Finance and Audit Committee
October 9, 2003

Report to Convocation

Purpose of Report: Decision

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on October 9 2003. Committee members in attendance were: Chahbar A. (v.c), Bourque P., Coffey A., Dray P. Gotlib A., Harris H., Murray R., Patillo L., Pawlitza L., Silverstein A., Swaye G., Symes B., Wright B.. Staff attending were Heins M., Tysall W., Grady F., Cawse A., Reilly L.. Libraryco Inc. attendees were Mulligan G. and Hebditch S..

2. The Committee is reporting on the following matters:

Decision

X LibraryCo Inc. 2004 Budget
X Law Society 2004 Budget

FOR DECISION

LIBRARYCO INC. 2004 DRAFT BUDGET

1. The draft LibraryCo Inc. 2004 budget is submitted under separate cover (in camera). This budget has been approved by the Board of LibraryCo Inc.

   The Finance and Audit Committee recommends that Convocation approve LibraryCo Inc.'s budget for 2004.

LAW SOCIETY 2004 DRAFT BUDGET

2. The draft Law Society 2004 operating and capital budget is submitted under separate cover (in camera).

   The Finance and Audit Committee recommends that Convocation approve the Law Society budget for 2004.

LAW SOCIETY OF UPPER CANADA

2004 DRAFT BUDGET

Presented to Convocation
October 23, 2003

Table of Contents

2004 Budget Overview

Where we came from and what this means for 2004....

It is recommended that the 2004 levy be reduced. This is the third consecutive year of levy reductions. We are recommending a further $48 reduction to the member levy from $1,489 to $1,441, bringing the overall member fee down $341 or 19% over this three-year period.

During the same period, the full fee paying membership has increased by 16%.

The 2004 proposed budget, with the exception of increased spending for tribunals, Profession Regulation and anticipated recommendations by the Task Force on the Continuum of Legal Education, is reflective of the planned expenditures budgeted in 2003. Savings generated in 2003 are largely the result of implementation of initiatives taking place later in the year than originally planned. As a result, the better comparison for the 2004 proposed budget is the 2003 budget, rather than the 2003 actual.

The proposed 2004 budget includes the changes being made in Professional Regulation and tribunals, the implementation of salary adjustments, increased costs and revenues of Continuing Legal Education and the cost of implementing recommendations to be made by the Task Force on the Continuum of Legal Education.

These factors result in an increase in proposed budgetary expenditures of $2.9 million, offset by approximately $800,000 of Continuing Legal Education revenues. Despite the need for increased expenditures, the annual membership fee will again decline in 2004 as non-fee revenues increase and the membership continues to grow.

Since 2001, management of the Law Society has been reviewing all aspects of the Law Society's operations and restructuring the organization. We have been doing so to change the Law Society into a focused, cost-effective, service-oriented organization with an annual budget that allows us to deliver effectively on our mandate to govern in the public interest, while providing members with value for their fees.

Factors in play....

We are balancing the need to compete in attracting staff with appropriate expertise, an increasing membership and the expectations of a service culture on the part of both the public and members.

In other words, we have different stakeholders with varying needs and expectations. For example, we operate in a service-oriented environment, which presents challenges. We need to be flexible in the provision of services for both the public and profession. We must effectively regulate the profession in the public interest. We are working more and more in an electronic environment which impacts on our work processes and practices and the way we communicate with our stakeholders. We must be adaptable to changing policy imperatives and the increasing diversity of the public and profession. And we must meet the challenges of increased scrutiny for an effective regulatory process and effect the implementation of the competence mandate.

The 2004 proposed budget....

The overall annual membership levy will be down from $1,489 to $l,331, a reduction of $48. Together with the reduction in 2002 and 2003, the overall levy has been reduced by $341 over three years.

The breakdown for 2004 is as follows:

• General Membership	$939
• Lawyers Fund for Client Compensation	$230
• LibraryCo	$197
• Capital and Technology	$ 75
TOTAL:	$1,441

For students, the Bar Admission Course fees remain at $4,400.

We are continuing to enhance access and delivery of the Bar Admission Course for students. For example, in 2002, we launched our e-learning site and in 2003, we will offer all BAC materials free of charge to members on line. This is a significant achievement and long-term goal that enables members and students direct access to important legal information.

Our budget process....

The Law Society employs a hybrid budget process that includes some of the characteristics of the "base-budgeting" approach, as well as a technique referred to as "zero-based budgeting" (ZBB).

Base budgeting looks at the current year budget as a base or minimum starting point and increases or decreases that base by some factor. ZBB requires proponents of discretionary expenditures to continually justify every expenditure.

This is the basis for rotational operational reviews that are in place at the Law Society. Each year, three or four areas are selected, the mandate or output of the area is defined and then resources to meet that output are assessed. Building on reviews of the Compensation Fund, the Great Library and the Client Service Centre in 2002, the Finance and Audit Committee reviewed Professional Development and Competence and Communications and Public Affairs in 2003.

As well, the Human Resources and Finance departments underwent an internal control review conducted by Deloitte and Touche as part of the review of the Society's control processes, the results of which were presented to the Finance and Audit Committee in April 2003. The Information Systems department also presented to the Committee an overall review of its operations, strategic direction and anticipated resource requirements early in 2003.

As a result of these reviews over the past two years, 70% of the Law Society's fiscal resources have undergone operational reviews or systems audits. We will continue to conduct similar reviews with all other operational areas of the Law Society over the next few years.

The format of the budget materials is organized according to function and does not follow organizational structure.

A budget based on strategic directions....

While the reviews outlined assist in the process, the Law Society's annual budget is prepared based on the organization's strategic directions. For example, our 2003 budget focused the resources of the Law Society on four strategic areas: professional regulation, professional development and competence, policy development and equity and diversity/access to justice.

Since that time, we have made strides in virtually every one of these four strategic areas and have achieved some significant results in an effort to improve our service to members of the public and the legal profession.

Professional regulation began looking at ways to address issues of timeliness, fairness, transparency and the effectiveness of the complaints processing throughout the entire process from the time a complaint comes into the Law Society to the final outcome of each matter including divisional issues of enhanced support, training and expertise.

Activities that began in 2003 included:

- Conclusion of a business process review
- Amending the division's structure including the creation of Intake and Enforcement departments
- Delayering some management functions
- Beginning to populate the member database with discipline history and orders
- Introducing a case management system.

Professional development and competence continued to focus on the true needs of the profession, from acceptable practices through to excellence in practice, and to providing learning and information supports to assist members to meet competence goals.

Priorities included:

- Providing supports to assist lawyers to achieve and maintain competence
- Continuing to determine program, product and service priorities through needs analysis
- Continuing to explore and implement alternate delivery models developed for information and education products and services such as the popular Interactive Learning Network launched early in 2003
- Developing and implementing a plan to promote and market the new products and initiatives being offered
- Committing Information Systems resources to transfer the Admission and CLE databases to the AS400, which for the first time will provide an integrated membership and services database. The system will be fully integrated in 2004
- Integrating, wherever possible, equity-related information and resources into professional development and competence programs, products and services.

The Policy Secretariat continued to provide support to Convocation in its policy development process. There has been increased input from all departments in this process to identify operational implications such as what is required financially, as well as policy options, to support Benchers in their decision-making role. For example, the Communications and Public Affairs Department has been more involved in helping to position the Law Society on issues such as the money laundering and anti-terrorism legislation.

Over the past few years, the Equity Initiatives Department has developed and implemented many valuable programs and services for lawyers, law firms, community groups and members of the public. Its dual focus has been on encouraging and helping to make the legal profession more attractive to equity seeking groups, Aboriginal persons and Francophones and assisting members and firms in making legal services more accessible.

In 2003, we began to expand equity and diversity/access to justice initiatives into operational departments of the Law Society and the programs, products and services they provide to members, students, the public and employees. Promotion, communication and greater accessibility to these valuable equity services are becoming part of the fabric of what Law Society employees do in the course of their daily business.

What this means for 2004....

We know what our mission is. We have an internal vision – what we want to be, the way we want to be viewed by our stakeholders and the experiences we want them to take away when dealing with the Law Society.

That means having our stakeholders see the Law Society as a strong and principled leader that acts in an open and responsive manner advancing the independence, competence and integrity of the legal profession.

In dealing with the Law Society, members of the public, profession and other stakeholders should feel:

- secure or protected
- that the process and organization was open, accessible and fair
- that the services and products provided were credible and provided by people who have a high level of expertise
- that we delivered a reliable and effective product
- that the service was delivered in a timely, courteous, helpful manner
- that staff are knowledgeable and responsive.

We set our strategic directions and our goals in 2003 and are continuing to refine them and the work that needs to be done to be successful.

All of these factors were taken into consideration in developing our proposed budget for 2004 in a cohesive and aligned manner. As a result, most of our budget requests by department remain unchanged from 2003, with either minimal increases or decreases in most areas.

Professional Regulation

The exception is Professional Regulation whose budget request will increase from approximately $9 million to $10.1 million in 2004 (not including the Compensation Fund). Increases are attributable to a number of factors including:

- salary adjustments (although staffing levels should remain stable at about 100, the same as in 2003)
- higher outside counsel fees to more accurately reflect expenditures in this area, some of which are involved in mortgage fraud investigations which are extremely resource-intensive
- additional consulting to assist in the development and implementation of a system to support case management.

Another important change that affects the overall Professional Regulation budget is the creation of a Tribunals Unit. This will allow for increased support to Benchers, improved timelines for hearings and publication of Law Society discipline decisions. This move will also eliminate the potential of placing Senior Counsel, Legal Affairs in a position of conflict.

The creation of this new independent unit will increase administrative and management costs as well as requires additional physical space for both the Tribunals and Legal Affairs Units.

Professional Development and Competence

Professional Development and Competence represents the largest component in the Law Society's budget.

The 2004 PD&C budget proposes expenditures of $15.6 million, as compared to the $14.5 million budgeted expenditures in 2003. At the same time, we anticipate revenues to climb from $10.5 million in 2003 to $11.3 million in 2004.

The Bar Admission Course (BAC) accounts for a large portion of the PD&C expenditures coming in at approximately $6 million. The continued achievement of efficiencies in process in the BAC will assist the Law Society in maintaining the budget at a comparable level despite increase in activity in distance learning, increasing support to students to assist with articling placements, and market increases in expenditures for space rental, materials production and the development of online learning supports. With the continued financial assistance of the Law Foundation of Ontario (LFO) the student tuition fee for the Bar Admission Course is maintained at $4,400 for the fourth year in succession. Funding in this year's budget from the LFO has been returned to the 2002 level of $1.3 million.

Continuing education programs continue to see a remarkable growth with a 100% increase in attendance at seminars in fewer than two years. In 2001, there were 8,500 attendances, compared to our estimate of 16,000 for year end 2003.

PD&C will continue to focus on maintaining the many new delivery initiatives that have been introduced to the membership including the Interactive Learning Network, teleseminars, on-demand video streams and a variety of alternative options for the purchase of materials. It is important to note that increased accessibility has led to increased attendance in turn leading to increased variable costs. Having said that, CLE accounts for approximately $2.6 million in 2004 PD&C expenditures. Offsetting these expenditures are $3.5 million in CLE revenues reflecting the significant growth in member response to CLE activities.

Policy and Legal Affairs

Policy and Legal Affairs is responsible for a number of functions important to the corporate interests of the Law Society, including policy development, Convocation support, corporate legal affairs, Law Society tribunal administration, and government relations.

The Policy Secretariat is responsible for supporting the policy work of benchers. They act as secretaries to committees, task forces and working groups. Policy Advisors are responsible for developing policy ideas, including research, consultation with stakeholders, and writing reports. The Clerk to Convocation is also part of the Policy Secretariat.

The budget includes $100,000 for policy development. These funds are used to pay for the costs associated with Convocation's committees and task forces.

The Policy Secretariat was created in 1996 to support three standing committees – Admissions, Professional Regulation and Professional Development and Competence. The same number of Policy Advisors now support more than double that number of committees, along with numerous other Task Forces and Working Groups.

Government Relations anticipates, monitors and addresses regulations and legislation that affects access to and the quality of legal services in Ontario.

Legal Affairs was established in 2001. It is responsible for Legal Services and Tribunals. Senior Counsel, Legal Affairs manages the Legal Affairs Unit and is responsible for both functions.

The budgets for these two units are based on the assumption that they are operating as separate and independent departments. The creation of a new and separate tribunals unit is necessary to avoid placing the Senior Counsel, Legal Affairs in a position of conflict.

As the General Counsel to the organization, Senior Counsel, Legal Affairs must be free to advise the organization on outstanding litigation. Much of the litigation in which the Law Society is engaged arises directly from the operation of the tribunals. Members who are subject to conduct or capacity hearings often sue the Law Society, alleging the mishandling of their matters. Senior Counsel, Legal Affairs is the staff person ultimately responsible for the handling of a hearing, and also responsible for advising the Litigation Committee and the organization on pending litigation, which may raise the issue of the handling of a hearing. To protect the Law Society against a complaint of this nature, the Tribunals Unit must function separately from Legal Services, and have separate management.

The separation of the two units will increase costs associated with each unit as outlined already in the Professional Regulation section above.

In addition, the Tribunals function at the Law Society is currently under resourced. There is currently no dedicated support for hearing panel members to provide legal research, or to assist with the drafting of orders. There is no dedicated resource for the publication of Law Society decisions or the distribution of them to benchers. A project is currently underway examining the processes within the Tribunals Unit. Its preliminary findings indicate that the Tribunals Unit must have more control over the production of decisions, including the distribution of all draft decisions to hearing panel members for comment and the ultimate formatting of the decisions.

As a result of these new costs, the Policy and Legal Affairs 2004 proposed budget is $2.7 million, up from $2.4 million budgeted in 2003.

Other operation functions....

The budget requirements developed for each Law Society department are based on what they need to support the four strategic functions, and in particular regulation and professional development and competence.

Operational areas such as Finance and Administration, Human Resources, Information Systems, the Client Service Centre and Communications and Public Affairs will continue to concentrate their efforts and resources in helping us achieve the goals we have set for professional development and competence and professional regulation for 2004.

Finance and Administration

The department provides the following specific services: general accounting, accounts payable and receivable processing, cash management and banking, payroll, insurance, central purchasing, billing of the annual membership fee and suspension for non payment of annual fees.

The department is responsible for ensuring the adequacy of internal financial controls intended to safeguard the financial assets of the Society and for ensuring the Society's books and records are in compliance with generally accepted accounting principles. Staff coordinate the Society's annual budget process and track the expenditures to budget throughout the year, assisting departments in managing their individual budgets.

To continue to provide these services, improve customer service and utilize the enhanced technological capabilities of the Society, the department proposes a budget, primarily for staffing costs, of $2.2 million in 2004, compared to $2.1 million in 2003. Some savings have been realized from implementation of cost saving measures in printing and postage as more efficient processes have come on line and there is also one position vacant.

Facilities

The Facilities Department provides ongoing facility services, including planning, design, implementation and financial control. Services consist of housekeeping; building and grounds maintenance; event booking; security; fire prevention; environmental and energy management; space and accommodation planning; building preservation; curatorial, and minor and major capital project services.

Capital Project Services
The department provides ongoing capital project services for:

- Heritage restorations
- Renovations and re-configurations
- Major equipment repairs and replacements
- Structural reinforcements and stabilization
- Energy conservation renovations and retrofits
- Accessibility alterations
- Security improvement upgrades

The department proposes an operating budget of $3 million in 2004, up from $2.9 million in 2003, a 3.5% increase. The budget increase is due to increases in salaries, training, and maintenance services offset by reductions in a number of other areas, such as adjustments to funded staffing levels. The utility budget remains unchanged based on the projected 2003 actual figure, without factoring in any increases in rates, which are unknown at this time.

Capital Projects

Facilities capital projects are budgeted at $2.4 million in 2004, and include the following:

- Mechanical and electrical upgrades
- Fire and life safety upgrades
- Window upgrades

- Roof replacements
- Floor and wall finish upgrades
- Electronic security and accessibility upgrades

Catering

The primary function of Catering is to provide food preparation services for Bencher needs and Society staff. An a la carte restaurant service in Convocation Hall during the lunch hour period is operated from 12:00 noon until to 2:00 pm. Lawyers, staff, Benchers and members of the public regularly patronize the restaurant. The restaurant is operational from Monday to Friday from September to June and, on a typical day, will provide service to about 200 patrons. The cafeteria serves approximately 300 patrons per day. In addition, the department caters events for outside organizations wishing to use the facilities at Osgoode Hall for their particular events.

The cafeteria is also used for the provision of meals for the Lawyers Feed the Hungry program. The site and its facilities are provided to the program free of charge. The program serves approximately 1,300 meals per week or some 65,000 meals per year.

In 2004, expenditures are budgeted at $1 million, compared to $1.1 million in 2003, with a net cost of $42,000 (net of revenues) in 2004.

Equity Initiatives

Consistent with the Law Society's mandate to govern the profession in the public interest and to facilitate access to justice, the Equity Initiatives Department undertakes activities to ensure that:

the Law Society's services, programs and decision-making as well as membership are reflective of the Ontario population and accessible to diverse communities;

- there are no discriminatory barriers to participation in the legal profession in Ontario;
- the governance of the profession is guided at all times by goals of non-discrimination, equity and diversity.

The Department's activities are divided into the following main areas: Public Education; Research/Policy Development; and Equity and Diversity in Employment. The Department also supports the functions of the Discrimination/Harassment Counsel.

The Department's budget is increased from $751,200 in 2003 to $772,200 in 2004. The proposed budget increase reflects salary adjustments. The total employee count is maintained at 6.

The variance between projected actuals in 2003 ($593,300) and the 2004 budget ($772,200) is due to vacant positions in the Department in 2003. It is expected that vacant positions will be filled in 2004.

Communications and Public Affairs

Communications & Public Affairs provides comprehensive and strategic communications advice and support to all areas of the Law Society to promote and enhance the organization's profile and credibility among our many target audiences.

Staff do so by proactively and cost-effectively using a wide range of communications and public affairs tools to communicate and deliver key messages to members of the public, the profession and legal community, the government, the media and other stakeholders.

Prior to its departmental restructuring, which began in 2001, its approved budget was $1.7 million with a permanent staff of nine people. In each subsequent year since, the department has requested a budget in the range of $1.5 million. The proposal for 2004 remains unchanged from 2003 at $1.5 million.

The $1.5 million budget is almost evenly split between salaries/benefits (11 people) and program expenses with each coming in at between $700,000 and $800,000. Office expenses account for only $60,000.

Program expenses support the following key activity areas:

- Media Relations and issues management
- Corporate web site development, design and information management
- Internal communications
- Member communications
- Public communications
- Creative and publishing services

Human Resources

Human Resources (HR) plays a dual role in the organization. First, staff provide vital expertise and support in core people processes: recruitment and selection, performance management, compensation and recognition, employee services, retention and termination. However, in HR's equally important role – as strategic business partner – HR brings to the decision-making table essential skills in the areas of change management and organizational development.

The HR budget requirement for 2004 remains virtually unchanged from 2003 at $1.5 million. This budget will enable HR to continue to offer this wide range of services, with a particular focus on the following key activities:

- Training and development
- Performance management
- Employee recruitment and retention

The Law Society like most employers is constantly having to compete in the marketplace to attract and retain staff who are qualified, experienced and with the appropriate skills and expertise.

Despite previous market adjustments, by mid-2002, the Law Society was experiencing pressure on compensation levels. Incumbent changes within the senior management team made this situation particularly acute, as these new managers were trying to attract the right people into the right jobs in order to fulfill the organization's ambitious mandate. As time passed, and the marketplace continued to change, more and more new hires needed to be recruited at higher and higher levels within the salary range, creating significant inequities between valued employees on staff prior to 2002 and many of the new hires.

In late 2002, consultants assessed the marketplace and identified the impact of the changes that had occurred in the intervening years since our last review in 1999.

The Law Society considered several options to address the salary structure shortfall and selected one that allowed the organization to reward employees based on their performance level, while continuing to be fiscally conservative, by holding target rates of pay to the 1999 levels.

<u>Effects of this Recommendation</u>

Fully 58% of Law Society employees' salaries are appropriate for their performance ratings, and no salary increase is needed to place these individuals appropriately into the revised structure. (These individuals may still be eligible for a merit pay adjustment in December.)

42% of employees would require a salary increase, with a median increase of 7% to place them appropriately within the revised range structure relative to their performance.

Budget Impact of the Recommendation

In order to implement and effectively communicate this change to the organization, it is recommended that all adjustments (normal merit, market catch up, and performance adjustments) be made at the same time, in conjunction with annual salary reviews in December 2003.

The incremental cost to the Society of implementing this recommendation is $750,000 or approximately 2.6% of total annual compensation. The 2004 draft budget, as presented, provides the $750,000 required to implement the necessary adjustments to the Law Society range structure.

Information Systems

The Information Systems (IS) Group provides three essential services to the Society and its staff: computer operations, custodial data backup, and planning and problem resolution of data services, specifically:

- Web site systems oriented to the public, members, students, and staff;
- Remote access to e-mail services for staff and students;
- Seminar and lecture content "streaming-on-demand" via the Internet and regional distributions, for Bar Admission and Continuing Legal Education audiences;
- Corporate database and information processing services by means of the secure IBM AS/400 computer systems;
- Central and remote access to secure and backed-up electronic files and documents, to assist staff in their day-to-day tasks;
- Developing and enhancing all application (business support) and operating systems that deliver the foregoing services; and
- Planning, operation and support of corporate telephone systems, and the telecommunication infrastructures that support these services.

The IS Group budget request is essentially flat in the operating category, and has been since 2001. Reduced dependency of external consulting resources, and economies in maintenance and support of computers, software and telecommunications, account for the ability to continuously meet flat operating expense goals. The IS Group has developed or "traded up" in skills and experience over the past three years, in order to reach this enviable position.

The capital portion of IS Group's budget request reflects, and is in direct support of the key projects to be undertaken in 2004, as well as a program of prudent replacement of desktop computers and software on an ongoing cycle:

• Education Administration Ssytem (EAS) Computers & Software	$50,000
• Case Management System (CMS) Computer Equipment and Software	100,000
• Library System Computer Equipment and Software	275,000
• Desktop/Laptop Equipment and Software Replacement Program	120,000
	$545,000

Client Service Centre

The Client Service is the front line one-stop access point to the Law Society. Staff are equipped to effectively deal with a range of requests from both the public and the legal profession to provide services in other languages and formats.

The Client Service Centre includes:

- Call Centre, whose service standard includes answering most calls within 20 seconds
- Lawyer Referral Service

- Membership Services
- Complaints Services
- Administrative Compliance Processes (ACP).

The proposed 2004 budget request is $3.7 million, as compared to $3.5 million budgeted in 2003. The major cause for this increase include:

- Annualization of staff salaries (impact of salary market adjustments)
- Additional software licenses for telephone systems software
- One additional staff person

On average, each year the Law Society admits approximately 1,100-1,200 new members into the profession, which impacts on the workload of the CSC, particularly Membership Services and ACP. Furthermore, this department is now taking on responsibility for the production and mailing of the Member's Annual Report (MAR) from Information Systems. In addition, the department is streamlining the content, distribution, collection and records management for the 2003 MAR.

Library Services

Ontario lawyers continue to support three types of library-related services: County and District Law Libraries (through LibraryCo.), the Great Library and Canadian Legal Information Institute (CanLII).

LibraryCo total expenses are budgeted at $7.2 million with Law Society funding of $5.9 million being requested. This budget request translates into a per member levy of $203. Utilizing the blaance in the Society's Restricted Fund for County Libraries will reduce the actual per member levy to $197.

The Great Library and CanLII are two important services that also support member professional development and competence. In total, the Great Library budget requirement for 2004 is $3 million, with an additional $616,000 allocated for CanLII.

Total spending on overall library services, including the Great Library, LibraryCo. and CanLII, is over $10.5 million, with the membership fee funding $8.5 million of this amount. Through their annual membership fee, Ontario lawyers will contribute approximately $297 for library services.

The Lawyers Fund for Client Compensation...

The member fee for 2004 has declined to $230 from $280 in 2003.

The Lawyers Fund for Client Compensation will end 2003 with a Fund balance of approximately $17 million as claims experience remains very favourable for the Fund. As a result of this trend, the budget for 2004 proposes to set the allowance for claims at $3 million down from $4 million in 2003. This reduction in the claims allowance accounts for the large reduction in the Compensation Fund levy.

The Fund will continue insuring for catastrophic claims with coverage of $10 million excess of the 2003 year end fund balance estimated to be $17 million.

Capital requirements...

An important component of the annual membership fee is the capital levy of $75 per member. The levy is tracked in the Capital Allocation Fund and is intended to ensure adequate funding is available to meet the capital requirements of the Law Society. This levy has been utilized to upgrade the Society's property and buildings, as well as its information systems.

In 2002 preliminary investigation and costing for a complete renovation of the North Wing of Osgoode Hall was undertaken. Convocation subsequently approved the transfer of $4.0 million from the Unrestricted Fund surplus to

the Capital Allocation Fund for a partial renovation of the North Wing from the second to the fourth floor. Subsequent considerations, including the need to extend the main elevators to the sixth floor to enhance accessibility and renovations to the Lamont lecture hall to make it a multi-use, multifunctional space have resulted in detailed plans being developed for a full renovation of the North Wing from the first to the sixth floor. The cost of this renovation would be approximately $9 million over a two-year span.

The Task Force on the Continuum of Legal Education is expected to deliver its final report on the future of the Bar Admission Course in November. The Task Force is expected to provide options on the future direction of the delivery of Bar Admission Course that may impact the decision making process on the renovation of the North Wing. Therefore, this budget, while supporting in principle the renovation of the North Wing, is not seeking approval of the project at this time. A more detailed proposal on the North Wing will be brought forward for the consideration of Convocation in January 2004. At present, this budget is recommending that Convocation allocate funding for the project and is seeking approval to transfer the 2003 Unrestricted Fund surplus to the Capital Allocation Fund for this purpose.

To provide funding for the project it is recommended that the $3.2 million Unrestricted Fund surplus from 2003, be transferred to the Capital Allocation Fund to support the renovation. When combined with the previous transfer the total accumulated funding for the project would be $7.2 million. We strongly believe that with this level of funding assured, the project should proceed at the earliest practical date after approval by Convocation. The $1.8 million funding deficiency will be provided from future Unrestricted Fund surpluses and/or the dedication of monies raised through the annual capital levy.

The 2004 capital requirements (excluding any renovations to the North Wing) including information systems enhancements and building upgrades are included in the 2004 budget. The total cost of these projects, $2,385,000, exceeds the total capital levy of $2,175,000 by $210,000. If the North Wing renovations are approved and construction begins in 2004, facilities projects will be scaled back such that the total spending on capital projects (excluding any renovations to the North Wing) would not exceed $2,175,000 in 2004. If the North Wing renovations do not proceed, then it is recommended that the shortfall of $210,000 be provided from the accumulated fund balance in the Capital Allocation Fund.

From a technology perspective, we have committed to the AS400 as our major platform for the development of major applications. This commitment will continue as the Society focuses resources on its core programs.

What this means for 2003...

2003 has been a successful financial year for the Society. The general fund will end the year with a surplus of approximately $3.2 million while maintaining the Working Capital Reserve approved by Convocation at $7.9 million, approximately two months of operating expenses.

The anticipated surplus of approximately $3.2 million achieved in 2003 enables us to propose directing these funds to renovating portions of the North Wing, providing additional useable office space and bringing all Law Society departments under one roof while achieving operational efficiencies. This use of the surplus is consistent with the policy adopted by Convocation last year outlining how surplus funds should be directed.

What this means moving forward....

We have now developed and implemented three consecutive budgets that provide appropriate funding to enable us to fulfill our mandate while offering reduced member fees and additional programs and services.

We are on solid financial footing. Last year, we were able to redirect $4.7 million into the establishment of a working capital reserve and throughout 2003 we have been able to maintain this amount. We were able to accomplish this through some program redesigns, efficiencies and additional revenues. A further $3.2 million surplus will be generated in 2003 enabling us to fund, with Convocation's approval, the renovation of the North Wing.

Over the past three years we have been able to reduce the overall member fee by $341. We have strengthened our financial position, dedicated significant funds for the future renovation of the North Wing and turned the Law Society into a focused, cost-effective, service-oriented organization with an annual budget that allows us to deliver effectively on our mandate to govern in the public interest, while providing members with value for their fees.

THE LAW SOCIETY OF UPPER CANADA
Draft Budget
For the year ending December 31, 2004
2004 Budget Assumptions

- Membership fee based on 29,000 full fee paying equivalent members, increased by 1,000 members from last year.

- Funding from the Law Foundation of Ontario for the Bar Admission Course restored to 2002 level of $1,300,000 (2003:$1,062,900) offset by increased expenditures in BAC and funding for Archives maintained at $100,000.

- Investment income surplus from the Errors and Omissions fund increased to $3,000,000 (2003:$2,600,000) consistent with the actual amount received in 2003.

- The tuition for the Bar Admission course is maintained at $4,400 unchanged from the fee level established in 2001.

- Proposed compensation system, if adopted, to add approximately $750,000 to salary and benefit costs for 2004.

- Provision for salary merit adjustments set at 3.5% of compensation costs. (Approximately $1.0 million reduced to $500,000 to compensate for anticipated staff turnover).

- The budget contains a general contingency of $1.2 million, unchanged from 2003.

- LibraryCo per member levy of $197 (2003:$195) is based on budget submission from LibraryCo for 2004 (reduced by the anticipated balance in the county library fund at the end of 2003, $200,000)

- Funding for CANLII of $22 per member is provided for core operations.

- Unrestricted fund surplus for 2003 (estimated at $3.2 million) recommended for transfer to Capital Allocation fund to be used for proposed North Wing renovation.

- Working Capital Reserve for 2004 maintained at 2003 level ($7.975 million).

- The Capital levy remains at $75.

- The Lawyers Fund for Client Compensation will retain insurance of $10 million, excess of 2003 year end fund balance estimated at $17 million, with a premium of approximately $500,000 unchanged from 2003.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, October 23rd, 2003:

Mathew Neal Abenstein	Bar Admission Course
Adefolami Babafemi Adekusibe	Bar Admission Course
Mbong Elvira Akinyemi	Bar Admission Course
Geoffrey Scott Allen	Bar Admission Course
Tara Marie Andronek	Bar Admission Course
Christian Peter Angelini	Bar Admission Course
Axel Bernabe	Bar Admission Course
Marcus Adam Bornfreund	Bar Admission Course
Jason Chalmers Brooks	Bar Admission Course
Ryan Gordon Caughey	Bar Admission Course
Lyne Denise Cormier	Bar Admission Course
Mercy Dadepo	Bar Admission Course
Dona P. David	Bar Admission Course
Robert Joseph Del Frate	Bar Admission Course
Katherine Ellen Ferguson	Bar Admission Course
Penelope Ann Fortier	Bar Admission Course
Theresa Mary Hartley	Bar Admission Course
Alison Jean Hayman	Bar Admission Course
Robert Michael Lockwood Hughes	Bar Admission Course
Joanna Elizabetta Jehan Jazairi	Bar Admission Course
Vanessa Alanne Kee	Bar Admission Course
Jeffrey John Jamieson Kendall	Bar Admission Course
Mahwash Waris Khan	Bar Admission Course
Ramesh Khandor	Bar Admission Course
P. Ronald Krumeh	Bar Admission Course
Stephen John Larkin	Bar Admission Course
Jennifer Claire Leach	Bar Admission Course
Gloria Loncaric	Bar Admission Course
Helgi Laura Maki	Bar Admission Course
Igor Mazin	Bar Admission Course
Bruce Robert Millar	Bar Admission Course
Camille Antoinette Millwood	Bar Admission Course
Dwayne John StClare Morgan	Bar Admission Course
Susan Aidan Mullins	Bar Admission Course
Boris Nevelev	Bar Admission Course
Hossein Niroomand	Bar Admission Course
Charles Bruno Piroli	Bar Admission Course
Tania Pompilio	Bar Admission Course
Benjamin Levi Shinewald	Bar Admission Course
Sanjit Singh Sodhi	Bar Admission Course
Daniel Therrien	Bar Admission Course
Pema Tulotsang	Bar Admission Course
Joshua Matthew Christopher Tupper	Bar Admission Course
Catherine Lynn Vautour	Bar Admission Course

Joanna Wojcik	Bar Admission Course
Hoi Yu Winnie Wong	Bar Admission Course
Anna Katherine Merivale Yarmon	Bar Admission Course

B.1.3. (b) Transfer from another Province - Section 4.1

B.1.4. The following candidate has completed successfully the Transfer Examinations or the teaching terms of the Bar Admission Course, filed the necessary documents, paid the required fee, and now applies to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, October 23rd, 2003:

Eric Pollanen	Province of Quebec

B.1.5. (c) Transfer from another Province - Section 4

B.1.6. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, October 23rd, 2003:

Emily Martha Durant	Province of Nova Scotia
Maureen Ann Harquail	Province of Alberta
Norman Toby Lang	Province of British Columbia
Terence Henry MacKean	Province of Manitoba
Jill Wendy McFarlane	Province of British Columbia
Stephen Joseph John Moreau	Province of Manitoba
Jeffrey Laurie Oliver	Province of British Columbia
Leanne Christine Strobel	Province of British Columbia
George Lovell Waggott	Province of British Columbia

B.1.7. (d) Full-Time Member of Faculty of Approved Ontario Law School

B.1.8. The following member of an approved law faculty asks to be Called to the Bar and admitted as a solicitor on Thursday, October 23rd, 2003, without examination, under sec. 5 of By-Law 11 made under the *Law Society Act*:

Paul Daniel Ocheje	University of Windsor

ALL OF WHICH is respectfully submitted

DATED this the 23rd day of October, 2003

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

Carried

CALL TO THE BAR (Convocation Hall)

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

Mathew Neal Abenstein	Bar Admission Course
Adefolami Babafemi Adekusibe	Bar Admission Course
Mbong Elvira Akinyemi	Bar Admission Course
Tara Marie Andronek	Bar Admission Course
Christian Peter Angelini	Bar Admission Course
Axel Bernabe	Bar Admission Course
Marcus Adam Bornfreund	Bar Admission Course
Jason Chalmers Brooks	Bar Admission Course
Ryan Gordon Caughey	Bar Admission Course
Lyne Denise Cormier	Bar Admission Course
Mercy Dadepo	Bar Admission Course
Dona P. David	Bar Admission Course
Robert Joseph Del Frate	Bar Admission Course
Katherine Ellen Ferguson	Bar Admission Course
Penelope Ann Fortier	Bar Admission Course
Theresa Mary Hartley	Bar Admission Course
Alison Jean Hayman	Bar Admission Course
Robert Michael Lockwood Hughes	Bar Admission Course
Joanna Elizabetta Jehan Jazairi	Bar Admission Course
Vanessa Alanne Kee	Bar Admission Course
Jeffrey John Jamieson Kendall	Bar Admission Course
Mahwash Waris Khan	Bar Admission Course
Ramesh Khandor	Bar Admission Course
P. Ronald Krumeh	Bar Admission Course
Stephen John Larkin	Bar Admission Course
Jennifer Claire Leach	Bar Admission Course
Gloria Loncaric	Bar Admission Course
Helgi Laura Maki	Bar Admission Course
Igor Mazin	Bar Admission Course
Bruce Robert Millar	Bar Admission Course
Camille Antoinette Millwood	Bar Admission Course
Dwayne John StClare Morgan	Bar Admission Course
Susan Aidan Mullins	Bar Admission Course
Boris Nevelev	Bar Admission Course
Hossein Niroomand	Bar Admission Course
Tania Pompilio	Bar Admission Course
Benjamin Levi Shinewald	Bar Admission Course
Sanjit Singh Sodhi	Bar Admission Course
Daniel Therrien	Bar Admission Course
Pema Tulotsang	Bar Admission Course
Joshua Matthew Christopher Tupper	Bar Admission Course
Catherine Lynn Vautour	Bar Admission Course
Joanna Wojcik	Bar Admission Course
Hoi Yu Winnie Wong	Bar Admission Course
Anna Katherine Merivale Yarmon	Bar Admission Course
Emily Martha Durant	Transfer, Province of Nova Scotia
Marueen Ann Harquail	Transfer, Province of Alberta
Norman Toby Lang	Transfer, Province of British Columbia
Terence Henry MacKean	Transfer, Province of Manitoba
Jill Wendy McFarlane	Transfer, Province of British Columbia
Stephen Joseph John Moreau	Transfer, Province of Manitoba
Jeffrey Laurie Oliver	Transfer, Province of British Columbia

Leanne Christine Strobel	Transfer, Province of British Columbia
George Lovell Waggott	Transfer, Province of British Columbia
Eric Pollanen	Transfer, Province of Quebec
Paul Daniel Ocheje	Faculty, University of Windsor

CONTINUATION OF THE PRESENTATION OF THE 2004 BUDGET

Mr. Ruby answered questions at the conclusion of his presentation.

It was moved by Mr. Ruby, seconded by Mr. Chahbar that the 2004 budget with an annual fee of $1,441 be approved.

Carried

It was moved by Mr. Ruby, seconded by Mr. Chahbar that the 2004 budget for LibraryCo be approved.

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Ducharme presented the Report of the Professional Regulation Committee to Convocation.

Professional Regulation Committee
October 23, 2003

Report to Convocation

Purposes of Report: Decision and Information

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

OVERVIEW OF POLICY ISSUES

MEMBERS' INFORMATION TO THE LAW SOCIETY
ON SUPERVISED PARALEGALS ACTING AS
STATUTORY ACCIDENT BENEFITS REPRESENTATIVES
AT THE FINANCIAL SERVICES COMMISSION OF ONTARIO

Request to Convocation

1. Convocation is requested to approve the creation and use of a Law Society form to capture information on member-supervised paralegals appearing before the Financial Services Commission of Ontario who provide services to the member's clients in claims for statutory accident benefits under the *Insurance Act*.

2. An example of the type of form to be created appears at page 10.

Summary of the Issue

3. On November 1, 2003, a new regulatory scheme for individuals who appear before the Financial Services Commission of Ontario (FSCO) as a representative of statutory accident benefits claimants will take effect. Under the new scheme, anyone who acts as an adviser, consultant or representative on behalf of a person concerning a claim for statutory accident benefits must meet the requirements that are set out in the regulations under the *Insurance Act*.

4. Lawyers acting in the usual course of the practice of law and insurer representatives are exempt from these requirements. Lawyers' employees are also exempt, provided they act only under the direct supervision of a lawyer who is retained, or whose law firm is retained, by the claimant.

5. The Committee determined that for the protection of the public and lawyers supervising the work of paralegals who act for the lawyers' clients in claims for statutory accident benefits, the Law Society should attempt to capture information about the supervised paralegals , who are not required to register with FSCO.

GUIDELINES FOR LAWYERS ACTING IN CASES INVOLVING CLAIMS OF ABORIGINAL RESIDENTIAL SCHOOL ABUSE

Request to Convocation

6. Convocation is requested to approve guidelines for lawyers acting in cases involving claims of aboriginal residential school abuse. The Guidelines begin at page 32.

Summary of the Issue

7. At their September 11, 2003 meetings, the Professional Regulation Committee and the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones unanimously approved Guidelines for lawyers acting in cases involving claims of Aboriginal residential school abuse.

8. As a matter of information, the Committees reported the approval of the Guidelines to Convocation on September 25, 2003. The chair of the Professional Regulation Committee briefed Convocation on the Guidelines and raised the question of whether Convocation should approve them. The Treasurer agreed that Convocation should approve the Guidelines, and deferred discussion on the matter to October 2003 Convocation.

PROPOSED RULE AMENDMENT RELATED TO THE SPECIALIST CERTIFICATION PROGRAM

Request to Convocation

9. Convocation is requested to approve an amendment to rule 3.05 of the *Rules of Professional Conduct* by adding new commentary to clarify the use of terms in advertising about a lawyer's designation as a certified specialist. The proposed commentary appears at page 56.

Summary of the Issue

10. Following discussions at the Professional Development, Competence and Admissions Committee that led to a redesign of the specialist certification program and a new by-law on the program adopted at April 25, 2003 Convocation, an issue relating to how lawyers advertise expertise in certain areas of practice was raised with the Committee.

11. The By-Law provides that a member who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the member is a certified specialist.

12. The Committee agreed that new commentary should be added to rule 3.05 to make specific reference to the language in the By-Law in an effort to clarify the type of advertising permitted.

THE REPORT

Terms of Reference/Committee Process

13. The Committee met on October 9, 2003. Committee members in attendance were Todd Ducharme (Chair), Carole Curtis (Vice-Chair), Mary Louise Dickson, Anne Marie Doyle, Sy Eber, Patrick Furlong, Allan Gotlib, Ross Murray and Laurie Pattillo. Staff in attendance were Julia Bass, Naomi Bussin, Terry Knott, Zeynep Onen and Jim Varro.

14. The Committee is reporting on the following matters:

For Decision

- Members' information to the Law Society on supervised paralegals acting as statutory accident benefits representatives at the Financial Services Commission of Ontario
- Guidelines for lawyers acting in cases involving claims of Aboriginal residential school abuse
- Proposed rule amendment related to the specialist certification program

Information

- Report from the Professional Regulation Division

MEMBERS' INFORMATION TO THE LAW SOCIETY ON SUPERVISED PARALEGALS ACTING AS STATUTORY ACCIDENT BENEFITS REPRESENTATIVES AT THE FINANCIAL SERVICES COMMISSION OF ONTARIO

A. BACKGROUND

15. On November 1, 2003, a new regulatory scheme for individuals who appear before the Financial Services Commission of Ontario (FSCO) on behalf of claimants for statutory accident benefits will take effect. Under the new scheme, anyone who acts as an adviser, consultant or representative on behalf of a person concerning a claim for statutory accident benefits must meet the requirements that are set out in the regulations under the *Insurance Act*. This includes a person who does any of the following activities concerning a claim under the Statutory Accident Benefits Schedule (SABS):

    a. advises another person about his or her rights under the SABS;

    b. completes or assists in completing application forms;

    c. discusses or negotiates with an insurer or adjuster;

    d. attends dispute resolution proceedings at FSCO, in Small Claims Court or private arbitration; or

    e. negotiates the settlement of SABS claims.

    More detailed information about this development is explained by reference to the *Insurance Act* and the regulations made thereunder and in material from FSCO's website, beginning at page 12.

16. The regulations require representatives to file a declaration with FSCO, purchase errors and omissions insurance coverage and adhere to a Code of Conduct.

17. Lawyers acting in the usual course of the practice of law and insurer representatives are exempt from these requirements. Lawyers' employees are also exempt, provided they act only under the direct supervision of a lawyer who is retained, or whose law firm is retained, by the claimant.

18. The FSCO scheme in effect is a first step in regulating unsupervised paralegals who represent the public in respect of statutory accident benefit claims.

B. THE PURPOSE OF CAPTURING SUPERVISED PARALEGAL INFORMATION

19. At its September 2003 meeting, the Committee discussed concerns that arise for the Law Society as result of this new scheme. They include the following:

    a. As a result of the exemption for individuals employed and supervised by a lawyer, the public has no way of knowing whether or not a paralegal is supervised;

    b. The Society's ability to investigate and/or prosecute a lawyer who is alleged to have supervised a paralegal could be adversely affected (e.g. lawyers may claim that they were *not* supervising the paralegal, and the paralegal may claim that lawyers *were* supervising).

20. At present, there is no ability to cross-reference between the Law Society's database and FSCO's database information about supervised paralegals acting as statutory accident benefit representatives. To address this gap, the Committee is proposing that the Law Society create a database of paralegals who are working under the supervision and direction of lawyers. The lawyer would in effect register his or her paralegal with the Society, and the paralegal would be assigned a number by the Society.

21. The Committee determined that a form should be created that members of the Society could voluntarily complete to identify the paralegal(s) whom the members supervise and who appear before FSCO. This is a first step in capturing information about supervised paralegals and could be expanded to include information on other supervised paralegals as experience is gained with the use of the form.

22. Because completion of the form by members would be voluntary, the data collected from the form will not provide a complete picture of the activities of supervised paralegals appearing before FSCO. However, it will create an awareness among lawyers of the Society's interest in these relationships, offer protection for lawyers who use paralegals in work before FSCO and enhance protections for the public.

23. The Committee reviewed a draft of the type of form that would be administered through the Society's Administrative Compliance Processes Department. This sample form appears on page 10 and would be intended capture the following key information:

- The identity of the lawyer supervising a paralegal appearing before FSCO
- The identity of the paralegal appearing before FSCO under the supervision of the lawyer
- The relationship between the supervising lawyer and the paralegal (e.g. employee, independent contractor, partner (under By-Law 25), etc.)
- The paralegal's qualifications
- The services provided by the paralegal under the supervision of the lawyer
- The lawyer's declaration and undertaking with respect to supervision of the paralegal

24. With respect to the third item above, s. 18 of R.R.O. 1990, Reg. 664 (amended to O. Reg. 275/03) under the *Insurance Act* confines the exemption from registration with FSCO for non-lawyer individuals to "an employee of a barrister and solicitor or a firm of barristers and solicitors". The Committee acknowledged that individuals who fall outside this category even though supervised by a lawyer would be required to register with FSCO. However, the Committee believes that information about paralegals and lawyers in any supervised relationship related to work before FSCO should be captured, for the reasons indicated above. The Committee therefore proposes that, as indicated in the sample form, lawyers provide information on independent contractors and non-lawyer partners under By-Law 25 (Multi-Discipline Practices) whom they supervise and who provide services to the lawyers' clients in respect of claims for statutory accident benefits.

SAMPLE FORM

Supervising Member's Registration Of Paralegal/SABS Representative Appearing Before the Financial Services Commission of Ontario (FSCO)

PART A: Information on Member/Firm

Name and Member Number of Supervising Lawyer	Firm Name
Name: _____ Member Number: _____	
Status of Member	**Member/Firm Contact Information**
□ Sole Practitioner □ Employee/Associate □ Partner □ Other (Specify) _____	Address: _____ _____ _____ Telephone Number: _____ Facsimile Number: _____ Email Address: _____

PART B: Information on Paralegal

Last Name (Legal name in Canada)	First Name (in full)	Commonly used First Name (if different)	Middle Name(s) (in full)
Birth Date (YYMMDD)			

Paralegal Contact Information	Paralegal's qualifications, designations, degrees
Address: _____ _____ _____ Telephone Number: _____ Facsimile Number: _____ Email Address: _____	_____ _____ _____ _____

Number of year(s) supervised by above lawyer	Lawyer/Paralegal relationship
_____ year(s)	
Description of services provided by paralegal under the supervision of the member	
_____ _____ _____	

PART C: Declaration and Signature

_____ is my employee/an employee of my firm/an independent
(Name of SABS Representative/Paralegal)
contractor with my office/firm/my partner under By-Law 25 and, in respect of any claim for benefits under the Statutory Accident Benefits Schedule made by my clients or clients of my firm, acts only under my direct supervision and direction.

I agree to notify the Law Society of Upper Canada within 1 business day if the person named above is no longer under my direct supervision and direction.

I am a member in good standing of the Law Society of Upper Canada and carry professional liability insurance as required by the Law Society of Upper Canada.

_____ _____

Member Signature Date

Excerpts from the *Insurance Act* and Regulations

Insurance Act, R.S.O. 1990, c. I.8

398. (1**)** Subject to subsection (2), no person shall, on the person's own behalf or on behalf of another person, directly or indirectly,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2002, chapter 22, subsection 130 (1) by striking out "Subject to subsection (2)" at the beginning and substituting "Subject to subsections (2) and (3)". See: 2002, c. 22, ss. 130 (1), 133 (2).

(a) solicit the right to negotiate, or negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or

(b) hold himself, herself or itself out as an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed by the Statutes of Ontario, 2002, chapter 22, subsection 130 (2) and the following substituted:

(b) hold himself, herself or itself out as an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim against an insured or an insurer for which indemnity is provided by a motor vehicle liability policy, including a claim for Statutory Accident Benefits.

See: 2002, c. 22, ss. 130 (2), 133 (2).

Exception

(2) This section does not apply to a barrister or solicitor acting in the usual course of the practice of law. R.S.O. 1990, c. I.8, s. 398.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 398 is amended by the Statutes of Ontario, 2002, chapter 22, subsection 130 (3) by adding the following subsection:

Non-application to prescribed persons

(3) Subsection (1) does not apply to a prescribed person or class of persons who comply with prescribed terms and conditions.

See: 2002, c. 22, ss. 130 (3), 133 (2).

R.R.O. 1990, Reg. 664 (amended to O. Reg. 275/03)

Public Adjusters - Statutory Accident Benefits (Section 398 of the Act)

18. A person is exempt from subsection 398 (1) of the Act in respect of a claim for benefits under the Statutory Accident Benefits Schedule if,

(a) the person,

(i) obtains and continues to maintain errors and omissions liability insurance acceptable to the Superintendent in an amount of not less than $1 million in respect of any one occurrence,

(ii) does not provide services in respect of a claim by another person whom the person knows or ought reasonably to know has sustained a catastrophic impairment as that term is defined in the Statutory Accident Benefits Schedule, and

(iii) files with the Superintendent such information as the Superintendent requires; or

(b) the person is an employee of a barrister and solicitor or a firm of barristers and solicitors and, in respect of any claim for benefits under the Statutory Accident Benefits Schedule, acts only under the direct supervision and direction of a barrister and solicitor who,

(i) is a member in good standing of the Law Society of Upper Canada,

(ii) carries such professional liability insurance as the Law Society of Upper Canada requires, and

(iii) is retained in respect of the claim or is a member of a firm that is retained in respect of the claim. O. Reg. 275/03, s. 9.

Representation - Dispute Resolution Proceedings (Section 284.1 of the Act)

19. (1) A person may, for compensation, represent a party to a proceeding under sections 279 to 284 of the Act if,

(a) the person meets the requirements in section 18; or

(b) the party to the proceeding whom the person represents is an insurer. O. Reg. 275/03, s. 9.

(2) For the purposes of subsection (1), a person shall be considered to be representing a party for compensation if the person receives or is entitled to receive, directly or indirectly from any source, a financial benefit in connection with the representation of the party, whether the financial benefit is wages, fees or another form of consideration or remuneration. O. Reg. 275/03, s. 9.

Filing & Other Regulatory Requirements for Paralegals (SABS Representatives)

Questions & Answers

1. What is a filing?

A filing is a declaration by the SABS representative confirming that he or she has met all of the requirements of the regulations and is in compliance with the Code of Conduct issued by the Superintendent. It also provides the Financial Services Commission of Ontario (FSCO) with personal identification information, business information and details of a SABS representative's errors & omission (e & o) liability insurance. It is not an application for a licence or registration.

2. Who has to file?

Anyone who acts as an adviser, consultant, or representative on behalf of a person concerning a claim for statutory accident benefits must file with FSCO, effective November 1, 2003. These representatives may use different titles, but are often referred to as "paralegals" or "SABS representatives." The latter term is used for clarity to denote individuals who are not lawyers and who provide representation in SABS claims.

3. I am a SABS representative but I don't attend dispute resolution proceedings at FSCO, do I still have to file?

Yes. The requirements apply to all SABS representatives whether or not they attend dispute resolution proceedings at FSCO. SABS representatives who appear in Small Claims Court or private arbitration, or who help claimants fill out forms, negotiate settlements with adjusters and insurers and provide advice about entitlement to statutory accident benefits, are all required to file.

4. I am currently licensed with FSCO as an adjuster and I act for SABS claimants. Am I subject to the filing and other requirements?

Yes. However, adjusters who only provide adjuster services on behalf of insurance companies are exempt from all the requirements.

5. Are there any other regulatory requirements, besides filing a declaration, that apply to SABS representatives?

Yes. The regulations require SABS representatives to carry e & o liability insurance coverage of $1,000,000 in respect of any one occurrence; and refrain from acting for any individual who they know, or ought reasonably to know, has a catastrophic impairment as defined in the SABS (O. Regulation 664 amended by O. Reg 275/03).

The regulations also amend the definition of "unfair or deceptive acts or practices" to prohibit the following conduct by SABS representatives:

- charging fees under a contingency fee arrangement;
- paying or accepting referral fees;
- committing an act or omission inconsistent with the Code of Conduct issued by the Superintendent; and
- failing to disclose any conflict of interest, as defined in the regulation, to the claimant and the insurer (O. Reg. 7/00 amended by O. Reg. 278/03).

6. Who is exempt from the requirements?

Lawyers acting in the usual course of the practice of law, and insurer representatives, are exempt from these requirements. Lawyers' employees are also exempt, provided they act only under the direct supervision of a lawyer who is retained, or whose law firm is retained, by the claimant.

Persons who provide representation without compensation (such as a friend or family member who assists a claimant in an informal and unpaid manner) are also exempt from these requirements. However, a person is considered to be providing representation for "compensation" if he or she receives, directly or indirectly, a financial benefit in connection with the claimant's representation. Individuals who are paid service providers who combine the provision of health care or other services with claimant representation, must comply with these requirements.

7. When is filing of the declaration required?

All SABS representatives must file a declaration form with FSCO before November 1, 2003. SABS representatives may commence filing with FSCO on September 2, 2003. SABS representatives are encouraged to file early to ensure their filing is received and processed by FSCO prior to November 1, 2003. Anyone who becomes a SABS representative after November 1, 2003, will need to file before engaging in the activities of a SABS representative.

8. What information is required in the declaration filed with FSCO?

The required information in the declaration includes basic personal identification information (name, home address and contact information); business information (business name, business address, and contact information); details of e & o liability insurance (information on the broker or agent, insurance company, and policy), confirmation of compliance and signature. The filing requirement applies to individuals, not to businesses. However, any business or organization under which the person operates must be identified.

9. Is there a filing fee?

No.

10. Why does a SABS representative have to file and make a declaration with FSCO?

In order to comply with the amendments to the *Insurance Act* introduced under the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* (Bill 198), SABS representatives are required to file with FSCO.

11. How do I file the declaration?

The convenient and secure on-line declaration can be quickly completed and submitted through FSCO's website at www.fsco.gov.on.ca. Simply go to the *Paralegals/SABS Representatives* page of FSCO's website, which is accessed through the *Insurance* or *Consumers* sections of the site.

You must have an e-mail address to file electronically. FSCO will use this e-mail address to confirm that your filing has been processed, and to notify you when your renewal date is approaching.

12. How often does a SABS representative have to file with FSCO?

A SABS representative must re-file on or before the renewal date of his or her e & o liability insurance policy, and any time the file information changes (e.g. change to personal or business information, change to e & o liability insurance, or ceasing to act as a SABS representative).

13. What if a SABS representative fails to file a declaration with FSCO by November 1, 2003?

A SABS representative who fails to file or fails to update the filing as required, is in violation of the *Insurance Act* and is not entitled to act as a SABS representative. He or she may also be subject to prosecution and administrative action taken by the Superintendent. After November l, 2003, FSCO will not accept an application in any dispute resolution proceeding from a SABS representative who has not filed. Nor will FSCO allow a SABS representative to participate in existing proceedings after the deadline, if he or she has not filed.

14. What does FSCO do with the declaration?

A searchable list of SABS representatives who have filed with FSCO will be posted in the *Paralegals/SABS Representatives* page of FSCO's website at www.fsco.gov.on.ca. Only the SABS representative's name, business name, and city in which he/she does business will be posted; no personal information will be posted. This list will ensure that claimants and insurance industry participants can verify that a SABS representative has filed with FSCO. It does not mean, however, that FSCO has endorsed the services or qualifications of the persons whose names are on the list.

15. How soon after I have filed with FSCO can I act as a SABS representative?

As soon as your name appears on the list, you may begin providing services as a SABS representative. On-line filing of a declaration through FSCO's website for the initial filing should ensure your name and business name will be listed the following business day. Renewals or changes to the declaration will be updated automatically with no delays.

16. Why is a SABS Representative's information posted on FSCO's website?

This ensures that stakeholders, such as claimants, insurers, adjusters, service providers and dispute resolution staff, can easily verify that a SABS representative has filed.

FSCO is not endorsing SABS representatives, vouching for their qualifications or advocating their use. However, the website will allow the public to confirm that a SABS representative has filed with FSCO. Only the SABS representative's name, business name and the city in which he or she does business will be indicated; no personal information will be posted.

17. Once a SABS representative has filed, does FSCO issue a licence or registration certificate?

No. FSCO is not licensing or registering SABS representatives.

18. Can a SABS representative tell people that he or she is licensed or endorsed by FSCO?

No. A SABS representative may not indicate in any way that he or she is licensed or that his or her services or qualifications as a SABS representative are endorsed by FSCO. After filing a declaration with FSCO, the SABS representative may tell people that he or she has filed and is legally permitted to advise and represent persons claiming statutory accident benefits, as long as his or her name appears on FSCO's web listing.

19. If someone's name is on the list. does that mean they've been screened by or are approved by FSCO?

No, it only indicates that they have filed a declaration with FSCO.

20. How does a SABS representative make changes to his/her filing information, and how does he or she renew?

He or she can go to the *Paralegals/SABS Representatives* page of FSCO's website at www.fsco.gov.on.ca, which can be accessed through the *Insurance* or *Consumers* sections of the site, to make changes to the filed information, or to renew.

21. Can I use the on-line filing system to notify FSCO of a name change?

No, not at this time. Any SABS representative submitting a request for a name change must submit a written request to FSCO and provide the legal proof coinciding with his/her request. The FSCO website list for SABS representatives will be updated accordingly.

22. What is the Code of Conduct? How do I obtain a copy?

The *Code of Conduct for Statutory Accident Benefit Representatives* (Code), issued by the Superintendent, sets out the standards of conduct expected of SABS representatives. The Code also includes requirements set out in legislation and regulation so as to be a comprehensive document.

The Code is made under authority of the *Insurance Act* (*Act)* and subsection 4(1) of Ontario Regulation 7/00, as amended. The effective date is November 1, 2003. The Code governs the conduct of all SABS representatives, whether or not they appear in dispute resolution proceedings at FSCO.

A link to the Code is posted on the *Paralegals/SABS* Representatives page of FSCO's website at www.fsco.gov.on.ca. The Code will also be published in *The Ontario Gazette*. A copy may also be obtained by contacting FSCO. See contact information at the end of the document.

23. Where can a SABS representative get errors and omissions insurance?

Effective November l, 2003, all SABS representatives must have e & o liability insurance coverage. This insurance may be available to some SABS representatives through membership in one of the paralegal associations. If not, he or she will need to obtain insurance directly. Please contact your insurance broker or agent directly for more information or ask them to contact ENCON Group Inc., which currently arranges this coverage.

A SABS representative must obtain and continue to maintain e & o liability insurance coverage in an amount that is not less than $1,000,000 in respect of any one occurrence, with an overall policy aggregate limit of at least $1,000,000 per person. The deductible must not exceed $5,000 in respect of any one occurrence.

Information with respect to the policy must be provided to FSCO when making and filing the declaration. In addition, if requested by FSCO, a SABS representative must provide a copy of the insurance certificate or policy.

24. What kind of security features are in place in the on-line system for making and filing the declaration?

No special computer or software is required, just Internet access. The system is available 24 hours a day, seven days a week. It can be accessed through the *Paralegals/SABS Representatives* page of FSCO's website at www.fsco.gov.on.ca, through the *Insurance* or *Consumers* sections of the site.

The confidentiality and security of the information provided on-line via the secure server is paramount to FSCO. Extensive security features have been incorporated into the system. The system protects your information and privacy by Secure Sockets Layer or SSL which allows data flowing between two computers on the Internet to be encrypted. It is used on the Web whenever a high degree of security is required.

25. Does a SABS representative require a password or PIN number to use the on-line e-filing service?

Yes. For security reasons each user is assigned a PIN number (5 digit number) by FSCO. It acts as a password into the system and should be stored in a safe place for future use. The PIN number will automatically be e-mailed after the initial filing is processed and the SABS representative's name is listed on the FSCO web site.

26. What if I forget my PIN?

As part of the initial filing process you will be asked to submit a question to which only you can provide the answer. Should you forget your PIN in the future, the system will pose this question back to you. A successful answer will allow you to retrieve your PIN. Both the question and the answer should be clear and precise.

27. When will the system ask for my PIN?

On subsequent attempts to use the system it will prompt you to enter your FSCO PIN. Simply type it into the appropriate field and click "Continue".

28. Is there someone a SABS representative can contact if he or she has questions about the on-line e-filing system or any other issues related to the legal requirements for paralegals?

Yes. Please contact FSCO at 416-250-7250 or 1-800-668-0128, or by e-mail at paralegalinfo@fsco.gov.on.ca.

29. If a SABS representative doesn't have a computer, how does he or she file electronically?

Go to any public library to access the Internet. The North York branch of the Toronto Public Library is accessible from the building complex where FSCO's offices are located.

Another alternative is to use the public access computer on the 14th Floor at FSCO's offices, located at 5160 Yonge Street.

You must have an e-mail address to file electronically. FSCO will use this e-mail address to confirm that your filing has been processed, and to notify you when your renewal date is approaching.

If you are unable to file electronically please contact FSCO at 416-250-7250 or 1-800-668-0128, or by e-mail at paralegalinfo@fsco.gov.on.ca.

30. Can a SABS representative come to FSCO to file the declaration in person?

Yes. There will be a convenient FSCO Resource Computer located in the reception area on the 14th Floor at 5160 Yonge Street. On this computer, SABS representatives may obtain free access to FSCO's website, including the easy-to-use on-line e-filing service for SABS representatives. FSCO will review all filing information that is submitted to ensure it is complete, before an individual may act as a SABS representative; please note that you will not be able to file the information and act as a SABS representative on the same day.

31. Is the electronic information provided in this filing governed by requirements under the *Insurance Act*?

Yes. Providing false, misleading or incomplete information is an offence under the *Insurance Act*, and doing so may be sufficient grounds to reject the filing, or result in a prosecution. The offence is punishable on conviction by a maximum fine of $100,000 for a first conviction and a maximum fine of $200,000 for any subsequent conviction.

32. Will the information submitted be accessible to others under *Freedom of Information and Protection of Privacy* Legislation?

The *Freedom of Information and Protection of Privacy Act (FOIPOP)* governs what information is considered personal and what information can be released in an access request. The personal information gathered on-line on this website is collected under the authority of the *Insurance Act*. Any personal information that is provided will only be used by FSCO to ensure the requirements of the Act are met. Your information will not be disclosed to anyone else, except as may be authorized by law.

33. Who do I contact if I have a complaint concerning a SABS representative?

Effective November l, 2003, if you have a complaint concerning a SABS representative please contact the Office of the Insurance Ombudsman at 416-250-7250 or 1-800-668-0128, or by e-mail at paralegalinfo@fsco.gov.on.ca.

34. If I require additional information, who can I call?

If you have questions about the requirements, new regulatory changes or the Code of Conduct and how it applies to you, please contact FSCO at 416-250-7250 or 1-800-668-0128, or by e-mail at paralegalinfo@fsco.gov.on.ca.

GUIDELINES FOR LAWYERS ACTING IN CASES INVOLVING CLAIMS OF ABORIGINAL RESIDENTIAL SCHOOL ABUSE

A. INTRODUCTION

25. The Committee and the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("EAIC") unanimously approved Guidelines for lawyers acting in cases involving claims of Aboriginal residential school abuse, which begin at page 32.

26. The Guidelines are intended to be an educational tool to assist lawyers acting in these cases. The Guidelines highlight a number of issues specific to representation of these claimants and the professional conduct expectations for lawyers acting in these cases, with appropriate references to the Rules of Professional Conduct.

B. BACKGROUND TO THE DRAFTING OF THE GUIDELINES

Genesis of the Issue

27. In September 2001, a joint working group of the EAIC and the Committee[1] was struck to consider a number of issues identified in connection with Aboriginal Residential School and Childhood Institutional Abuse discussed in a report to Convocation in June 2001. One issue related to the manner in which lawyers seek to represent and represent individuals who are pursuing claims arising from Aboriginal residential school abuse.

28. The impetus for the Law Society's review of issues related to litigation involving these claimants came from a number of sources, including

- an October 1998 letter from the National Chief of the Assembly of First Nations to the Society raising concerns about the alleged exploitation of residential school claimants by lawyers in Canada;
- a March 2000 report "Restoring Dignity: Responding to Child Abuse in Canadian Institutions", from the Law Commission of Canada, which made several recommendations specific to law societies in regard to providing safeguards for survivors of childhood institutional abuse, as well as guidance and training for lawyers acting in Aboriginal residential school and childhood institutional abuse cases;
- Canadian Bar Association Resolution 00-04-A ("Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools") adopted at the August 2000 Annual General Meeting of the CBA, which called upon all law societies in Canada to adopt the Guidelines as recommended conduct for lawyers acting or seeking to act for claimants in Aboriginal residential school abuse cases.

29. In late 2000 and into mid-2001, EAIC received reports, largely through Rotiio> taties Aboriginal Advisory Group, concerning Aboriginal residential school issues. While to date, the Law Society has not received any formal complaints about lawyers from Aboriginal residential school claimants, unsubstantiated third party allegations of misconduct by lawyers in other Canadian jurisdictions in these types of cases have been brought to the Society's attention. They include reports of:

[1] The members of the working group were Judith Potter (chair), Stephen Bindman, Tom Carey and Avvy Go.

- Lawyers sending unsolicited letters to potential claimants which may include detailed and lengthy questionnaires requesting explicit information about experiences in residential school, including accounts of physical and sexual abuse from the survivor
- Lawyers requiring claimants to sign retainer agreements which do not set out a defined fee, but rather indicate that the fees will be determined by an hourly rate, the complexity of the case, the results obtained in the case, with allowances for the delay in payment for the lawyer's fees.
- Lawyers coming into communities and setting up in a local community centres, putting up posters about the lawyer's ability to sign up clients in residential school cases and actively recruiting clients, without any concern whether that claimant is already represented by counsel.
- Lawyers offering to pay claimants $50 cash if they agree to sign a retainer agreement with the lawyer.
- Lawyers signing on clients in bulk fashion but not delivering on legal services, lawyers not doing the work required on the case, and lawyers not being knowledgeable about the work required in residential school claims.
- Lawyers not keeping clients informed on the status of their case or the legal process, lawyers not returning phone calls from clients, lawyers sending clients detailed opinion letters with complicated instructions requiring clients to opt in or out of certain processes, etc. without making themselves available to the client to discuss and explain the opinion, lawyers refusing to accept collect phone calls from indigent clients and thereby denying communication with the client altogether.
- Lawyers requiring aging claimants to amend their wills naming the lawyer as Executor of their estates prior to agreeing to proceed with their cases.

30. While there was consensus that the *Rules of Professional Conduct* generally deal with many of the above issues, in light of the developments described above, EAIC considered whether further work could be done to educate the profession. This led to discussions between the Committee and EAIC.

31. Gavin Mackenzie, then the Committee's chair, and George Hunter, then Vice-Chair of EAIC requested that staff from the Equity Initiatives Department and Policy and Legal Affairs develop draft "Guidelines for Lawyers Acting in Aboriginal Residential School Cases" to be co-ordinated through the joint working group of EAIC and the Committee. The working group, following similar initiatives by other law societies in Canada, prepared the Guidelines for review and approval by EAIC and the Committee.

Overview of the Guidelines and the Consultation Process

32. Although based on the August 2000 CBA Guidelines, the Society's Guidelines have been drafted to reflect relevant provisions of the Society's *Rules of Professional Conduct* and the advisory purpose of similar Society Guidelines. They are intended to educate and provide guidance to the profession on the Rule-based standards, in this case, applicable to counsel representing parties in residential school abuse litigation.

33. The Guidelines deal with the following issues in appropriate detail:
    - the special nature of these claimants' cases
    - the unique demands that these cases put on the lawyer and other law office staff
    - competence to act prior to accepting clients in these matters
    - culturally appropriate methods in making legal services available to claimants, including consideration of the potential vulnerability of some claimants
    - clear communication and client comprehension regarding all aspects of the lawyer and client relationship and the legal process in which the client is involved
    - the lawyer's accessibility to clients and clear lines of communication with the client
    - sensitivity to the emotional, spiritual and intellectual needs of claimants and an effort to understand and respect claimants' cultural roots, customs and traditions.

34. The working group, in addition to requesting comments on the proposed Guidelines from representatives of the Aboriginal community and certain legal organizations, sought input from the profession on the

proposed Guidelines in the spring of 2002. The working group in its call for input[2] indicated that it was "interested in views on the scope, detail and comprehensiveness of the proposed Guidelines, and their ability to be practically applied."

35. In response to the call for input, the Society received ten written responses from lawyers and organizations. In addition, three meetings were arranged, with members of the Aboriginal community, Department of Justice counsel and counsel representing various churches. The written responses and input received at the meetings are summarized at the end of this report (beginning at page 37), without attribution.

36. A number of constructive comments and criticisms were made on the draft Guidelines. Most were directed at clarification of the scope of the Guidelines, their ultimate purpose and the need for use of proper terminology and descriptions, given the specific type of legal matter the Guidelines address. These changes included the following:
    a. Replacing the term "survivor" with "claimant", as a result of advice from the Aboriginal community that for some people, the term "survivor" carries a stigma and should not be used in the context of the Guidelines.
    b. Defining other terms used in the Guidelines (i.e. "respect" and "healing").
    c. Acknowledging that although the Guidelines may be a useful information piece for counsel involved in these matters representing parties opposing the claimants, the majority of the Guidelines are focussed on the obligations of claimants' counsel.
    d. Referencing in the Guidelines a list of resources for lawyers acting for claimants.

37. The Guidelines unanimously approved by EAIC and the Committee appear below.

GUIDELINES FOR LAWYERS ACTING IN ABORIGINAL RESIDENTIAL SCHOOL CASES

Preamble

These Guidelines are provided as a tool primarily to assist members of the Law Society of Upper Canada who act for claimants in cases involving Indian residential schools ("the residential schools"). While the word "Indian" is the title used by government and in laws or other official documents to refer to the Aboriginal people of Canada, the term "Aboriginal" will be used in the context of these Guidelines.

The Guidelines were prepared in the context of the Aboriginal community=s unique experience and history with the residential schools across Canada. The Guidelines reflect a response to calls from the Assembly of First Nations, Rotiio> taties Aboriginal Advisory Group, the Law Commission of Canada, and the Canadian Bar Association for law societies to implement safeguards for Aboriginal claimants engaged in legal processes. These Guidelines are in keeping with the spirit and letter of the *Rules of Professional Conduct* ("the Rules"). In particular, rule 1.03(1)(b) recognizes that lawyers have a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights law in force in Ontario.

While these Guidelines address issues relating specifically to claimants in legal matters involving the schools, the principles in the Guidelines may apply to lawyers acting in cases involving other claims of institutional abuse or other vulnerable clients. The Guidelines also provide guidance of a general nature, which lawyers acting on behalf of individual defendants, churches or government will find useful in their representations.

The Guidelines, advisory in nature, are meant to be educational and should be read in conjunction with the Rules. A lawyer will not be subject to discipline by the Law Society for a breach of the Guidelines, but may be subject to discipline for a breach of the standards of professional conduct found in the Rules, some of which are referenced in these Guidelines. The Guidelines have been created to identify appropriate practices in the area of residential school litigation with a view to ensuring the competence and professional conduct of the Ontario Bar in providing legal services and non-discriminatory access to legal services in Ontario for claimants in these actions.

[2] The call for input, with the proposed Guidelines, was published in the *Ontario Lawyers Gazette*, the *Ontario Reports* and on the Society's web site.

In these Guidelines, words such as "respect" and "healing" are used throughout. These words have significant meaning in an Aboriginal world-view. For the purposes of these Guidelines, "respect" reflects either an acceptance of the importance of the issue referred to, or polite, honourable, kind and careful consideration of the person referred to. "Healing" refers to the claimant's emotional, psychological, physical and spiritual journey towards health and wellness in his or her life, and in his or her relationships with family and community.

Background information on the residential school experience and a list of resources for lawyers acting for claimants may be obtained through the Society's website *[specific web link to be inserted]* or through the Society's Equity Initiatives or Practice Advisory areas.

General

1. Given the specific knowledge required to responsibly serve the legal needs of Aboriginal Peoples or represent other parties to these claims, the special nature of residential school cases, and the various legal processes that exist in those cases, lawyers should ensure they are competent to act prior to accepting clients in these matters. Rule 2.01 provides a definition of a "competent lawyer". Rule 2.01(h) states that being a competent lawyer includes "recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps to ensure the client is appropriately served." Competence also involves "performing all functions conscientiously, diligently, and in a timely and cost-effective manner" (rule 2.01(e)). Lawyers should avoid unnecessary delay and encourage clients to pursue expeditious resolution of these claims, with particular care to avoid delays in cases involving ill or aging claimants.

2. Recognizing that this type of litigation creates additional demands for lawyers and their staff, lawyers should be aware of the possible need for training for law office personnel to effectively manage the practice and maintain competent legal service to clients. Lawyers acting in residential school cases are encouraged to ensure that employee assistance programs and counseling are available for law office lawyers and staff.

3. Lawyers should recognize and respect that claimants may be seriously damaged from their experiences, which may include cultural damages resulting from being cut off from their own society, culture and traditions and removed from their parents. These experiences may be aggravated by claimants having to relive their childhood abuse, and healing may be a necessary component of any real settlement for claimants. Accordingly, lawyers should take into account that any redress provided to claimants may include a broader range beyond the monetary. Lawyers should endeavour to understand and respect claimants' cultural roots, customs and traditions.

Guidance for Claimants' Counsel

4. Lawyers should recognize and respect the unique nature of residential school cases and appreciate claimants' need for "healing" in the legal process. Lawyers should recognize and respect the special nature of claimants' cases and should assist in facilitating their client's healing process through, where possible:
    a) identifying and providing referrals to appropriate community resources, including counseling resources, to assist the client;
    b) referring their client to treatment programs, if appropriate;
    c) recognizing and respecting the need for the client to develop a personal support network.

    Lawyers should review these options with the client at the beginning of and throughout the retainer.

5. Lawyers should recognize and respect that residential school cases place unique demands on the lawyer and other law office staff by virtue of the complicated legal issues, the emotional nature of such cases, the additional amount of time and resources required for each case, the special needs of claimants, the potential need for crisis intervention and management, and the lawyer's role in facilitating the claimant's healing process. Lawyers should recognize and respect that these demands may place a practical limit on the number of cases which they can competently and responsibly take on at any one time. Lawyer must also remember that they must act consistent with their responsibilities to their clients.

6. If lawyers pursue claims through a class action, lawyers should ensure that the claimants understand the nature of a class action and the need for a representative group of claimants from whom the lawyer will take instructions. The lawyer should also implement appropriate information distribution systems for the benefit of all claimants.

7. Lawyers should appreciate the need for the utmost sensitivity in dealings with claimants. Lawyers should ensure that the methods they employ in making legal services available to claimants are culturally appropriate and comply with Rule 3.06, in particular Rule 3.06(2)(c) which prohibits unconscionable or exploitive means in offering legal services to vulnerable persons or persons who have suffered a traumatic experience and have not yet had a chance to recover. Lawyers should make reasonable efforts to ensure that initial communications offering legal services to claimants are welcomed and respectful. Care should be taken to ensure that these communications will not result in further trauma to the claimant. Subject to protecting and advising the client with respect to solicitor and client privilege, lawyers may wish to consider having community support people available at the initial meeting with the client and should recognize that claimants may require support people to be present throughout various stages of the legal retainer.

8. Lawyers should ensure that advertising aimed at soliciting claimants is in good taste, is not false or misleading, and complies with Rule 3.04.

9. Lawyers acting on behalf of claimants must comply with Rule 2.08 and ensure that all fees and disbursements are clearly communicated to the claimant in a way that is understandable. Given the unique nature of residential school cases and needs of claimants, lawyers should make reasonable efforts to ensure that there is clear and understandable communication regarding the lawyer and client relationship, the legal process including settlement and alternative dispute resolution processes, responsibilities of lawyer and client, and fees and disbursements. Accordingly, lawyers should, whenever possible, meet in person with the claimant before establishing a lawyer and client relationship or accepting retainers from residential school claimants.

10. Lawyers may enter into an arrangement with a claimant for a contingent fee provided the arrangement is in accordance with rules 2.08(3), (4) and (5).

11. Lawyers acting for claimants should ensure that they are accessible to claimants for whom they are acting and that clear lines of communication exist with the claimants. Lawyers should recognize and respect the special communication needs that some claimants may have including language barriers, cultural barriers, and limited access to telephone service. Lawyers may be required to consider the services of interpreters, as necessary. Lawyers' written communications to claimants should be in an understandable and accessible format and lawyers should make reasonable efforts to follow up to ensure client comprehension. Rule 2.01 defines a "competent lawyer" to be one who communicates at all stages of the matter in a timely and effective manner that is appropriate to the age and abilities of the client, and performs all functions conscientiously, diligently, and in a timely and cost-effective manner. This also involves being clear with the client about what the legal system can and cannot deliver, and, depending on the circumstances, involving the client in determining the approach to gathering information relevant to the claim. Lawyers should also be prepared to deal with a claimant's progressive disclosure of issues related to the claim, given the emotional restraints that many claimants may experience.

12. Sensitivity to the emotional, spiritual and intellectual needs of claimants is necessary in the provision of legal services to claimants. Lawyers acting for claimants should recognize and respect that many claimants have had control taken from their lives and were victims of child and sexual abuse and therefore, as clients, should be routinely informed about and consulted as much as possible on the direction of their case. Lawyers should ensure that they obtain instructions from claimants at every stage of the legal process. Lawyers should also recognize and respect that for claimants, interaction with lawyers and the legal process can be extremely stressful and difficult.

13. Lawyers should recognize and respect that claimants are often at risk of suicide and/or violence toward themselves and others, and should seek appropriate instruction and training for all law office staff to deal

with such occurrences. Lawyers should be aware of available and appropriate resources and supports in order to make referrals when crisis intervention is warranted.

Summary of Input Received on Draft Guidelines

Introduction

In response to the call for input on the draft Guidelines, the Society received ten written responses from various lawyers and organizations. In addition, three meetings were arranged, with members of the Aboriginal community, Department of Justice counsel and counsel representing various churches. The written responses and input received at the meetings are summarized in this memorandum, without attribution except as noted below.

The Guidelines on which the submissions were made contained 12 paragraphs. The Guidelines approved by EAIC and the Committee were expanded to 13 paragraphs by the addition of new paragraph 6.

Background

Information received from Department of Justice counsel during the consultation provided some context for the issue, as follows:

- The Deputy Prime Minister oversees the Office of Indian Residential Schools, uniquely established to resolve these cases in a policy context. The Department of Justice supports the office, and between 80 and 90 Justice lawyers in Canada work on these cases.
- There are approximately 11,000 claims. Justice estimates at the conclusion of these matters to have 12,000 to13,000 validated claims of abuse. In an informal survey, about 70 firms across the country have identified as serving as plaintiffs' counsel. The bulk of claims are in Alberta and Saskatchewan (3000 to 4000 each). Between 800 and 900 claims are in Ontario, and include both primary and secondary claims.

Residential School Claims in the Context of the Civil Justice System

In response to the call for input, two lawyers, Elizabeth Grace and Susan Vella, provided what was at the time an unpublished paper on the civil justice system's response to residential school claims.[3] While the bulk of this paper is an analysis of the components of these claims in the civil justice system, the discussion of one component (respect, engagement and informed choice) is relevant to the Guidelines. The following is an excerpt from the paper:

> The objectives of respect, engagement and informed choice speak to access to justice, which is a fundamental marker for judging the adequacy of any system of redress for wrongs committed against innocent persons. … There are, however, significant practical barriers that exist which may prevent residential school claimants from accessing civil justice at all, let alone in an empowering and effective way. These barriers include:
>
> 1. a lack of understanding on claimants' parts as to what their realistic legal rights and remedies are,
> 2. a lack of understanding of the complexity and emotionally draining nature of the process which they will face in their pursuit of civil justice,
> 3. the difficulty in finding a lawyer who is skilled in both this type of specialized litigation and the representation of psychologically fragile trauma survivors, and will assume the financial risk typically associated with such litigation by structuring a fee arrangement which is fair and feasible, and
> 4. the burden of funding the costly disbursements (such as court and expert witness fees and archival research and transcript costs) associated with properly advancing their cases.
>
> …

[3] The published version will appear in Magnet and Dorey, *Aboriginal Rights Litigation Off Reserve* (Butterworths 2003, forthcoming December 2003, Chapter 5).

In order to become truly engaged in the civil litigation process, survivors need to understand the process before they commit to becoming litigants. It is only then that they can take the psychological and financial measures necessary to prepare them for the steps that must be taken and endured along the way of a civil lawsuit. Their lawyers must spend time with them explaining the process orally (preferably in-person), and not just in writing, so they have an understanding of both what the civil justice system is capable of delivering, and what it is not.

Survivors need to be told, and understand, what is entailed in moving through a lawsuit, including the fact it will typically take several years from the date of filing a claim to the actual trial date, excluding appeals, before they can expect to see any monetary compensation, assuming they are successful in proving their claims. They should be warned about the examination for discovery process and the highly personally intrusive and sometimes culturally insensitive and even hostile nature of the questioning which may occur, and which will require them to articulate in words (to which they will be held thereafter) events, emotions and conditions which they may have seldom or never before spoken about. They also need to appreciate that the discovery process may trigger flashback memories of traumatic events they have spent years trying to forget. To be prepared for the discovery process, they must spend time in advance with their lawyers discussing the process and the likely questions they will be asked as well as time on their own reflecting on what their answers will be.

Survivors must also be prepared to authorize the release of legally relevant, but highly sensitive and confidential documents, such as therapy, medical, school, and employment records. Further, defendants often take the position that criminal and welfare records are legally relevant and these may have to be released. In addition, survivors must be prepared to submit to at least two, and sometimes more, mental health assessments by health care professionals (and where lasting physical injuries are alleged, physical examinations as well). They have to be well prepared for each occasion on which they tell their story because the slightest inconsistency in what they relay may be exploited by the defence at trial, sometimes to very effective ends.

…The media and others have published unflattering reports of lawyers essentially raiding reserves and urban centres to sign up dozens, if not hundreds, of residential school clients so they can start large multi-plaintiff lawsuits. Some lawyers have apparently resorted to questionable tactics in seeking out these potential new, and often vulnerable clients. These revelations prompted the Canadian Bar Association in 2000 to issue guidelines for professional conduct in relation to the representation of aboriginal clients with residential school claims and to urge provincial and territorial law societies to do the same.

Even if survivors are fortunate enough to have found a diligent lawyer with the necessary legal expertise and sensitivities to the cultural and psychological dimensions of residential school cases, they will still be faced with the prohibitive expense of hiring that lawyer and funding the disbursements required to mount an effective case. This requires survivors, who are very often economically disadvantaged and may live in remote geographic locations which can add considerably to the expense of the litigation, to find alternative sources of funding. Given the difficulty securing alternative sources of funding, the only feasible option available to the majority of survivors is negotiation of a deferred fee arrangement with their lawyers. They can take the form of a contingency fee arrangement, which means the fee is a percentage of the ultimate monetary result obtained, or an arrangement in which the fee is subject to a premium or discount determined by reference to the number of chargeable hours docketed, the lawyer's hourly rate, the result, and other court-approved criteria. With any kind of deferred fee arrangement, it is like the successful plaintiff will pay a larger fee than if he or she were able to pay on an ongoing basis as the services were rendered. …[W]ith a deferred fee arrangement, the possibility for exploitation of the client is always present. This possibility is enhanced when the client, for economic, psychological and cultural reasons, is not in a position to negotiate an arrangement that is fair.

From lawyers' perspective, deferred fee arrangements present the risk of not being paid at all or in full (e.g., where the claim is dismissed, the legal costs exceed the amount of the judgment awarded, or the defendants become insolvent). Because payment is delayed, the case may have to be "carried" by the lawyer for what can be an extended period of time. Consequently these arrangements can also pose serious cash flow difficulties for lawyers, especially those working on their own or in small firms. As a result, it

can be difficult to find lawyers prepared to take on residential school clients and, if they do, to invest the time and resources necessary to advance the strongest claims possible on behalf of their clients. Where the clients cannot afford to fund disbursements fully, which is often the case, the lawyer may have to advance some or all of the money to cover these. Where this occurs, the financial pressures and risks for plaintiffs' lawyers become even more acute because not only are they deferring payment of their own fees (and assuming the risk of non-payment), but also they are now having to pay third parties, like experts. One solution adopted by some plaintiffs' counsel is to attempt to achieve economies of scale by amassing large numbers of clients and advancing multi-plaintiff suits. However, unless such suits are carefully managed and sufficient attention is devoted to individual clients, this method of proceeding can prove frustrating to clients who do not feel either respected, engaged, or informed.

General Comments from Respondents on the Guidelines

1. In Ontario, no one firm monopolizes as counsel for plaintiffs in numbers.

2. Anecdotal information about lawyers has been relayed by Justice lawyers. For example, it is apparent in discoveries that some lawyers have not met with clients or prepared them for discoveries (this is not unique to this type of case). They used to, but no longer, hear about "recruiting" trips at reserves and "tent shows" to solicit claims. The Law Society of Saskatchewan rule of conduct rule helped to address this activity. Saskatchewan took the initiative despite a lack of complaints and changed its marketing rule, addressing solicitation of clients in a weakened state.

3. Ontario is doing something other provinces are not doing, despite a lack of volume of litigation and no evidence of complaints, by considering these guidelines. The Yukon Territory has adopted the CBA guidelines. Nova Scotia posted the CBA guidelines but did not formally adopt them. Newfoundland considered rule amendments but decided they were not needed, as did Alberta. British Columbia reviewed the Saskatchewan rule and consulted with the CBA Aboriginal Law Section, but decided not to amend the rules (although BC has same "weakened state" wording in its rules).

4. Many counsel have inflated ideas of what a claim is worth, and this impacts on the satisfaction of the client. Lawyers must give clients a realistic sense of the worth of the claim.

5. Many of these issues could be addressed in CLE (for example, the importance of counseling).

6. Language should be used that specifically directs lawyers to meet with and prepare the client prior to examinations, etc.

7. Beyond the obvious responses of the Guidelines and rules, the Society must devote resources to the education of the bar on Aboriginal issues, work with law faculties to increase the representation of Aboriginal people in the profession and develop its education process to ensure that Aboriginal issues are appropriate reflected in its curriculum.

8. The Guidelines are replete with affirmations of assumptions (e.g. "survivors") imputing credibility and assuming a validation of complaints before any investigation is done. Care should be taken to avoid "speculative myths, stereotypes and generalized assumptions" (quoting Justice Kaufman). Otherwise, it will be more difficult for lawyers representing defendants in these cases to properly represent the interests of their clients. There is a need for sensitivity and frankness on both sides of such cases.

9. Defence counsel involved in these cases regularly attend conferences and CLE on institutional and other abuse. One issue discussed is how examination of a claimant regarding the events or circumstances of the abuse can lead to re-victimizing the person. All of the defence counsel in the experience of the respondent are respectful of this principle and this is likely reflected in the Guidelines in that this is not referred to in any substantive way.

10. The Guidelines do not define the term "healing" but place significant emphasis on it. The Society should attempt to better define the notion of healing.

11. The Guidelines appear to be principally aimed at those who are acting on behalf of victims. But the rules around sensitivity ought to apply with equal force to those acting on the other side of these claims. Special care must be taken by counsel, including government representatives, acting for defendants during the discovery and trial process. Given the fragile nature of some victims, how much is too much? The Guidelines should comment on the obligations of defence counsel in responding to these claims.

12. The Guidelines do not address the dynamic in which the most angry clients may be those who were not victims but whose parents and grandparents attended the schools and have related treatment and conditions which they endure. Counsel have a obligation to recognize the impacts which the experience and the revelation of the experience is likely to have on the individual and the family. The Guidelines should also recognize that it may be necessary to extend counseling beyond the immediate victim.

13. Similar issues may arise in a broader context, i.e. at the community level, where a variety of responses can happen, all within the incredibly politicized world of Aboriginal issues. Events may transpire in reaction to a claim that create a personal crisis for the victim and polarization within the community. It is helpful to establish effective lines of communication within a community up to and including Chief and Counsel. Further, as some victims are not welcome in their communities, it is important to lay the foundation for some understanding within the communities about the history of residential schools and the effects of residential schools, in a way that is politically sensitive and which does not unnecessarily ratchet lines of division between survivors and those who do not wish to recognize the wrongs that occurred.

14. Recruitment practices in which Aboriginal "head hunters" organize meetings at which Aboriginal organizers sign up clients to retainer agreements and are paid a fee per head is inappropriate and should be specifically dealt with the Guidelines. Also, some counsel have used questionnaires to obtain basic information or by exchange of correspondence, because of the remoteness of some of the clients. In these cases, there is no check or balance to ensure that the client is able to handle the emotional consequences of completing the questionnaire. Counsel should be encouraged not to use questionnaires unless absolutely necessary and then only with appropriate safeguards (e.g. a help line for victims or community support).

15. The Guidelines do not adequately address the obligations and complexities of class action litigation involving residential schools. The following are recommended:
    - Where practicable, counsel should have a representative group of clients from whom he or she takes instruction in the class action
    - This group controls the litigation i.e. provides instruction and is adequately informed of what is going on for each step
    - Mass mailings, a web site for information and large gatherings for communicating information may be appropriate
    - Co-counsel arrangements must be approved by the group
    - Counsel must have competence in claims of loss of language/culture if they are being pursued

    Class actions are a more culturally appropriate way of prosecuting the claim.

16. The purpose of the Guidelines is unclear. If they are intended to protect clients and to assist lawyers, it would be helpful to divide them into categories and use headings.

17. Many of the statements are too general to be of much assistance (mirroring the rules, or are matters of common sense). It would be useful to include more specific suggestions.

18. The Guidelines are well-drafted, thoughtful and comprehensive, and provide an important and clear set of parameters for lawyers working in this area.

19. The Guidelines are sufficiently comprehensive to address the profound emotional and psychological issues likely to surface where aboriginal residential school litigation is pursued.

20. The Guidelines fairly and adequately recognize the unique nature of these cases. But they would be substantially improved if they expressly identified the support services, resources and programs that are available fore survivors and provided direction on how to access them.

21. The following should be added as an additional guideline:

> It is inappropriate for a lawyer involved in Aboriginal Residential School litigation to make recommendations to their client to take legal steps to delay a survivor's claim or resolution of a survivor's claim where a survivor is elderly or in poor physical health. In these cases, lawyers should encourage their clients to pursue expeditious resolution of these claims.

22. The Guidelines are a mistake, for the following reasons:
    a. The well-intentioned "singling-out" of individuals for special treatment will be the subject of legitimate opprobrium at some future time.
    b. Nothing should be done with the Guidelines unless the Assembly of First Nations passes what is comparable to a Band Council Resolution approving the spirit and wording of the Guidelines. If not, there will be grumbling, criticism and blame against the Society for creating impediments which caused problems for First Nations people. Dabbling in so-called "Indian politics" is hazardous.
    c. The Guidelines would increase the expense of or cause lawyers not to be interested in these cases if they necessitate some healing component, special training for staff/employees (and constant retraining), the need for cultural recognition, limitations around communications with the clients and in-person meetings. In short, the Guidelines will discourage lawyers from acting, and in turn will cause victims to resent the Society and blame it in effect for taking away the right to obtain lawyers because of the special treatment they received.
    d. Because of a number of factors [listed in the letter], First Nations people largely continue to be unaware of the potential right they have to recovery. The Guidelines would create a chill on tendencies by lawyers to communicate those rights.
    e. With respect, the Guidelines under-emphasize the importance psychologically for victims to deal with the hurt.
    f. The chill on representation that the Guidelines will be magnified by the inability of lawyers to know at all how these concepts will be interpreted by a discipline committee.
    g. Based on the history of the complaints, very few claimants remain to come forward, and very few have come forward to date from Ontario. By pursuing Guidelines, new meaning is given to the saying closing the barn door after the horses have left. Why risk the mistake of adopting Guidelines that distinguish on the basis of race for a few hundred further claimants who are likely to come forward?
    h. The Guidelines fail to address the psychological impact of not coming forward with a claim and not bringing closure to the wrongdoing. These individuals benefit personally by addressing their demons, and depriving them of that opportunity is a mistake. The Society will be blamed for helping to deprive the victims of the opportunity to obtain legal assistance.

23. Paramount to the policy in the Guidelines are the considerations in paragraph 2, which include healing, crisis management and counseling. This type of relationship between a lawyer and client is inconsistent with a class action, and one counsel used the Guidelines in an argument before the court against certification for a class action for these claims.

24. Myths and legends about these cases must be addressed so that the Guidelines can accurately and practically reflect reality. Not all children at the schools suffered abuse, but some children suffered some abuse at some schools. The government management of the schools was perhaps not very astute and was impersonal, but it was an institutionalized experience.

25. "Survivor" is a loaded term, and makes an underlying assumption that all claimants were abused, that a certain culture was forced on them, and that they survived the experience. Thus, the Guidelines accept as fact things that have yet to be proven. One counsel indicated that he has yet to see a case where children were forced to go the schools – either parents applied to have them sent or the children were sent by child welfare agencies in cases where the parents had abandoned the children. The suggestion is that neutral

words like "former students" , "claimants" or "clients" be used instead of "survivor", especially if the argument is accepted that the very experience of being at the schools was not a bad thing.

26. The Guidelines to not appear to have relevance to defence counsel. The counsel have yet to hear a wisp of a complaint about defence counsel's actions in these claims. Defence counsel must pursue these cases diligently and fearlessly, as any advocate would. Currently, there is no balance in the Guidelines – they are one-sided in favour of survivors and the role of survivors' counsel.

27. Should the Guidelines only apply to claimants' counsel? The duties to one's client are different than the duties to the client and lawyer on the other side. The complaints noted to date all relate to claimants' counsel. The Guidelines only relate to issues with defence counsel in an anticipatory sense. Defence counsel are in an adversarial relationship, and that is difficult to regulate. The problem is not between the counsel.

28. The only specific mention of defence counsel in the Guidelines is in the last sentence of paragraph 12. The fact is that defence counsel have no duties related to the claimants' culture. Issues around culture are part of litigation. How can defence counsel challenge the claimants' argument that that culture has been interfered with and be sensitive to it (as described in the Guidelines) at the same time? One of the issues is whether, when some of these children came to the schools, they came from a traditional way of life. One counsel explained the evolution of the schools from the mid-19th century to the 1950s when integration was rejected by the aboriginal community. The view appears to be that segregation is equated with abuse.

29. The challenge is to not re-victimize the claimants. Counsel are attuned to that dynamic and regularly attend CLE on issues related to these types of claims. There is a general tension in using the legal process for healing (one counsel indicated this is why there are efforts to use the ADR process). Defence counsel are mindful of this tension. Their view is that the facts must be proved before the healing begins. The challenge is to get to the truth (in some cases, defence counsel will argue there has been no abuse) in a way that respects those who have suffered.

30. Defence counsel also act as the "messenger" to former employees of the institutional clients who are alleged to have abused the children but who are not sued as parties in the Ontario actions. They are witnesses who may not be represented or may not have the funds to be represented by a lawyer. Some are terrified of the allegations. Their interests and issues are balanced by defence counsel with those of the claimants, not without difficulty and challenges.

31. If the Guidelines are only to apply to claimants' counsel, the concerns expressed above should be alleviated by changes to the words and terms that assume abuse is proved, and that require sensitivity in the same way for defence and claimants' counsel.

32. The CBA Guidelines, as the basis for these Guidelines, appeared to apply only to claimants' counsel. The Society's Guidelines evolved to include a wider range of counsel.

33. If the unique nature of these cases results from the fact that these individuals are Aboriginal, a guideline should be formulated for dealing with all Aboriginal clients, whether the allegations relate to an Indian Residential Schools, or otherwise. If the unique nature of these cases stems from the fact that the individuals were allegedly sexually and physically abused, then the guidelines should refer to all such injured clients, regardless of race.

34. As the anecdotal evidence indicates, there have been instances where lawyers have signed up clients in bulk fashion, etc. Rule 3.06(2) of the Society's *Rules of Professional Conduct* deals specifically with this practice. If further guidance is needed in the form of guidelines, guidelines addressing the emotional sensitivity and the need for healing amongst clients who have been sexually or physically abused need not refer only to Aboriginals.

Specific Comments on Sections of the Guidelines

Preamble

35. Use of the word "survivor" is a concern. This term in the Aboriginal Community represents or symbolizes the point at which a person is healing. Healing is fundamental and should be given due consideration when litigating these types of cases.

36. The words "survivor" and "victim" are often used to describe a person who has experienced trauma in their lives. Many in the Community do not favour these terms. A more appropriate term should be chosen.

37. The word "respect" has different meaning for different people, but has significance meaning in the Community. A definition of the word in the preamble would be helpful.

38. More detail should be included in the Guidelines so that lawyers can assess whether a breach of the Guidelines has occurred or may occur if a particular course of action is undertaken. Notes should be added to provide concrete examples of situations to which the Guidelines apply.

39. In the preamble, "survivors" (who include descendants) does not define the claimants properly. Consider defining them as those who suffered losses or abuse while attending the schools. The term "survivor" connotes someone who is emotionally fragile and psychologically damaged. The term should be redefined to steer away from broad assumptions. "Survivor" will be offensive.

40. Many of the claims are for cultural loss, but the children as descendants are swept in, even if unintentionally.

41. The definition ["survivor'] should not be too specific, because all who attended the schools survived something. The idea is to "red flag" this type of file so the lawyer knows the specific issues surrounding these claims.

42. Within the Justice office, there has been a debate about use of "aboriginal" to describe the schools. As "Indian" is a defined term, the suggestion is that it should be used. However, "Indian residential school" is not a defined term, and should not be capitalized.

43. Although it was suggested that the term include day schools, it was noted that this is simply a public school by another name, and involved a situation different from residential schools.

44. While the principles in the Guidelines are stated to apply in other abuse/vulnerable client situations, the title does not indicate this. Could it be modified to read "Guidelines for Lawyers Involved in Institutional Child Abuse Litigation and in particular in Aboriginal Residential School Litigation"?

45. The Guidelines refer, on numerous occasions, to the "unique nature" of the Aboriginal Residential School experience. A short paragraph outlining the Residential School experience could be included here or somewhere else near the beginning of the document, similar to the following:

> From the early 19th century until well into the 20th century, large numbers of school-aged Aboriginal children, at times up to one-third of them, were sent to residential schools. Denial of access to family and culture and other forms of emotional abuse, including, for some students, physical and sexual assaults, characterized the experience of many Aboriginal children at residential schools. The effects on their mental and physical health were both immediate and long-lasting. As well, whole families and communities were affected by the residential school system. The effects of the residential school system are still felt today.

As an alternative, the suggestion could be made in the Guidelines to consult documents such as the Law Commission's Report "Restoring Dignity" for background information on the Residential School experience.

Paragraph 1

46. The question is where to go from acknowledging this issue The suggestion is that the Society and the profession need to be more pro-active. Many clients do not know how to complain to the Society. Over half of the complaints are urban-based. One cannot assume that supports and networks are always there. It is a very private issue. Given the role of plaintiff counsel, and degree to which the plaintiff relies on the lawyer, the chance that he or she will complain is very small.

47. Most lawyers will not know how to refer clients to services. Perhaps the Law Society could create resource center, and determine what resources are available.

48. Some clients my not feel the need for counseling or treatment programs and may be offended by the lawyer's suggestion or referral. All lawyers should review this possibility with their clients at the outset and throughout the retainer.

49. It would be helpful to point out that all sexual abuse survivors are vulnerable and aboriginal clients particularly so.

50. The Guidelines should state that lawyers should not take on these cases unless they are willing to embrace Aboriginal culture, and it would be helpful for a lawyer taking on these cases to speak with an elder to obtain insight into the cultural issues.

51. The Guidelines should identify the role of First Nation agencies, support groups and counseling as a primary referral source, and referrals should be made to aboriginal therapists if possible, or at least therapists who have some experience with aboriginal clients. Lawyers must recognize that among the aboriginal community views differ on the appropriateness of pursuing litigation as a remedy, and that community support may be lacking.

52. In emphasizing the needs of the Survivor first, it is suggested that rather than dealing with the needs and capacities of lawyers and their support staff, the paragraphs dealing with Survivors' needs (5, 6, 7, 9, 10, 11, and 12) should be moved to this first part, then discuss lawyers' work loads and need for EAP etc. (paragraphs 2, 3, 4,).

53. A list of available resources, programs and networks should be assembled and attached to the Guidelines. This will give the lawyer an available reference source which will help the lawyer feel comfortable that he or she has considered all possible resources for the client. The same suggestion applies to paragraph 11 for times of crisis.

Paragraph 2

54. A concern is that the Guidelines will be used to criticize lawyers. In these cases, counsel deal with very sensitive issues, and it is upsetting no matter how sensitive the counsel is. The Guidelines should recognize that counsel must act consistent with their responsibilities to the client. A review should be done to see where the Guidelines should apply to plaintiff or defense counsel, and perhaps a statement could be added to the preamble to the effect that the Guidelines apply to plaintiff's counsel and where appropriate, to defense counsel.

55. A specialty in residential school litigation should be created by the Society and lawyers who achieve the designation should be required to attend CLE programs on these issues. They should also be required to attend workshops designed to address the issues in these cases to assist lawyers in dealing with the emotional and psychological effects the caseloads have on them.

56. This and the next paragraph appear to assist lawyers and their staff and should be in a separate section under the appropriate heading.

57. The word “additional” should appear before the words “amount of time and resources required for each case”, to reflect the intention that these cases generally require additional time and resources (the word “additional” appears in paragraph 3).

Paragraph 3

58. Lawyers should be required to report annually to the Society that they have EAP providers for their offices in place.

59. Through the specialist program suggested above, lawyers could be canvassed for ideas on a how firms cope with the emotional and psychological aspects of these cases.

60. The Society should offer assistance programs to lawyers lacking experience in mass tort claims or with residential school cases. The second sentence should state “Lawyers acting in Aboriginal residential school cases should be aware of the employee assistance programs offered to lawyers and their staff by the Law Society of Upper Canada and are encouraged to participate in these programs as needed.”

Paragraph 4

61. An idea is to get lawyers to identify themselves as dealing with these cases so support can be offered. It may be that they should be required to comply with training requirements, e.g. CLE, etc. There is an annual CLE program by the Canadian Institute dealing with institutional abuse cases.

62. The Society should build in language on the sensitivity issue as part of the responsibilities of lawyers to their clients.

63. If counsel lacks knowledge in areas of law relevant to these cases, they should be required to remove themselves as counsel of record or retain co-counsel who has the requisite knowledge and experience.

64. As lawyers must maintain personal balance in dealing with these cases, the Society should establish programs that specifically address the emotional needs of counsel.

65. This is stating the obvious.

Paragraph 5

66. Respecting the “vulnerable” client, perhaps lawyers should be encouraged to have support people available at the initial meeting. Support can be very broad. Support people may come with the claimant, attend the meeting, and then accompany the individual until he or she gets home.

67. Lawyers involved in these cases should be sent notices of requirements discussed in the context of specialization, information on the consequences if they fail to meet the requirements, and information on practices that have led to discipline.

68. The Guidelines should state that lawyers are not to approach anyone who has not come forward to seek legal representation. Advertising is unlikely to be successful and as the Society has a rule on advertising, this does not add much, and it would be best not to mention it at all.

69. Respecting the words “culturally appropriate” to describe the methods discussed in the paragraph, its meaning may not be entirely clear to many lawyers. It is not just the offering of services that should be done in a culturally appropriate manner. That approach should apply to the entire process of handling an Aboriginal client’s case. Perhaps another paragraph could be added inviting lawyers to connect with the appropriate Aboriginal cultural centres so that they are able to act with respect and sensitivity to the client and his or her community.

Paragraph 6

70. Lawyer’s advertising should be required to include information on how a client may access services should the advertisement itself trigger a crisis. The last sentence of the paragraph refers to the initial communication. Mandatory language should not be used, as these guidelines are not rules.

71. Lawyers specializing in this area should be required to include certain standard features in their advertisements approved by the Society or Rotiio> taties. The consequences of failing to observe the requirements should be disclosed.

Paragraph 7

72. Does a lawyer acting in many cases save a client fees (on the theory that the issues take less work for all cases)? The Law Commission of Canada held a conference, open to survivors and lawyers, where alternatives in processes were presented – civil litigation, criminal process, ADR, etc.

73. This paragraph should be restructured so that the first point is that all communications with survivors must be clear and understandable at every step of the way.

Paragraph 8

74. For contingent fee issues, the Society should consider the example of Saskatchewan which established a provincially operated class action fund to cover initial disbursements.

75. As this community has no ability to fund litigation, creative funding options are required i.e. those available under the *Class Proceedings Act* ought to be available to provide access to justice.

Paragraph 9

76. It may important to flag the fact that there are many emotional restraints; counsel should be prepared for the "trickle" or progressive disclosure. CLE could be very beneficial. Rotiio> taties' recommendation has been to consider creating some sort of specialist certification that would require those seeking it to maintain a level of training.

77. Issues relate to intergenerational effects and the question of the cause of action. The *Family Law Act* in Ontario creates possible claims – this will be dealt with in the Court of Appeal in November.

78. The class action issue has been raised. One view is that class actions are too broad - these cases are so different on the facts that each one would have to be examined to validate the claim and damages.

79. Lawyers must utilize the services of interpreters whenever appropriate and feasible.

80. Lawyers must use language that is appropriate and understandable, and be available to clients to answer any questions or concerns.

81. Lawyers should be required to obtain clients' informed instructions on which course of action to take, keep clients informed of all meetings and court appearances well in advance so that the clients may decide whether he or she wishes to attend and actively seek and encourage clients' participation in the planning and direction of all potential resolution processes.

82. As many clients have trust issues, the lawyer must work with the client to establish reasonable expectations and ensure that these are met or exceeded. The lawyer must be clear about what the legal system can and cannot deliver.

83. The lawyer must recognize that traditional information gathering a preparation may not be appropriate – the first meeting with the client should be used to build trust, discuss the litigation process, privilege, etc., preferably at the client's home as this shows trust and respect.

84. The client must be fully informed on what to expect from litigation and understand the legal obligations regarding records disclosure, independent medical exams and examinations for discovery.

85. The client should be involved in determining the approach to information gathering. An option is to give the client a list of information needed and some options for collecting it. The client should have the option

of bringing a support person to meetings with the lawyer, mediations and discoveries. Accommodations should be made for those clients who speak through someone else.

86. The client should also be involved in the determining the approach to communications between the lawyer and client.

Paragraph 10

87. The most important issue is the loss of control. Lawyers should take into account the adversarial process and the role of lawyer. It was suggested that the language be clarified as to whom this paragraph is intended to apply (plaintiff or defense counsel).

88. The Law Society must establish a CLE program dealings with the issues arising in these cases.

89. This is a good paragraph. Some of the following ideas might also be useful:

> Lawyers should endeavour to put the needs of the survivor first and respect the survivor's decision-making ability. The lawyer should also do as much as he or she can to protect the privacy of the Survivor, if that is the wish of the Survivor, to minimize the risk of revictimization through the legal process and to ensure that the decision-making power and control over the process is in the hands of the Survivor.

90. This Guideline should also recognize that many survivors have been the victims of child and sexual abuse. The words "were victims of child abuse and sexual abuse" should be added after the words "Survivors have had control taken from their lives…"

Paragraph 11

91. The Society should assist the bar in compiling lists of resources.

92. Lawyers practising in this area should be required to receive training to recognize the symptoms or signs of crisis or risk, and to provide proof of this training in the certification or re-certification process.

93. This item should be combined with 1.

94. "In times of crisis" should be replaced with "when crisis intervention is warranted", to place the responsibility on the lawyer of knowing when to make referrals rather that just being aware of available resources and support when crises arise.

Paragraph 12

95. This is good.

96. Lawyers must ensure that support systems are in place for their clients prior to initial interviews and examinations for discovery. Lawyers should also give clients an opportunity to meet with them and the support person. The support person should be allowed to attend the examination for discovery, on the consent of other parties. The Guidelines should reflect permitting support people or alternatively, court workers or community members, to attend meetings.

97. Lawyers should accommodate a ceremony before meetings (e.g. the smudging ceremony), provide for affirmation using an eagle feather and endeavour at the initial meeting and examination for discovery to meet with the client at his or her choice of location.

98. Change the wording as follows: "Lawyers should recognize and respect that Survivors may be badly hurt by their experiences…"

This paragraph contains three important ideas that could be separated out for greater clarity:

a. the consequences of litigation may be very harsh and may result in the revictimization of the Survivor;
b. lawyers should be encouraged to a broad range of needs into account in negotiating settlements;

c. lawyers should understand and respect Survivors' backgrounds, cultures, traditions, etc.

With respect to the first idea, the Guidelines should be clearer in stating that Survivors need clear, understandable information which is frequently repeated not only about what will happen during the legal process, but also about what the impact of it might be on them. They need a chance to prepare themselves emotionally, spiritually and physically for what might happen to them and to build in the appropriate support networks. It is important to state that survivors must have this information right at the outset of the process so that they can determine whether legal action is appropriate at all.

With respect to the second idea, lawyers should be encouraged to take into account that any redress provided to survivors of institutional abuse may include a broader range of needs than just the monetary needs of the Survivor and his or her family. It is often not just the Survivor who has been hurt by the abuse, but also his or her family and community. The needs may be cultural, spiritual, psychological, vocational, educational and other.

The third point has been addressed above.

99. The Federal Government has denied a cause of action for "cultural" abuse claims, and clients should be aware that to establish such a tort they must be prepared for a long, hard fight.

100. The Guidelines should recognize that survivors have been removed from their parents and these words should be added before the words "customs and traditions".

PROPOSED RULE AMENDMENT RELATED TO THE SPECIALIST CERTIFICATION PROGRAM

A. BACKGROUND

38. As a result of a referral from the Professional Development, Competence and Admissions ("PDC&A") Committee, the Committee considered whether the advertising rules required amendment to clarify the use of terms that relate to a lawyer's designation as a specialist certified by the Law Society.

39. The referral from the PDC&A Committee followed a redesign of the specialist certification program, in which questions about advertising issues were raised. The Committee's review was continuing at the time that Convocation adopted By-Law 38 on the specialist certification program on April 25, 2003.[4]

40. The PDC&A Committee referred to problems in enforcing the *Rule of Professional Conduct* that specifies that only those certified as specialists by the Law Society can advertise themselves as such. Specifically, it noted that there is no prohibition against using words like "expert" to describe a lawyer's qualifications. The referral to the Committee focussed on clarifying the advertising as part of the larger initiative to include the Law Society's authority to designate specialists in a by-law.

41. The new Specialist Certification by-law includes the following section:

Specialist designation
26. (1) A certified specialist may use the following designation:

[4] In June 2002, Convocation approved a business plan for the redesign of the program. In September 2002, based on a report from its working group on the specialist program, the PDC&A Committee approved amendments to policies governing the specialist certification program to reflect the approved redesign. The policies were incorporated into the By-Law, reflecting policies, procedures and the June 2002 redesign. The By-Law is set out at Appendix 1 (page 57).

Certified Specialist [*area of law in which certified as specialist*]

Same

(2) *A member who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the member is a certified specialist.*
[Emphasis added]

42. Rule 3.05 of the Society's Rules on advertising the nature of a lawyer's practice (see Appendix 2 at page 73) lists the manner in which lawyers may describe their practices. The rule dealing with specialization permits use of that term only if a lawyer has been certified. As noted above, the By-Law includes a prohibition on what amounts to misleading advertising.

B. SUBSTANCE OF THE SUGGESTED AMENDMENT

43. In September 2003, the Committee discussed a range of options on how to address the issue identified by the PDC&A Committee, including:
   a. Drafting a rule that prohibits certain language describing the nature of the practice
   b. Drafting a commentary explaining how the rule is intended to be interpreted, with guidance on acceptable and unacceptable language
   c. Adding introductory language to rule 3.05(2) to the effect that only the following may be used to describe restricted practices
   d. Doing nothing, on the bases that the current rules make it clear that only certified specialists may use that term and that the By-Law includes a prohibition that addresses misleading advertising.

44. The Committee determined that option b. was most appropriate. It felt that while the By-Law contains the stated prohibition, the Rules, unlike the By-Law, are likely to be accessed more readily by the general profession, and should include this type of clarification where it is warranted.

45. The Committee also determined that the commentary should make specific reference to By-Law 38 and the language of the relevant By-Law provision.

46. Paul Perell, the principal drafter of the Rules adopted by the Society in 2000, was consulted for his drafting expertise, and provided valuable input on the draft prepared by staff.

47. The following is the proposed commentary for the Convocation's consideration, which the Committee suggests be inserted following subrule 3.05(5):

> Where a lawyer or law firm advertises in accordance with rule 3.05, the advertisement should be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter.
>
> An advertisement should not mislead or confuse a client about the lawyer's qualifications. Although the advertisement may include a description of the lawyer's or law firm's proficiency or experience in an area of law, in accordance with s. 26 of the Society By-law 38 on Certified Specialists, the lawyer who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the lawyer is a certified specialist.

APPENDIX 1

BY-LAW 38

Made: April 25, 2003
Amended: June 26, 2003

SPECIALIST CERTIFICATION

PART I
GENERAL

Definitions
1. In this By-Law,

"Board" means the Specialist Certification Board;

"certification staff" means employees of the Society assigned by the Chief Executive Officer the responsibility of supporting the work of the Board and the specialty committees; and

"Committee" means the standing committee of Convocation responsible for professional competence matters.

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.

PART II
SPECIALIST CERTIFICATION BOARD

Board to be established
3. (1) There is established the Specialist Certification Board.

Composition of Board
(2) The Board shall consist of seven persons appointed by the Committee as follows:

1. Four benchers who are not lay benchers.

2. One lay bencher.

3. Two persons who are certified specialists who are not benchers.

Term
(3) Subject to subsection (4), a person appointed to the Board shall hold office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure
(4) A person appointed to the Board holds office as a member of the Board at the pleasure of the Committee.

Chair
4. (1) The Committee shall appoint one member of the Board as chair of the Board.

Term of Office
(2) Subject to subsection (3), the chair holds office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure
(3) The chair holds office at the pleasure of the Committee.

Function of Board
5. It is the function of the Board,

(a) to establish specialty committees;

(b) to oversee the work of the specialty committees;

(c) subject to section 12, to establish standards for the certification of members as specialists;

(d) to determine the areas of law in respect of which members may be certified as specialists;

(e) to make, subject to this By-Law, rules of practice and procedure with respect to the consideration by the specialty committees and the Board of an application under section 17 and the consideration by the Board of an application under section 22, subsection 31 (3), subsection 31 (5), subsection 31 (6) or section 33 and the exercise by the Board of its discretion under subsection 31 (2) or subsection 32 (2);

(f) to develop for the Committee's approval policies relating to the certification of members as specialists;

(g) to recommend to the Committee the amount of the fees payable by applicants for specialist certification and certified specialists under this By-Law; and

(h) to certify members as specialists.

Quorum

6. Four members of the Board constitute a quorum for the purposes of the transaction of business.

Meeting

7. (1) The Board shall meet at the call of the chair and in no case shall the Board meet less often than twice a year.

Meeting by telephone conference, *etc*.

(2) Any meeting of the Board may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Annual report to Committee

8. Not later than March 31 in each year, the Board shall make a report to the Committee upon the affairs of the Board of the immediately preceding year.

Confidentiality

9. (1) A member of the Board shall not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under this By-Law.

Exceptions

(2) Subsection (1) does not prohibit,

(a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;

(b) disclosure required of a member of the Board under the Society's Rules of Professional Conduct;

(c) disclosure of information that is a matter of public record; and

(d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

PART III
SPECIALTY COMMITTEES

Board to establish committees

10. (1) The Board shall establish a specialty committee for each area of law in respect of which a member may be certified as a specialist.

Composition of specialty committee

(2) A specialty committee shall consist of at least five and not more than nine members appointed by the Board.

Eligibility for appointment

(3) Only the following members may be appointed to a specialty committee:

1. If there are members certified as specialists in the area of law in respect of which a specialty committee has been established, a member certified as a specialist in the area of law.

2. If there are no members certified as specialists in the area of law in respect of which a specialty committee has been established, a member who practises law in the area of law and undertakes to become certified as a specialist in the area of law within three years of certification in the area of law being available.

Term

(4) Subject to subsection (5), a member appointed to a specialty committee shall hold office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(5) A person appointed to a specialty committee holds office as a member of the specialty committee at the pleasure of the Board.

Chair and vice-chair

11. (1) For each specialty committee, the Board shall appoint,

(a) one member of the specialty committee as chair of the committee; and

(b) one member of the specialty committee as vice-chair of the committee.

Term of Office

(2) Subject to subsection (3), the chair and vice-chair hold office for a term not exceeding three years and are eligible for reappointment.

Appointment at pleasure

(3) The chair and vice-chair hold office at the pleasure of the Board.

Function of specialty committee

12. It is the function of a specialty committee,

(a) to develop for the Board's approval standards for the certification of members as specialists;

(b) to review and accredit continuing legal education programs for purposes of sections 16 and 29;

(c) to specify the number of hours of self study and accredited continuing legal education programs to be completed by applicants and certified specialists;

(d) to review applications from members for certification as specialists; and

(e) to recommend to the Board members for certification as specialists.

Quorum
13. The majority of the members of a specialty committee constitute a quorum for the purposes of the transaction of business.

Meeting
14. (1) A specialty committee shall meet at the call of the chair and in no case shall the committee meet less often than twice a year.

Meeting by telephone conference, *etc*.
(2) Any meeting of a specialty committee may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Confidentiality
15. (1) A member of a specialty committee shall not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under this By-Law.

Exceptions
(2) Subsection (1) does not prohibit,

(a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;

(b) disclosure required of a member of a specialty committee under the Society's Rules of Professional Conduct;

(c) disclosure of information that is a matter of public record; and

(d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

PART IV
SPECIALIST CERTIFICATION

Requirements for certification
16. (1) A member may be certified as a specialist in an area of law in respect of which certification is available if the member meets the following conditions:

1. The member has engaged in the practice of law for at least seven years immediately before the day on which the member applies for certification.

2. The member has practised in the area of law for at least five of the seven years mentioned in paragraph 1 as follows:

   i. Two years immediately before the day on which the member applies for certification.

   ii. Any other three years.

3. The member has comprehensive knowledge of the substantive law and the practices and procedures in the area of law.

4. In each of the five years in which the member practised in the area of law, the member has completed in the area of law,

i. the number of hours of self-study specified by the specialty committee established in respect of the area of law, and

ii. the number of hours of accredited continuing legal education programs specified by the specialty committee established in respect of the area of law.

5. The member is not the subject and has no record, within the five year period immediately before the day on which the member applies for certification, of any order made against the member by a tribunal of the governing body of the legal profession in any jurisdiction.

6. The member has and has had, within the five year period immediately before the day on which the member applies for certification, no terms, conditions, limitations or restrictions imposed on the member's authorization to practise law in any jurisdiction in which the member is authorized to practise law.

7. The member is not, in any jurisdiction in which the member is authorized to practise law, the subject of a review of the member's practice for the purpose of determining if the member is meeting standards of professional competence.

8. The member has and has had, within the five year period immediately before the day on which the member applies for certification, no serious claims or substantial number of claims made against the member in the member's professional capacity or in respect of the member's practice in any jurisdiction in which the member is authorized to practise law.

Same

(2) Despite subsection (1), if a member is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the member is authorized to practise law, the member may not be certified as a specialist in an area of law in respect of which certification is available unless to certify the member as a specialist would not be contrary to the public interest.

Interpretation: practice in area of law

(3) In this section, in any year, a member practises in an area of law if in that year the member practises in the area of law for the time specified by the Board from time to time.

Application for certification

17. (1) A member who wishes to be certified as a specialist shall apply to the certification staff.

Application form

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

Accompanying documents, *etc.*

(3) An application under subsection (1) shall be accompanied by,

(a) a certificate of standing from the governing body of the legal profession in each jurisdiction of which the applicant is or was a member issued during the three month period immediately before the day on which the applicant makes the application;

(b) written references from four members not one of whom is,

i. a person whose membership is in abeyance under subsection 31 (1) of the Act,

ii. a partner, an associate, a co-worker, an employer or an employee of the applicant,

iii. a relative of the applicant,

iv. a member of a specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist;

v. a member of the Board,

vi. a bencher, or

vii. an employee of the Society; and

(c) an application fee in an amount determined by Convocation from time to time.

Documents, explanations, releases, *etc.*

(4) For the purpose of assisting the specialty committee and the Board to consider an application under subsection (1), the applicant shall provide,

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

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

Application to be considered by specialty committee

18. Every application under section 17, to the extent that the application deals with the conditions set out in paragraphs 1 to 4 of subsection 16 (1), shall be considered by the specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist and the committee shall,

(a) if satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 16 (1), recommend to the Board that the applicant be certified as a specialist; or

(b) if not satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 16 (1), recommend to the Board that the member not be certified as a specialist.

Interview

19. (1) Prior to making a recommendation to the Board, a specialty committee may require an applicant to attend an interview.

Same

(2) An interview under subsection (1) shall be conducted by,

(a) three members of the specialty committee selected by the chair of the committee; or

(b) three members who are certified as specialists selected by the specialty committee.

Report to committee

(3) If an interview is conducted by three members who are certified as specialists, the members shall prepare a written report on the interview and submit the report to the specialty committee.

Notice

20. If a specialty committee intends to recommend to the Board that the applicant not be certified as a specialist, before making the recommendation the committee shall give the applicant the opportunity,

(a) to withdraw the application; or

(b) to submit additional information to the committee.

Application to be considered by Board

21. Every application under section 17 shall be considered by the Board and the Board shall,

(a) certify the applicant as a specialist if,

(i) the specialty committee recommends that the applicant be certified as a specialist;

(ii) the Board is satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 16 (1); and

(iii) the Board is satisfied that,

i. the condition set out in subsection 16 (2) is not present; or

ii. it would not be contrary to the public interest to certify the applicant as a specialist; or

(b) not certify the applicant as a specialist if,

(i) the specialty committee does not recommend that the applicant be certified as a specialist;

(ii) the Board is not satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 16 (1); or

(iii) the Board is satisfied that,

(A) the condition set out in subsection 16 (2) is present; or

(B) it would be contrary to the public interest to certify the applicant as a specialist.

Notice

22. (1) If the Board does not certify the applicant as a specialist under clause 21 (b), the Board shall notify the applicant in writing of its decision.

Re-determination of application

(2) If the Board does not certify the applicant as a specialist under clause 21 (b), the applicant may apply to the Board for a determination as to whether the applicant should be certified as a specialist.

Timing

(3) An application under subsection (2) shall be commenced by the applicant notifying the Board in writing within thirty days after the day on which the applicant receives notice of the Board's decision not to certify the applicant as a specialist.

Determination

(4) The Board shall consider the application made under subsection (2) and the Board shall,

(a) certify the applicant as a specialist if,

(i) the Board is satisfied that the applicant meets the conditions set out in subsection 16 (1); and

(ii) the Board is satisfied that,

(A) the condition set out in subsection 16 (2) is not present; or

(B) it would not be contrary to the public interest to certify the applicant as a specialist; or

(b) not certify the applicant as a specialist if,

(i) the Board is not satisfied that the applicant meets the conditions set out in subsection 16 (1), or

(ii) the Board is satisfied that,

(A) the condition set out in subsection 16 (2) is present; or

(B) it would be contrary to the public interest to certify the applicant as a specialist.

Decision final

(5) The decision of the Board on an application under subsection (2) is final.

Issuance of certificate

23. The Board shall issue to an applicant certified as a specialist a certificate of specialty stating the area of law in which the applicant has been certified as a specialist.

Continuation of certification

24. A member certified as a specialist shall continue to be certified as a specialist so long as the member,

(a) practises in the area of law in which the member has been certified as a specialist within the meaning of subsection 16 (3);

(b) maintains comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the member has been certified as a specialist;

(c) is not the subject and has no record of any order made against the member by a tribunal of the governing body of the legal profession in any jurisdiction;

(d) has and has had no terms, conditions, limitations or restrictions imposed on the member's authorization to practise law in any jurisdiction in which the member is authorized to practise law;

(e) is not, in any jurisdiction in which the member is authorized to practise law the subject of a review of the member's practice for the purpose of determining if the member is meeting standards of professional competence;

(f) has and has had no serious claims or substantial number of claims made against the member in the member's professional capacity or in respect of the member's practice in any jurisdiction in which the member is authorized to practise law; and

(g) fulfils all requirements under this By-Law.

PART V
CERTIFIED SPECIALISTS

Definition

25. In this Part,

"certified specialist" means a member who is certified as a specialist by the Board under Part IV.

Specialist designation

26. (1) A certified specialist may use the following designation:

Certified Specialist [*area of law in which certified as specialist*]

Same

(2) A member who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the member is a certified specialist.

Requirement to pay annual fee

27. (1) Every year a certified specialist shall pay to the Society an annual fee in the amount determined by Convocation from time to time and any taxes that the Society is required to collect from the certified specialist in respect of the payment of the annual fee.

Payment due

(2) Payment of the annual fee is due on January 1 of each year.

Certified specialists

(3) Subsection (2) applies only to members who are certified specialists on January 1.

Members certified after January 1

(4) A member who is certified as a specialist after January 1 shall pay, in respect of the year in which the member is certified as a specialist, an amount of the annual fee as determined by the formula,

$$(A \div 12) \times B$$

where,

A is the annual fee, and

B is the number of whole calendar months remaining in the year after the month in which the member is certified as a specialist.

Payment due

(5) Payment of the amount of the annual fee specified in subsection (4) is due on the day on which the member is certified as a specialist.

Requirement to submit annual report

28. (1) A certified specialist shall submit a report to the certification staff by March 31 of each year in respect of the certified specialist's compliance with this By-Law during the immediately preceding year.

Report form

(2) The report required under subsection (1) shall be in a form provided by the certification staff.

Continuing legal education requirements

29. Every year a certified specialist shall complete in the area of law in which the specialist is certified,

(a) the number of hours of self-study specified by the specialty committee established in respect of the area of law, and

(b) the number of hours of accredited continuing legal education programs specified by the specialty committee established in respect of the area of law.

Proof of compliance

30. (1) A certified specialist shall, upon the request of the certification staff and by not later than the day specified by the staff, provide proof to the satisfaction of the staff of the certified specialist's compliance with this By-Law.

Deemed failure to comply

(2) A certified specialist who fails to provide proof to the certification staff by the day specified by the staff of the certified specialist's compliance with this By-Law, the certified specialist shall be deemed not to be in compliance with this By-Law.

Notice to Society

(3) A certified specialist shall notify the Society immediately the certified specialist is not in compliance with this By-Law.

Automatic abeyance

31. (1) A certified specialist's specialist certification is in abeyance while,

(a) the certified specialist's membership is in abeyance under subsection 31 (1) of the Act;

(b) the certified specialist has terms, conditions, limitations or restrictions imposed on the certified specialist's authorization to practise law in any jurisdiction in which the certified specialist is authorized to practise law;

(c) the certified specialist is, in any jurisdiction in which the certified specialized is authorized to practise law, the subject of a review of the certified specialist's practice for the purpose of determining if the certified specialist is meeting standards of professional competence; or

(d) the certified specialist has serious claims or substantial number of claims made against the certified specialist in the certified specialist's professional capacity or in respect of the certified specialist's practice in any jurisdiction in which the certified specialist is authorized to practise law.

Abeyance by Board: discretion

(2) The Board may place a certified specialist's specialist certification in abeyance if the certified specialist is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the certified specialist is authorized to practise law and to not do so would be contrary to the public interest.

Abeyance by Board: mandatory

(3) The Board shall place a certified specialist's specialist certification in abeyance if the certified specialist applies to the Board to have the specialist certification placed in abeyance.

Restoration

(4) If the conditions mentioned in subsection (1) are no longer present and the certified specialist's specialist certification has not been revoked under subsections 32 (1) or (2), upon notice to the certification staff of the change in conditions, the certified specialist's specialist certification shall be restored.

Same

(5) If the condition mentioned in subsection (2) is no longer present and the certified specialist's specialist certification has not been revoked under subsections 32 (1) or (2), on the application of the certified specialist, the Board may restore the specialist certification if to do so would not be contrary to the public interest.

Same

(6) If the Board placed a certified specialist's specialist certification in abeyance under subsection (3) and the certified specialist's specialist certification has not been revoked under subsections 32 (1) or (2), on the application of the certified specialist the Board shall restore the specialist certification if,

(a) none of the conditions in subsection (1) are present; and

(b) the condition in subsection (2) is not present, or if they are, the Board is satisfied that it would not be contrary to the public interest to restore the specialist certification.

Revocation

32. (1) A certified specialist's specialist certification is automatically revoked immediately,

(a) the certified specialist ceases to practise law in Ontario;

(b) the certified specialist ceases to practise in the area of law in which the certified specialist has been certified as a specialist within the meaning of subsection 16 (3);

(c) the certified specialist is the subject of any order made against the certified specialist by a tribunal of the governing body of the legal profession in any jurisdiction;

(d) the certified specialist fails to pay an annual fee or submit an annual report;

(e) the certified specialist fails to meet the requirement set out in section 29; or

(f) the certified specialist's specialist certification has been in abeyance for more than 12 months.

Same

(2) The Board may revoke a certified specialist's specialist certification if the certified specialist does not maintain comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the certified specialist has been certified as a specialist.

Application for certification after revocation

(3) A certified specialist whose specialist certification has been revoked may apply under section 17 for specialist certification only after 12 months from the day on which the certification was revoked.

Surrender of certification

33. (1) A certified specialist who wishes to surrender his or her specialist certification shall submit a request to surrender in writing accompanied by the applicable certificate of specialty to the Board and the Board shall approve the request.

Same

(2) A member ceases to be certified as a specialist immediately the Board approves the member's request to surrender his or her specialist certification under subsection (1).

PART VI
TRANSITION

Existing certified specialists

34. (1) Despite sections 16 and 17, if, on the day immediately before the day this By-Law comes into force, a member was certified as a specialist by the Society, the member shall be deemed to be certified as a specialist by the Board under this By-Law on the day on which this By-Law comes into force.

Annual fee

(2) Despite section 27, the amount of the annual fee payable by a member referred to in subsection (1) in respect of 2003 shall be $200.00 and any taxes that the Society is required to collect from the member in respect of the payment of the annual fee less any amount of any annual renewal fee paid by the member in respect of 2003 under the policies and procedures for specialist certification in place before this By-Law came into force.

Due date 2003

(3) Despite section 27, payment of the annual fee by a member referred to in subsection (1) in respect of 2003 is due on the day in 2003 on which the member would be required to pay an annual renewal fee under the policies and procedures for specialist certification in place before this By-Law came into force.

Existing applicants

35. (1) If before the day this By-Law comes into force a member applied to the Society to be certified as a specialist, the application shall be considered in accordance with the policies and procedures for specialist certification in place before this By-Law came into force.

Certification of existing applicants

(2) If a member referred to in subsection (1) is certified as a specialist, the member shall be deemed to be certified as a specialist by the Board under this By-Law.

APPENDIX 2

3.05 ADVERTISING NATURE OF PRACTICE

General Practice

3.05 (1) A lawyer or law firm may state that the lawyer or law firm is in general practice if such is the case.

Restricted Practice

(2) A lawyer may state that the lawyer is a specialist in a particular area of the law only if the lawyer has been so certified by the Society.

(3) A lawyer may state that the lawyer's practice is restricted to a particular area or areas of the law or may state that the lawyer practises in a certain area or areas of the law if such is the case.

(4) A law firm may state that it practises in certain areas of the law or that it has a restricted practice if such is the case.

(5) A law firm may specify the area or areas of law in which particular members practise or to which they restrict their practice.

Multi-discipline Practice

(6) A lawyer of a multi-discipline practice may state the services or the nature of the services provided by non-lawyer partners or associates in the practice.

REPORT FROM THE PROFESSIONAL REGULATION DIVISION

48. The Professional Regulation Division's Quarterly Report provided to the Committee by Zeynep Onen, the Director of Professional Regulation appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period July to September 2003. A separately bound version of the Quarterly Report with colour graphs and charts will be available at Convocation for those who wish to receive a copy.

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

(1) Copy of a Bulletin dated July 28, 2003 from Mr. Bryant P. Davies, Chief Executive Officer and Superintendent of Financial Services.

(pages 15 – 18)

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

(pages 75 – 114)

Re: Member's Information Form on Supervised Paralegals Acting Before the Financial Services Commission of Ontario

It was moved by Mr. Ducharme, seconded by Mr. Campion that Convocation approve the creation and the use of a Law Society form to capture information on member-supervised paralegals appearing before the Financial Services Commission of Ontario who provide services to the member's clients in claims for statutory accident benefits under the *Insurance Act*.

An amendment made by Mr. O'Brien that the words "without delay" be added to the form was accepted.

The Ducharme/Campion motion as amended was approved.

Re: Residential School Litigation Guidelines

It was moved by Mr. Ducharme, seconded by Ms. St. Lewis that Convocation approve the guidelines set out in the report at page 32 for lawyers acting in cases involving claims of aboriginal residential school abuse.

Carried

Re: Proposed Rule Amendment Related to the Specialist Certification Program

It was moved by Mr. Ducharme, seconded by Mr. Wright that Convocation approve an amendment to Rule 3.05 of the Rules of Professional Conduct by adding new commentary to clarify the use of terms in advertising about a lawyer's designation as a certified specialist.

It was moved by Ms. Ross, but failed for want of a seconder that after the words "area of law" in the second paragraph of the proposed new commentary that the words "or that the fact the lawyer or the law firm specializes in a particular area of law or that their practice is restricted to a particular area of law" be inserted.

An amendment made by Mr. MacKenzie that the words "shall not" in the second paragraph of the proposed new commentary be deleted and replaced with the words "is not permitted to" was accepted.

The Ducharme/Wright motion as amended was approved.

Carried

REPORTS FOR INFORMATION ONLY

Continuum of Legal Education Task Force Report

Task Force on the Continuum of Legal Education
October 23, 2003

Report to Convocation

Purpose of Report: Information (October 23, 2003)
Decision (December 5, 2003)

Task Force Members

George Hunter, Chair

Professor Constance Backhouse
Earl Cherniak
Holly Harris
Professor Vern Krishna
Harvey Strosberg

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Appendices

EXECUTIVE SUMMARY

1. Since April 2001, the Task Force on the Continuum of Legal Education has been studying that part of the continuum of legal education within the Law Society's direct jurisdiction, the period between law school and the call to the bar.[1] Our inquiry has not been confined, however, only to the BAC and articling process. We felt that any thoughtful consideration of the post-law school, pre-call phase would require an understanding of what precedes and follows it. So we began by looking into the history of legal education in Ontario, and along the way observed as well the many different approaches to licensing in other jurisdictions and in other professions. We are now coming to the end.

2. Over the past several months of our work, we have consulted widely in the profession and heard from a number of students, lawyers and educators their views on the best direction to be taken for the education and professional development of new lawyers.[2] All agree that the bar admission process must be relevant to the education and licensing needs of the profession and in the public interest.

3. Just as the Law Society moved ahead in 1957 to recognize the importance of a new approach to legal education, so we ask Convocation to do the same in 2003. We recommend the adoption of a bold new competency-based licensing and education program that:

   a. redefines the traditional classroom model of bar admission to make it relevant to the practice of law in the 21st century;

   b. removes unnecessary barriers to admission and respects the principles of equity to which the Law Society is committed;

   c. significantly reduces costs to students; and

   d. serves the public interest.

***

4. Our mandate was approved by Convocation in April 2001 and refined in July 2001 to focus on the bar admission process. We have reviewed:

   a. the previous Law Society reports on bar admission reform;

   b. bar admission programs across the country and in the United States, Australia and Great Britain;

   c. other professions' approaches to licensing;

   d. the 1992 American Bar Association *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (the MacCrate report);

   e. examination formats across various professions;

   f. the Law Society's 1990 Proposals for Articling Reform and current articling issues; and

   g. the Professional Development and Competence Committee's 2001report entitled *Implementing the Law Society's Competence mandate: Report and Recommendations*.

5. In April 2002, the Task Force presented to Convocation an interim report outlining our proposal for the future of the Bar Admission Course (the BAC). It included preliminary recommendations and the premises upon which those recommendations were based. The preliminary recommendations are set out at Appendix 2. Convocation authorized us to consult with lawyers, legal organizations, law schools, BAC section heads

and instructors and students on the direction set out in the report.

6. We have completed the consultation process, a process that led us to undertake more research especially in skills and professional responsibility training, licensing examinations and the articling process. While the basic tenets underlying the interim report have been confirmed, we have made additional recommendations and elaborated more fully on some of the recommendations already in the interim report. What we learned has confirmed much of what we outlined in the interim report, but has also resulted in additions to our final recommendations and more in-depth description of some of the recommendations already made to clarify and elaborate upon them.

7. Convocation will recall that the Task Force's recommendations are based on two premises:

   a. that the licensing process currently in place at the Law Society of Upper Canada reflects a reality that dates back to (and, in some respects, pre-dates) the model of legal education instituted more than forty-five years ago; and

   b. that, since then, changes in the teaching and practice of law have been so many and profound that the bar admission system now requires major reform.

8. In arriving at our recommendations we have taken special note of the following factors:

   a. The changes that have taken place in legal education in recent decades and the structure of law school curricula;

   b. The changing and expanding legal landscape awaiting newly-called lawyers;

   c. The competencies lawyers should have, as set out in the definition of the competent lawyer in the Rules of Professional Conduct, and the methods available to ensure they attain and demonstrate those competencies;

   d. The relationship of the Law Society's post-call competence model, approved by Convocation in March 2001, to the bar admission process;

   e. The importance of continuing career-long learning;

   f. The importance of ensuring access to the profession by providing for an valid, fair and reliable accreditation process; and

   g. The direct and indirect costs underlying various approaches to the bar admission process.

9. We recommend the following new model for bar admission:

   a. The Law Society will focus on its regulatory obligation to establish a licensing process that ensures candidates demonstrate pre-determined standards of competence in substantive law and an understanding of professionalism, including ethics, as it applies to the substantive law. Although, the traditional classroom model of teaching substantive law is not part of the program, innovative learning tools will provide relevant, useful educational support to BAC students.

   b. The Law Society will provide the Reference Materials for the subjects on which the candidates will be examined. The Reference Materials have a long tradition of excellence and are useful for the licensing examinations and, subsequently, in practice. These invaluable materials are developed by the practising bar and address important issues relevant to the practice of law, including professional responsibility. The current nexus between the Reference Materials and the examinations will continue so that candidates for admission will know what is expected of them in the examinations. Learning tools and the Law Society's Education Support Services

will also support students' self-study and preparation for the licensing examinations.

c. Licensing examinations as described in the Performance Assessment Group Inc. Report (Executive Summary set out at Appendix 3) will test legal knowledge and analytical capabilities, based on a predetermined set of competencies.

d. The Law Society will provide instruction in legal skills, including practice management skills, and will continue to teach and assess professional responsibility as part of its many-pronged approach to nurturing the ethical values upon which the honour of the profession depends. The four-week program will address the skills competencies that a newly-called lawyer should have and will include professional responsibility and practice management. The interim report recommended only professional responsibility and practice management skills be taught in the BAC.

e. Students will be assessed on the skills and professional responsibility competencies. In addition, the Reference Materials upon which the licensing examinations will be based will address professional responsibility, which will also be tested in each of those examinations.

f. Articling will continue to be part of the BAC. The Law Society will enhance the nature of the experience by developing additional materials and providing learning support and other opportunities to prepare students for the articling experience and for practice. There will be a review of the educational plans to consider ways to improve them. The Law Society will also explore ways to foster creative innovation, reinforce the mentoring aspect of articling and encourage collaboration among small or rural law firms to provide students with meaningful articling experiences. The skills program will be designed to include links to articling.

g. The new model will continue to reflect the Society's firm commitment to the goal of improved access to, as well as equity and diversity within, the legal profession.

h. The new model will take heed of the financial pressures operating upon students.

The Nature of this Report

10. Our interim report was meant to provide Convocation with the background essential to an understanding of our conclusions and recommendations. This final report builds upon that background, but also upon the information gathered over the months since the interim report was provided to Convocation. The final report sets out in one document the sum of our work over the life of the Task Force.

11. In providing the final report to Convocation in October 2003 for information, we hope to give benchers an opportunity to review it in detail and to provide their views before Convocation considers it formally on December 5, 2003.

12. In December, Convocation will be asked to consider the report and recommendations and, if appropriate, approve them for implementation in the spring of 2006. If Convocation approves the Task Force's proposal, the design process will be undertaken, with consultation continuing with legal organizations and groups on a variety of content-related issues.

Request to Convocation

13. That Convocation approves the Task Force's report and the following model for bar admission:

a. The bar admission process for admission to the Law Society of Upper Canada will consist of:

i. a four-week skills and professional responsibility program and assessments;

ii. 2 licensing examinations: a barrister examination and a solicitor examination, each including a professional responsibility component; and

iii. a 10-month articling program.

a. The licensing examinations will be developed in accord with the framework for licensing recommended in the Performance Assessment Group report (Executive Summary at Appendix 3).

b. The Law Society will provide Reference Materials upon which licensing examinations will be based. The traditional classroom method of teaching substantive law will not continue, but there will be significant, innovative educational and other supports for students.

c. The two examinations will be scheduled at three times each year (July, October and February). Students will have 1 study week for each examination and 2 days to write each examination (1 free day and 1 writing day). This designated time will be in addition to the articling term, but will comprise part of the articling contract.

d. The four-week skills and professional responsibility program and assessments will precede articles. The program will be designed along the lines of the "preferred option" included in the interim report of Dr. Julie Macfarlane and Professor John Manwaring (Executive Summary at Appendix 9). The competencies, including those specific to professional responsibility and practice management, will be developed in the coming months.

e. Articling will continue to be a ten-month program (44 weeks, including 2 weeks' vacation entitlement). The Law Society will develop further learning support for the articling process, will review and assess articling education plans and the professional responsibility assignment, and explore ways to encourage and support more lawyers to become principals, including through joint and non-traditional articles and co-operative programs.

f. The new program will come into effect in the spring of 2006.

14. If Convocation approves the proposed model, the Task Force will return to Convocation with the design for each component of the model for Convocation's approval.

THE REPORT

INTRODUCTION

15. More than forty-five years ago, in the winter of 1957, the benchers of the Law Society of Upper Canada approved an historic arrangement with the universities, the effect of which was to inaugurate a boldly new and different system of legal education in Ontario. Much of that system, once so fresh, remains with us still. A key feature of the agreement was that each participating university would provide a three-year Bachelor of Laws program containing twenty-three compulsory subjects.

16. By 1969, the number of law schools in Ontario had grown to its present total, six. In the same year, a Committee of Law Deans renegotiated with the Law Society the list of subjects enumerated as compulsory and reduced it from twenty-three to seven. The remaining subjects, augmented by conflict of laws and labour, were to be made available to the students within the three-year LL.B. program but students were no longer compelled to study them. The seven compulsory subjects were these:
    a. Civil Procedure;
    b. Constitutional Law of Canada;
    c. Contracts;
    d. Criminal Law and Procedure;
    e. Personal Property;
    f. Real Property; and
    g. Torts.

17. In 2003, the universities continue to provide three-year law degree programs, the students seeking entry to them must still complete a minimum two years of university undergraduate education, and the same seven

courses remain compulsory.

18. Although much of the old system endures, much has changed, too. Over time, the law schools have provided more and more courses, usually as options, within which the emphasis is upon the acquisition of practical skills, rather than upon substantive legal knowledge alone. The law schools have long maintained, of course, that their primary purpose is not to be a technical training school, but to educate students in the law and to demonstrate law's immutable connections to the basic problems confronting society. Still, as the information set out in Appendix 4 discloses[3], the law schools now provide many opportunities for students to learn the skills essential to the tasks performed by lawyers, skills such as interviewing, negotiating, legal research and writing, and trial advocacy.

19. Career options available to graduates of law schools have also expanded in the last twenty-five years and the course offerings at law school have grown to reflect the larger world within which legally trained professionals may now work. Whereas, historically, almost all law students entered private practice upon call to the bar, current Law Society statistics reveal a more complex portrait.[4] Thus, law school curricula must be broad enough to be relevant to and support the range of career choices law students make.

20. It is trite to say, in 2003, that the profession is different, larger, and more diverse than it was in 1957. In all that time, however, the BAC has changed little in its essential character despite many reviews and reforms. For example, in June 1988, a sub-committee of the Legal Education Committee, chaired by James M. Spence, Q.C.[5], delivered a report to Convocation entitled, "The Teaching Term of the Bar Admission Course: A Critical Assessment and Proposals for Change". One of the proposals for change was to shift the focus from the teaching of substantive concepts in the core areas of law to the teaching of skills and transactional learning. The BAC was revised to provide for more skills-based instruction, but the teaching of substantive law continued much as in the past. Convocation later authorized several additional reviews, all of which are summarized in Appendix 5 to this report.

21. The Task Force has reviewed the many modifications to the BAC in recent years, and the reasons for them. We have also come to see that other forces are emerging, the long-term implications of which may well be career altering for many in the profession, including those about to enter it.

22. These new developments are many and varied. Computer and information technology have already transformed the way many lawyers practise. They have had and will continue to have an equal effect on how students study and learn. Indeed, technology-enhanced learning has progressed with such spectacular speed that medical students, for example, can now simulate surgical procedures interactively in courses delivered wholly on-line. At Queen's University a highly acclaimed M.B.A. program uses video-conferencing combined with residential classes and customized Intranet programs.

23. In our own profession, building upon initiatives undertaken first in the Inter-Jurisdictional Practice Protocol and then by the western provinces, a National Task Force on Mobility recommended enhanced mobility, both on a temporary and permanent basis, for all lawyers in the common law provinces and, in the future, in Quebec. To date, eight jurisdictions within the country have signed the National Mobility Agreement and six of them have fully implemented its provisions.

24. Underlying the drive to increased mobility of lawyers is the developing consensus across Canada that it is in the public interest to remove all artificial or unnecessary barriers to practice and to affirm, as a matter of trust and faith, that each province's regulatory process is as good as any other. The passage of the National Mobility Agreement suggests that further steps will likely follow to remove all remaining unnecessary barriers to a lawyer's call to the bar and to harmonize admission processes all across the country wherever appropriate in the public interest.

25. Other law societies and professions are also reviewing the most appropriate ways to license new members, focusing on standards of competency. The accountants developed a licensing program through the Chartered Accountants School of Business (CASB). With the design assistance of the CASB, three of the four western law societies are developing a new bar admission program that eliminates the teaching of substantive law in favour of the development of skills taught in large measure by way of the Internet.

26. The valuable information we have received from other sources, including some outside our profession, has afforded the Task Force a broader context within which to re-evaluate certain recommendations made in the interim report. Again, Appendix 1 describes the scope of the consultative process and summarizes the nature and tenor of the submissions we received. Our final recommendations, set out in the following sections, are informed not only by the shaping premises with which we began, but also by the views and opinions of many others, inside and outside the practising bar, who responded to our call.

THE LICENSING PROCESS

27. A defining feature of self-regulation in the legal and other professions is the licensing process by and through which candidates for admission to the profession demonstrate that they have met pre-determined standards of competence. The admission function is at the core of the Law Society's mandate to regulate the profession in the public interest. It is the middle and briefest component of a continuum of legal education that begins with three years of law school and evolves through a lawyer's lengthy post-call working life.

28. At present, lawyers called to the bar have the unrestricted right to practise in any area of law they choose, on the basis that they:

a. are of good character;

b. have demonstrated the knowledge, skills, and attitudes necessary to provide legal services; and

c. understand and will apply their professional responsibility to provide services only in those areas in which they are competent.

29. Necessarily, then, the unrestricted right to practise granted at the call to the bar carries with it the professional obligation on lawyers to maintain competence throughout their careers. The Law Society addresses post-call competence in several ways, including:

a. the promulgation to the profession of a definition of the competent lawyer, now encoded in the Rules of Professional Conduct (Appendix 6).

b. the creation and dissemination of professional development programs and materials and tools to help lawyers maintain and enhance their competence and a recently introduced minimum expectation for professional development. The tools include the recently published Practice Management Guidelines, the Guide to Bookkeeping and the soon to be completed Self-Assessment Tool for practitioners;

c. the maintenance of a Specialist Certification program designed to recognize specialists and to provide the tools to less experienced lawyers that will assist them to develop the knowledge, skills and experience required for specialist designation;

d. the provision of Practice Advisory Services to guide and assist lawyers on the Rules of Professional Conduct and issues of practice management; and

e. the enforcement of remedial or disciplinary provisions for those who do not provide competent service.

30. The question of competence in a profession is best understood contextually. No one reasonably expects a law school graduate or a person who has had a few weeks' study at the BAC to be a specialist. The lawyer's competence ought to be presumed to increase with time and experience. And the reality is that almost immediately upon their call to the bar, most lawyers begin to focus their practices upon a limited number of areas of law. Few hold themselves out as competent in all or even many areas.

31. In the career of the practising lawyer, the call to the bar is a single step. The Law Society's role at this moment is to ensure that the lawyer is competent to take that step. But an entire career lies ahead, and the lawyer is obliged to be competent all along the way. The definition of the "competent lawyer" referred to

above requires focus on the lawyer at various points in his or her evolution as a professional.

32. The Law Society's regulatory objective for the lawyer's competence at the time of the call to the bar can rightly be premised on the understanding that competence is not static, and that the lawyer's competence on the day of call will change and grow from the moment the lawyer begins to practise. The assessment of competence at call is a snapshot only, to be enhanced by post-call support and regulatory structures and by the lawyer fulfilling the obligation to continue to update his or her skills and knowledge.

33. At the moment of the snapshot, however, the Law Society must be satisfied, in the public interest, that candidates for admission have demonstrated certain competencies and characteristics and been educated in certain principles fundamental to the profession. When the Law Society calls candidates for admission to the bar it should be satisfied that the candidates:

a. are of good character;

b. are educated in specified areas of substantive law and skills, as a result of law-school education;

c. have demonstrated, by examination, requisite levels of comprehension of substantive law, as well as analytical and other professional skills;

d. are appropriately experienced in explicitly defined skill areas by virtue of their overall legal education and articling experiences;

e. are knowledgeable and have been assessed on the ethical rules they must follow and the standards of professionalism they are expected to uphold;

f. are capable of serving the public within self-acknowledged skill limitations in accord with the Rules of Professional Conduct;

g. have acquired the requisite skills to manage a law office so as to properly serve the public and meet their obligations under the *Law Society Act*, as well as the by-laws and the appropriate provisions of the Rules of Professional Conduct on financial and other responsibilities; and

h. are prepared and committed to undertake post-call professional development and study to increase competence over time within their areas of work or practice.

34. Two questions with which the Task Force has grappled are:

a. Besides *evaluating* pre-call competence, what role, if any, should the Law Society play in *developing* pre-call competence?

b. Assuming the Law Society should have a role in developing as well as in evaluating pre-call competence how does it best realize that objective?

Our research has convinced us that the Law Society should play a role in such development, but not in the way it has done so in the past.

35. For nearly half a century, the Law Society has taught substantive law to bar admission candidates as a prelude to testing them, to ensure their competence to practice. Pre-call learning was thought to be virtually the last opportunity for imparting knowledge in a formal setting. Teaching substantive law in the classroom at the bar admission level was a way of ensuring that students had acquired the knowledge that the profession considered essential for them to know. In this way, the Law Society has traditionally defined its role in the development of competence.

36. Despite many changes to the bar admission process in the last 15 years, the emphasis still fell upon the teaching of substantive law, thereby ensuring the perpetuation of the old model. We believe that the time has come for major reform of the BAC, consistent with the Law Society's core mandate as regulator and

licensor. In arriving at this perspective, we have considered carefully the long history of legal education in the province (summarized in Appendix 7) and the many reforms to the BAC, especially since 1988.

37. The Law Society's commitment to legal education arose out of the mandate it was given at its creation, when there was no other body to pass on legal knowledge and skills to new members of the profession. The remarkable "New Deal" of 1957 meant that the old system, an apprenticeship system focused primarily upon articles, was about to give way to a new one that placed its emphasis upon formal education in a university setting. The BAC was born of this transition. But while the university-based legal education system has grown and changed considerably over decades, the Law Society has continued to make assumptions about what law schools teach (or do not teach) and about its own capacity to bridge a perceived gap in legal education in the concentrated teaching phase or phases of the BAC.

38. In the well known, highly regarded MacCrate Report, published by the American Bar Association in July 1992, a Task Force on law schools and the profession studied the roles of law schools and the practising bar in educating students to assume their place in the legal profession. It concluded that there was no gap in students' legal education. Instead, the Task Force found, "[t]here is only an arduous road of professional development along which all prospective lawyers should travel."

39. The framework of legal education and the profile of the legal profession and its needs have changed a great deal since the BAC was developed and implemented. Yet the BAC continues to reflect the Law Society's longstanding determination to inculcate students, before their call to the bar, into a pre-determined amount of substantive law knowledge. But this approach is restrictive in the sense that the teaching is offered to the students once only, and under the questionable structure of eight separate examinations. It continues to assume that a program of practitioners teaching substantive law is a necessary prerequisite to the competent development of candidates for admission. We believe that if this in-depth, duplicative teaching model was once necessary, it no longer is so.

40. As we considered the issues raised in Appendix 5 (BAC reforms) we made the following observations, all relevant to the BAC's future:

    a. For the Law Society, the 1957 arrangement signalled an end to the primacy of the apprenticeship system. It gave the universities primary responsibility for the students' formal legal education. In 1957, the arrangement was new and untested. Although the Law Society has reformed the BAC since then, particularly in 1990 in response to many of the recommendations in the Spence report, the fundamental rationale for the program has not changed.

    b. When the BAC model was introduced, CLE was almost non-existent. A tradition of teaching substantive law grew out of a need to provide as much information as possible at the pre-call stage, because post-call learning was not so pervasive, specialized, and accessible as it is today.

    c. By virtue of the particular evolution of formal legal education in Ontario, there exists in the profession an imperfect appreciation of the legal education and training Canadian law schools provide and are capable of providing.

    d. The substantive law portion of the BAC is premised upon a pedagogical approach of dubious value: the rapid-fire offering of many subjects and examinations within a very short time.

    e. LawPro and Law Society complaints statistics show that the problems lawyers encounter do not stem primarily from substantive law deficiencies, but from practice management issues and poor client relationships. The necessity to re-teach substantive law at the BAC is not proven.

    f. The overall legal education process (beginning with law school and continuing through the call to the bar) is still longer and more expensive than necessary.

    g. The range of approaches to licensing that now exist make it unrealistic to suggest that there is only one correct way to prepare candidates for the call to the bar and that it is necessary to teach substantive law

in the classroom at the licensing stage to ensure competence in practice.

41. As we observed in the interim report, we believe that the time has come for meaningful reform of the BAC, especially its tradition of teaching substantive law in the classroom. Moreover, our research convinces us that licensing examinations on substantive law will more effectively assess candidate competence and at the same time demonstrate that teaching substantive law in the classroom is unnecessary and redundant.

42. The interim report emphasized, however, that the Law Society does have a vital role to play in the *development* of competence at the pre-call stage, through:

a. the maintenance of articles;
b. the provision of Reference Materials and educational and other support; and
c. the teaching of professional responsibility and practice management skills.

43. In the interim report we also proposed to eliminate the skills portion of the BAC, except for the teaching of professional responsibility and practice management. This recommendation generated a good deal of response, mostly negative, and caused the Task Force to study the matter further in light of the criticism. In the result, we have been persuaded that the Law Society should continue to have a role in skills instruction and assessment at the BAC, a role that will be described more fully in subsequent sections. For now, it will suffice to say that skills instruction at the BAC will seek to identify those competencies essential for call to the bar and will emphasize professional responsibility and practice management skills. Overall, we continue to be of the view that post-call professional development is essential to the development of the professional's skills. Realistically, the BAC contribution can only set the foundation for all that follows.

44. Thus, the template for an admission program we propose would:

a. eliminate the traditional classroom model of teaching of substantive law, but provide supportive learning tools, including Reference Materials;

b. streamline the Law Society's licensing role by creating objectively valid, reliable and fair licensing examinations; and

c. contribute to the continuum of legal education through articling and a skills program that focuses on those essential competencies appropriately addressed in the BAC, including professional responsibility and practice management.

A NEW APPROACH

45. In this part of the report we describe each of the four branches of our proposal and address questions and comments raised about them during the consultations. We also include here a schedule and timeline for implementing the new model. The four branches are:

a. Licensing Examinations
b. Skills Training
c. Professional Responsibility
d. Articling

LICENSING EXAMINATIONS

The Substantive Law Teaching Component

46. The Law Society should accept that it is no longer necessary for it to teach substantive law in the BAC in the traditional classroom setting. Most other provinces do not re-engage candidates during the bar admission process in the in-depth learning of general principles and substantive law. They entrust that responsibility to the law schools. Nova Scotia, for example, teaches no substantive law. It gives the candidates for admission the materials upon which they will be tested and sets and administers licensing examinations based upon these materials. The American bar admission process consists entirely of

licensing examinations with no materials provided to students. It is left entirely to the students to prepare themselves for the examinations, an approach very different from the one we recommend. Appendix 8 describes the American approach.

47. In 1990, when the Law Society adopted some key aspects of what has come to be known as the Spence model, it mandated attendance in both the skills and substantive law portions of the course. Students initially accepted the need for attendance during the skills portion because much of the learning was interactive and performance-based, but they opposed loudly mandatory attendance in the substantive phase. After years of trying to adapt mandatory attendance to make it more palatable, the Law Society finally abolished it for the substantive courses in 1997.[6] The result has been a precipitous decline in attendance. Students use the opportunity to prepare for the examinations in their own time as they balance familial and other responsibilities. Those who attend do so intermittently, casually dropping in and out on a given day or for a given topic or subject. Many of the students write the examinations without attending some or all of the classes.[7]

48. Response to our proposal to refocus the teaching of substantive law in the BAC has been mixed. Those who favour the change generally support the views we expressed in the interim report. Those who oppose or at least question the changes tend to express one or other of the following:

a. What will be done to help students who may need more assistance than self-study affords?

b. Without the teaching component, students will lose an opportunity to make connections with the profession and to observe role models.

c. Law schools do not teach substantive law adequately enough to equip students for practice, so the BAC must. Alternatively, will law schools teach only what students need to pass the examinations? Will students be less able to take "non-traditional" courses at law school, because they will feel pressure to elect courses examinable in the BAC?

d. What is the likelihood that private providers may establish a foothold in Ontario to provide examination preparatory courses similar to those offered in the United States?

Student Support

49. In 1997, the Law Society considered the steps it could take to address a disproportionately high failure rate among some candidates from groups traditionally under-represented in the legal profession. In the result, it introduced a host of measures to assist candidates in overcoming unreasonable barriers to their call to the bar. The Task Force said in the interim report, and reaffirms here, that it is at once proper and reasonable for the regulator to assume whenever necessary a supportive, ameliorative role. The current infrastructure is sophisticated and valuable to those who use it; it should continue to exist. Services available within the system include the following:

a. tutoring;
b. tutorials on examination writing;
c. mentoring, where available, by lawyers recently called to the bar;
d. extended time to complete examinations;
e. use of special equipment such as personal computers;
f. use of private rooms in which to write examinations;
g. examinations in alternative forms such as audiotape, Braille, and text to speech; and
h. use of readers or scribes in the examination setting.

50. Still other support for students can and should be made available. The Law Society has already gone a long way toward this end by developing an e-learning website in 2002, which has proven to be as useful as it is popular. During the 2003 BAC, 1,424 students accessed the site. Total visits to the BAC e-learning site were 46,096, as compared to 18,147 in 2002. The cumulative hits on all pages within the site were 4,953,358 and the average visits per day this year are 388, as compared to 130 in 2002.

51. Currently the e-learning site offers:

a. live lectures on-line;
b. Reference Materials;
c. supplemental video presentations on examinable topics;
d. supplemental video role plays and situational videos on specific practice topics;
e. precedent forms, checklists, lists of key legislation pertaining to the subject area;
f. full practise examinations and answers; and
g. an information exchange bulletin board and chat-board for students.

52. The Task Force recommends that on-line or videotaped lectures continue to be available. Law Society staff and BAC instructors have expert knowledge of what areas traditionally attract the most questions from students. The lecture content should track this emphasis. It is also feasible for the site to be designed to have an on-line question-and-answer forum for students and willing practitioners during the examination study period, similar to the current chat room for students to communicate and exchange information. The e-learning site is a living tool. As technology changes it too will change and be adjusted to meet student needs.

53. The value of computers for education is that they provide easy, convenient, affordable access to learning tools and tips hitherto available to only an elite few. But some students still have no access to or cannot afford computer equipment or the Internet. The Law Society's Education Support Services must bear that fact in mind to ensure that students without such access are not disadvantaged. So, for example, if time is allotted for on-line question-and-answer periods with practitioners, telephone time must be allotted as well.

54. We trust and expect that as the new BAC program is designed and developed, individuals and groups especially knowledgeable about the needs of students requiring extra encouragement and support will be extensively consulted. As we said in the interim report, the Law Society must demonstrate and must be seen to demonstrate commitment to a reliable, fair, open and equitable accreditation process.

55. The Law Society's Reference Materials are, in and of themselves, a significant learning tool. Unlike in the American system where the Bar Examiners provide no substantive materials, the Law Society's examinations have always flowed from the materials upon which the testing is based. In the approach we recommend, the written materials will continue to form the basis for the examinations. Once the appropriate competencies in each subject area have been determined the Reference Materials will be refined to reflect these and to indicate what is or is not examinable. The materials will provide students with the tools necessary to prepare for the examination. Extra help will be available to any students requiring it.

Connection with the Bar

56. Students' connection to the bar and to mentors ought to be sedulously fostered. The abolition of the traditional classroom model of teaching substantive law at the BAC, however, has little or nothing to do with that important objective. To the contrary, the proposed new approach will strengthen the students' connection to the profession. It will do so in the following ways:

a. Experienced practitioners, all mentoring models, will teach skills, including professional responsibility in the four-week skills phase.

b. The Law Society's Education Support Services will link students with practitioners. The proposal envisions an active quest for mentors, particularly for students from groups traditionally under-represented in the profession or who do not have articling positions;

c. An on-line/telephone question and answer forum will also link students to practitioners; and

d. Articling will afford students opportunities to observe practice styles and approaches of not only their principal, but many other lawyers as well, and spend 10 months intensively with a lawyer or lawyers.

57. Many students actually make their first connections with practitioners during law school where many practitioners serve as adjunct faculty. Moreover, given the sharp decline in attendance at substantive law courses in the BAC, the Task Force is not convinced that today's students view the bar admission course in the way the comments suggest. Finally, we repeat our belief that the bar admission process is but a snapshot in a long career, during which connections to other lawyers will be numerous and enduring.

The Nature of Law School Courses

58. During the consultation process the Task Force heard the occasional criticism that in the substantive law courses, law schools have failed to prepare students for practice. According to the argument, only the bar admission teaching term does that, because it teaches problem-solving in substantive law areas. Others have suggested that without the BAC teaching term students may have no room to take from the broad array of courses available at law school because they will feel pressure to elect the courses that will form the content of the licensing examinations.

59. We understand the anxiety that these comments demonstrate, but we consider that the anxiety is not well-founded. Uniformly, the lawyers who teach in the bar admission program are committed, talented people, knowledgeable and passionate about their area of law. They perceive that some or many of the students know nothing about their area of law, so they consider that the bar admission teaching term is essential. The BAC instructors have made important contributions to the professional development of the students entrusted to them over the years. But is the method of classroom lecture instruction necessarily the best method to prepare students for the profession they are about to enter?

60. No creditable evidence exists to suggest that newly-called practitioners in Ontario are deficient either in understanding or applying substantive law. In fact, as LawPro statistics make clear, in a typical lawyer's career the weakness, if any, is to be found in client service-related areas. Law Society complaints underscore this truth. Nor is there any evidence to suggest that 4 or 5 hours of BAC lectures and 10 to15 hours of substantive law seminars could remedy whatever deficiency is perceived to remain after three years of law school. Even now, students report that their primary concern is to pass the three-hour examination written at the end of a course, not to delve into the intricacies of a discrete area of law. The falling attendance rates are a sign that the teaching term is no longer as central to the licensing process as the Law Society once believed.

61. Problem-solving is of course a critical lawyering skill. To the extent that the BAC makes a contribution to this skill it provides a valuable service linked to competence. We believe that this skill can be taught and learned through the skills program we recommend. We also believe that most students engage in problem-solving in law school, so they do not come to the BAC without any awareness of that critical skill. In addition, the articling term and process contribute significantly to the development of this skill.

62. As to whether students will be able to take a broad array of courses in law school or will feel compelled to take only those subjects that will form the content of licensing examinations, we believe that students' course selections among available electives will continue to reflect the same diversity of interest they do today. The Task Force's proposal is premised on the Law Society continuing to provide students with the written materials necessary to allow them to confidently write their licensing examinations, whether they have taken a course in the subject matter of the examination at law school or not. The BAC's Reference Materials have long enjoyed a reputation for excellence. Those materials and other supports will constitute a solid foundation for the licensing program.

63. It is essential that the Law Society regularly communicate with law schools and law students so that they will understand the requirements and the materials that will be available to them. This communication should minimize student concerns that their choice of courses must be restricted to the BAC examination subjects.

Private Providers

64. A number of those with whom we consulted, including law students and groups speaking for those traditionally underrepresented in the legal profession, raised concerns over the likelihood of private

providers emerging to play a role in the new admission process. We have considered this matter carefully.

65. Private providers are for-profit entities. They are unlikely to operate in any jurisdiction unless the market available to them is large and unless there is a perceived and obvious need they can fill. In the United States, where students are told the subject areas of examinations, but given no study materials, the multi-state examinations offer just such an opportunity for private providers. According to the National Conference of Bar Examiners, 73,065 students wrote the bar examinations in 2002. In Ontario, the total student body was approximately 1,250.[8] In the United States, conditions are ideal for private entrepreneurs. One provider's web site affirms that over 750,000 bar examination takers nationally have trusted it to help them pass the examination.[9]

66. In our view, there is no need for private providers to fill in Ontario. The reason is that under our proposal excellent study materials fully canvassing the subject matter on which students will be examined will be provided to them. The Law Society will also make available an array of other resources and materials at no additional cost to those who choose to use them.

67. Even if there were students interested in taking a course offered by a private provider, we believe that they would constitute too small a group to interest private providers. If costs for the program were comparable to the average U.S. costs (i.e., US $1,250 or CDN $2,000), at least 500 students would have to enroll in the program to generate total revenue of $1 million.

68. We acknowledge, of course, the possibility that private organizations currently providing instruction for LSAT preparation could expand their processes to include legal examination preparation. So, too, the law schools could see an opportunity to establish an ancillary revenue source. However, we are confident that in providing the materials and additional support necessary to complete the bar admission examinations, in providing examination preparation sessions, in affording students several opportunities to pass the examinations, and in communicating the BAC requirements and information to students, the Law Society will leave precious little room for private providers.

The Nature of the Proposed Substantive Law Examinations

69. The current approach of requiring students to write eight examinations illustrates the Law Society's traditional belief that it must re-teach substantive law in-depth. We recommend, instead, that there be two licensing examinations, each containing questions on professional responsibility in addition to substantive law subjects:
    a. A barrister examination focusing on advocacy-related areas; and
    b. A solicitor examination focusing on solicitor-related areas.

70. These examinations should not be designed to test the same volume of material in two examinations as is tested in the current eight examinations. The goal of the licensing process is not to force-feed content, but to identify those critical competencies that a newly-called lawyer should have, provide students with materials that address those competencies and test them. The goal is to create a licensing system to assure the public that those called to the bar meet appropriate standards for admission.

71. Reference Materials will contain examinable material designed to reflect the competencies, but they will also contain *non-examinable* information for reference after call to the bar.

72. The Performance Assessment Group Inc. (PAG) was retained to provide a report on a proposed licensing model. PAG's report, an Executive Summary of which is set out at Appendix 3, is entitled "Establishing a Standardized, Reliable, Valid, Fair and Defensible Licensure Program".

73. PAG's report identifies the following steps to create reliable, valid and fair licensing examinations, in the public interest:

    a. Identify the competencies that meet the requirements of the profession in the areas subject to examination; [10]

b. Develop a blueprint document that sets out the purpose and scope of the examination, the decision-making process, the content, the structure of examinations, and the scoring methods; [11]

c. Develop the examinations in accordance with the blueprint;[12]

d. Develop fair and transparent administration;[13]

e. Use effective, standardized scoring methods; and

f. Review the examination regularly to ensure relevance and appropriateness.

74. This proposed approach to examination development reflects the principles that should underlie a licensing process:

a. competency-based underpinnings;
b. consistency;
c. reliability;
d. validity:
e. fairness; and
f. collaborative development.

The PAG report recommends that content specialists be part of the design and that there be piloting and testing of each phase of development to ensure that it is valid, reliable and fair and that it contains the required competencies.

75. We heard a range of views on the PAG report and on the current examination system and its weaknesses. The most common questions asked about the PAG report were:

a. Will the examinations test appropriate competencies?

b. Who will be included in the development of the competencies, blueprint, examination and administrative development and testing process?

c. How will a licensing system accommodate equity, Francophone and Aboriginal student concerns?

Competencies

76. The Task Force's interim report, the PAG report and the Macfarlane-Manwaring report on skills training, discussed below, all emphasize that a licensing program must address the competencies that lawyers should have upon call to the bar. We agree and consider that identifying those competencies is best undertaken once a model is approved.

77. In 1997 Convocation approved a definition of the competent lawyer. That definition, set out at Appendix 6, now forms part of the Rules of Professional Conduct. A number of other law societies in Canada also use it as the basis for their rules on competence. The Law Society uses that definition as the beginning point for developing all competence-related policies.

78. If Convocation approves our recommended model, the program designers will identify the appropriate skills and substantive law competencies that should form part of the BAC. Each component of the definition of the competent lawyer will be considered to determine what should realistically be included in the skills and professional responsibility training.

79. The western provinces recently adopted a "competency profile" for use in their new bar admission program. This profile contains many of the same components that are in the Law Society's definition of the competent lawyer, but elaborates on each component.

80. The designers will also consider which competencies should be assessed in the licensing examinations.

This will involve determining the subject matter to be examined and then choosing appropriate content subject-by-subject. The PAG report contains a plan for ensuring that the competencies tested are those that the profession regards as relevant.

81. The foundation of the BAC design will be agreed-upon lawyer competencies. This will result in a significantly improved BAC.

The Licensing Examinations and Equity, Francophone and Aboriginal Student Concerns

82. Consultation is a cornerstone of the proposed licensing examinations, the object being to ensure that the competencies chosen are valid and that groups that have experienced a disproportionately higher failure rate on examinations are involved in development.

83. Given the concerns raised over the years about the disproportionately high failure rate of students from visible minority, Aboriginal and Francophone groups, we emphasize the importance of involving representatives of these groups in the design of the licensing examinations. Many of these groups' comments have been directed specifically at ensuring this involvement, an involvement we consider to be essential to the success of the new model. A licensing process developed in this way cannot be compared to the current approach.

84. Such involvement will go a long way to alleviating concerns about the licensing process. The designers will be alert to cultural issues that affect examination fairness and address them directly.

85. The Task Force has described elsewhere the role it envisions for the Law Society's Education Support Services in this new program. Aboriginal, equity and francophone representatives as well as law school student representatives focused on the importance of this support system. Education Support Services must be flexible to adapt to identifiable needs.

86. Two issues raised by specific groups and individuals require additional comment:

a. French language examinations; and
b. item banking and re-grades of the Examinations.

French Language Examinations

87. The issue relating to French language examinations is whether they should be translations of the English examinations or created independently. The PAG report discusses both approaches, focusing on perceptions of fairness. In the past, delays in completing the English version of the examination meant inadequate time for translation. This is not acceptable. In our view this problem illustrates the weakness in a system in which there are no "banked" questions and in which volunteer instructors must develop several completely new examinations each year. The result is actual or apparent unfairness to the Francophone students.

88. The PAG report notes that there is no evidence that a separate licensing examination designed in French is more valid than a properly translated examination, made available to translators in a timely fashion. We believe that if examination design is done as recommended above, a system of translation is appropriate and cost efficient. However, the design should address the issue and representatives of the Francophone bar should be part of the discussion.

Item Banking and Re-grades

89. Two important features of the examination model we recommend are item banking and a re-grade system for failed examinations, rather than an appeal. Creating a blueprint and examination questions involves substantial work, time, care, and pilot testing to ensure that the blueprint and the questions are valid, reliable and fair. The process is expensive, but worthwhile if it is properly developed and well-maintained. Two fundamental features of the process are the creation of a growing bank of questions that can be re-used and a re-grade system rather than an appeal to ensure the security of the examination questions. Those presently involved in BAC examination drafting have told us about the weaknesses of the current system, which does not have these features.

90. Some people, however, were concerned that in the past flawed marking guides or incorrect grading have only been revealed through appeals. Precisely because of these problems we recommend approval of the new approach to licensing, with a proper design that is collaborative and pilot-tested for validity, reliability and fairness.

91. The Task Force strongly cautions against compromising the very basis of the proposed system by ignoring or varying these two components. Without them the design will be fundamentally compromised. They are pre-conditions for the rigorous development of a licensing system.

SKILLS TRAINING

92. Our recommendation to include skills training is the most marked change to the recommendations we made in the interim report. The change reflects recognition of the comments we received and the additional research we undertook on the issue. Dr. Macfarlane and Professor Manwaring have prepared an interim report on skills training and professional responsibility, the Executive Summary of which is set out at Appendix 9 (the Macfarlane-Manwaring report).

93. Three consideration persuaded us to change our recommendation:

a. Despite a significant increase in available skills courses and programs in law schools, there are still insufficient offerings to ensure that every law student will be exposed to the fundamental skills areas before graduation. This is because teaching skills is a staff-intensive, expensive exercise and because students must balance skills courses against other important second and third-year courses that reflect their interest.[14]

b. The Law Society has an important role to play in the development of competence by ensuring that all candidates receive exposure to certain fundamental skills prior to call to the bar. This is particularly important for those who will enter sole or small firm practice. Candidates from groups traditionally under-represented in the profession tend to be over-represented in this group and a number of representative groups told us the skills program would be valuable for them.

c. It would be difficult and unfair to transfer responsibility for skills training entirely to articling principals.

94. Most of those we consulted on the Macfarlane-Manwaring report agree with its recommendations. Some directors of articling in large firms believe that teaching skills in the BAC is unnecessary because they provide training during articling. Others prefer that students have some training before they article. Law students who commented supported the inclusion of skills in the BAC. Groups traditionally under-represented in the legal profession strongly favoured skills training in the BAC.

95. Skills training is not new to the Law Society, which has placed emphasis on it since it introduced the Spence model in 1990. It has taught professional responsibility, interviewing, advocacy, negotiation, legal writing and drafting, and legal research. Currently students receive approximately 35 hours of skills training instruction, excluding assessment time.

96. Most skills programs identify these skills as the ones lawyers should develop and enhance throughout their careers. The Macfarlane-Manwaring report discusses essential competencies and expands upon this list of skills.

97. The designers of the new skills program will recommend which skills a new lawyer should have and which of those are best addressed in the BAC. They should not assume that the traditional list is necessarily the most relevant. We believe that the competencies chosen should reflect a balance between litigation and non-litigation skills. This is particularly important because law careers and the focus of legal practice continue to change and traditional skills may give way to others. The BAC program can only be an overview and should focus on those areas most useful to articling students and newly-called lawyers. Lawyers will continue to develop their skills through post-call professional development and experience.

98. The skills program will also focus on practice management issues. LawPro statistics and Law Society complaints information are clear that lawyers encounter a disproportionate percentage of their problems in this area. The skills program can be invaluable to address the critical skills that every lawyer should know.

99. We recommend that attendance at the skills program be mandatory. Some may disagree with this recommendation. The argument against it is that BAC students are adults and should be allowed to make their own decisions about attendance. We have been told about declining attendance in the current skills program, which is not mandatory except on assessment days. If, as many people have told us, it is essential for the BAC to include skills training to ensure that candidates called to the bar are competent, provide them with mentoring opportunities and focus on professional responsibility and practice management issues critical to ethical and efficient lawyering, then it is also essential they attend. We are persuaded that the best way to ensure attendance is to make it mandatory.

100. The four-week skills program we recommend would include approximately 96 hours of instruction, more than double the number currently offered.

PROFESSIONAL RESPONSIBILITY

101. The commitment to ethical action and professional responsibility in the public interest is the very foundation from which the legal profession draws its authority and strength. Without the constant nurturing of these values it would not be possible to continue to affirm the principles that justify self-regulation. Our interim report emphasized the importance of the Law Society's role in providing instruction and guidance to students at the bar admission level on the fundamental underpinnings of the profession.

102. The teaching of professionalism and ethics is an important component within the three-year law degree program. Regardless, however, of how the law schools approach the teaching of professional responsibility, it remains essential for the Law Society to provide its own additional instruction as part of the post-law school licensing process. This is so because professionalism and ethics are the soul and centre of our profession, because every lawyer is accountable for and responsible to abide by the Rules of Professional Conduct, and because a breach of this obligation may result in the imposition of sanctions.

103. All those with whom we consulted agree that the Law Society should continue to teach professional responsibility. Law Society instruction should continue to emphasize those features of professional responsibility that are of particular concern to the Society, including:

a. principles of self-governance;
b. a lawyer's duty to the public;
c. civility and professionalism;
d. identification and application of the Rules of Professional Conduct, with particular emphasis upon conflicts, confidentiality, ethical advocacy, and avoidance of discrimination and harassment; and
e. service to clients, including practice management.

104. Professional responsibility will be taught during the four-week skills program. It will address the professional responsibility competencies a newly-called lawyer should be able to apply. There will be a professional responsibility skills assessment. In addition, however, each of the two licensing examinations will include professional responsibility questions. Students will have had the benefit of the skills program when they write their examinations. There will also be professional responsibility material included in the Reference Materials.

ARTICLING

105. Many of the comments we received on the role of articling in the proposed model followed the interim report, which did not contain a skills training recommendation. The inclusion of skills training has addressed many of those earlier comments, but three areas of discussion require elaboration:

a. the nature of articling and its contribution to the development of competence;
b. possible expectations on articling under the new model;
c. length of the articling term.

Nature of Articling

106. Before beginning our consideration of the articling component of the BAC, the Task Force obtained information on the location and firm size of those offering articling positions. There are 1,063 reported articling positions for the 2002-2003 year.[15] Of these students,

a. 69.7% (741) article in Toronto; it is estimated that 75% (556) of these students are being paid a combination of salary and or tuition fees [60% of the students who reported were being paid their full salary during the entire licensing process and 75% are being paid all or a portion of their tuition fees];

b. 13.4% (143) article in Ottawa; it is estimated that approximately 40% (57) of these students are articling at the Ottawa offices of national firms and therefore receiving similar benefits of salary and tuition fees as are the Toronto students;

c. 3.3% (35) of the students article in the Greater Toronto Area (including Brampton, Vaughan, Mississauga, Oakville, Thornhill, Richmond Hill, Burlington and Woodbridge);

d. 3.1% (33) of the students article in London;

e. 2.1% (22) of the students article in Hamilton;

f. 1.8% (19) of the students article in Windsor; and

g. the remaining 6.6% (70) students article throughout the rest of the province, usually in small firms where there are only one or two articling students at most.

107. Of 1,124 students who filed articles of clerkship in 2001, approximately 525 articled in firms of more than 25 lawyers and another 115 articled in a government office or agency, typically with numerous lawyers. Approximately 279 articled for firms with between 5 and 25 lawyers, and approximately 127 articled for firms with between 1 and 4 lawyers. These statistics are relatively stable from year to year.

108. Articling has been the subject of discussion for decades. In 1990 the Law Society introduced reforms, the most significant of which was the creation of education plans to be completed by principals and students during and at the end of articling. Until then, there had been no systemic monitoring of students' articling experiences. While there have been other changes to the program since 1990, the most noteworthy was the decision Convocation made in 2001 to reduce the length of articling from 12 to 10 months.

109. The 1990 reforms took the middle ground between a system that leaves the governing of the process entirely to the individual relationship between principal and student and one that accredits placement offices after a lengthy inspection and requires principals to formally assess student performance. Ontario's, like the majority of other law societies', is a monitoring system that provides principals with a guide to those skills to which students should be exposed. It catches only egregious problems that the education plans reveal.

110. The Task Force's interim report recommended the continuation of articling. Articling provides a critical opportunity for candidates for admission to the bar to observe and participate in the practical application of skills, ethics and professional values, in a relatively low-risk environment. Because the candidate is under supervision, the public interest is protected while the learning process is advanced. This is in sharp contrast to the American model in which no such apprenticeship exists, and in which many lawyers are admitted to the bar without ever having worked in a legal environment.

111. In articling there is a direct, practical and perceivable relationship between skills and their application. A well-run and supervised articling experience will effectively guide the candidate from theory to practice. Articling students build upon and begin to apply the substantive law knowledge and skills to which they are introduced in law school and the BAC.

112. Despite admitted problems with the quality of some articles, articling students reveal time and again in surveys an appreciation of this feature of their pre-call experience. The acquisition and application of skills are essential components of a legal education and, in our view, should continue to be part of students' education prior to call. Once called to the bar, lawyers are then expected to build upon this foundation, honing and expanding their knowledge and skills over time.

113. Articling today is a different experience from that of decades ago. It now has characteristics of both an apprenticeship system and a work-experience model. The former is based on the one-on-one relationship between articling student and principal with no outside supervision. The other involves the imposition of structures by the Law Society designed to ensure that students are afforded the opportunity to learn and apply certain specified activities.

114. Although the Task Force received some feedback that articling should be eliminated, this view is not held by most. Given the overwhelming opposition the Task Force heard to its suggestion that the skills component be eliminated, any suggestion that articling be abolished is unrealistic. Moreover, we are convinced that articling continues to play an important competence-related function in the admission process.

Expectations for Articling under the New Model

115. Following the interim report, a number of those consulted said the new model would place greater expectations upon the articling process, because without a skills program in the BAC principals would be expected to do more skills training. We did not consider that our recommendation would entail substantial change to articling. In any event, however, our recommendation in this report to include skills training in the BAC has reduced many of the concerns expressed about articling.

116. There was little appetite among those we consulted for a restructuring of articling. The current process can, however, be improved. There should be certain expectations on the Law Society, students and principals to ensure that the process remains relevant and helpful to the development of competent lawyers.

117. At the same time, we are aware that the articling system is voluntary. Lawyers are not required to become principals. The articling system cannot demand more from prospective principals than they are willing to undertake. Articling must reflect a balance. It must ensure that the experience for students is valuable and that demands upon principals are reasonable.

118. The Law Society can make better use of the student and principal education plans than is currently the case. We recommend that the purpose and content of articling education plans be examined to:

a. ensure that the plans are relevant educational tools that can guide principals and students;

b. ensure that in considering the competencies to be reflected in the licensing and skills phase of the BAC, the competencies for articling are included;

c. use data from the education plans more effectively to recognize trends, gaps, and problems with the plans and report on the issues these trends reveal (based not on individual plans, but on the system as a whole);

d. consider better ways, if applicable, to use the plans for monitoring the quality of articles;

e. create the plans in electronic form to make them easier to use.

119. The Law Society should also develop education plans that reflect the realities of a principal's practice and highlight gaps in the learning that can be filled using Law Society supports and systems. These plans would make it possible for the placement to go ahead despite those gaps.

120. We also recommend that the Law Society review the professional responsibility assignment students are required to complete and discuss with principals to determine whether it should be revised or expanded to

include other assignments or discussions.

121. We have also consulted on ways in which the Law Society can improve articling. The Law Society should provide support in core practice areas for students who are unable to obtain a full rotation in different practice areas during their articling term, for example, providing corporate/commercial documents, precedents, file checklists, and writings for those whose articling placements focus on litigation only (Appendix 10).

122. CLE programs for training and information in core practice areas should be developed that are accredited for the articling student learning level (basic). These are already in development.

123. The Law Society should continue to facilitate mentoring opportunities for students and lawyers. Currently, the Law Society has three different mentoring initiatives:

a. an equity and diversity initiative to match high school and university students with mentors who can encourage them to consider law as a career;

b. a practice advisory initiative to connect lawyers with experienced practitioners to assist with complex substantive or procedural questions outside the Law Society's advisory mandate;

c. an articling and placement initiative to assist those looking for articling jobs.

124. The Law Society also plans to establish a mentoring database to connect students with mentors in practice areas not covered in their articles.

125. Mentoring has a long tradition in the profession and is an invaluable way to pass on values and knowledge from one generation to the next. The Law Society should foster mentoring opportunities. The profession should be encouraged to continue to recognize mentoring as a responsibility that experienced lawyers have to those who follow.

126. The Law Society should also take a more direct role in negotiating arrangements for joint or non-traditional articles and encourage lawyers to become principals in these flexible and alternative placements. Small firm lawyers and sole practitioners who feel unable to absorb the cost of an articling student for an entire year or whose practice may not provide as varied an experience as students might want could share a student with other firms. This might allow for an increase in articling positions in smaller communities.

127. In the past, the Law Society has approved two co-operative law programs at Queen's University law school. Issues arose as to whether the job placements could properly be considered as articling because they occur during law school. We believe that the flexibility offered by these programs is laudable and that the Law Society should consider how to address any difficulties posed by our current definition of the articling term.

128. The Law Society should develop a bank of supplementary learning modules, both online and in videotape format, including precedents, checklists and other information that can be used to supplement the articling experience and principals can share with students. This initiative would be particularly helpful for sole practice or small firm principals who cannot develop their own materials.

Length of Articling Term

129. During the consultation process we consulted with articling principals on at least two occasions. We discussed the length of the articling term. In 2001 the Law Society shortened the term from 12 to 10 months. As a result, there is a two-month period in the year when there is no overlap between one year's articling students and the next year's. This creates challenges to the smooth transfer of files, although the fact remains that the profession has been operating under the system since 2001. Although the employment of summer students is an option during this period, some of the affected firms do not hire the students.

130. To the extent that differences could be discerned among principals, we found that more of those from outside Toronto and in smaller firms were in favour of returning to a 12-month articling period. The representatives of the larger firms, particularly in Toronto and Ottawa, who employ most of the articling students, strongly oppose a return to longer articles. They have adapted their systems to the new length and are reluctant to change them once again.

131. Few of the principals, whether inside or outside Toronto, raised any educational reasons for extending the term to 12 months. We are not aware of any evidence that demonstrates that either length affects the educational value of the program. By reducing the articling term to 10 months the Law Society was making an effort to reduce the overall length of the BAC, which was at the time longer than most programs in the rest of the country.

132. We are not satisfied that the views expressed are based upon educational factors. While we understand the concern about file transfer, we recommend that the current length of articles at 10 months be maintained under the new program.

PROPOSED TIMELINE FOR THE COURSE

133. To assist Convocation in understanding how the proposed model will be scheduled we have included a tentative timetable. The BAC will begin immediately after third year law school (as is currently the case) with the four-week skills and professional responsibility training and assessment program. This timing is critical to enable students to continue to be eligible for OSAP during the skills program. Instructional days would typically run from 9:00 a.m. – 4:30 p.m. four days a week, with the fifth day being available for assessments.

134. Licensing examinations will be held three times a year: July, October and February. Reference materials upon which the examinations will be based will be provided to students in April or May just before the skills program begins. The two examinations may be written at the same time or may be split over examination periods. Students will receive one (1) uninterrupted week (5 business days) of study time prior to writing each examination. Students will also receive at least two (2) business days to write each examination, one free day and one writing day. In total students will receive two (2) weeks (10 business days) of study time and four (4 business days) to write examinations.

135. The study time and examination writing time would be in addition to the articling term, but would form part of the articling term. Principals will be entitled to specify in which session a student will write, as part of the articling contract.

136. Students can re-write examinations for up to three years. Students studying for and re-writing examinations will do so on their own time, as is currently the case, unless otherwise agreed with the principal.

137. The recommended articling contract term is 44 weeks (10 months), which includes 2 weeks for vacation entitlement and is exclusive of the time set aside for examination preparation and writing.

138. The following chart sets out a timetable based on the 2003-2004 year.

Scheduled Activity	Approximate Dates (Using 2003-04)
Law school completed	April 30
Skills program	May 19-June 13
Available to begin articling	June 23
Examinations (offered three times a year)	July 7-11; October 27-31; February 23-27

47 week articling period ends (44 weeks plus 2 study weeks plus 4 days for writing examinations)	May 15
Call to the bar	June 1-10

EQUITY IMPLICATIONS OF THE PROPOSED MODEL

139. In the interim report the Task Force included a section on the equity considerations that have affected our study of the BAC. We made it clear that as the licensing authority for the province's lawyers, the Law Society must be committed to an admission process that is both reliable as a measure of entry-level competence and free of unreasonable barriers to admission for all groups, especially those candidates from groups currently under-represented in the legal profession. In other words, the Law Society must demonstrate and be seen to demonstrate commitment to a reliable, fair, open, and equitable accreditation process.

140. The extent to which an accreditation process is open and accessible depends upon a number of factors, among the most important of which are,

a. the nature of the course content and examination system; and
b. the cost and length of the admission process.

Nature of the Course and Examinations

141. Throughout this report we have canvassed equity issues and concerns, because we are acutely aware of occasions in the past when there have been factors in the BAC that have had a disproportionate impact on students from groups traditionally under-represented in the legal profession. It is essential that the new program be designed on different footing than has been done in the past. As described elsewhere in this report, we believe the program can be valid, reliable and fair if representatives of such groups are involved in the design of the competencies to be tested, the examination questions and the administrative process and if the Law Society maintains and enhances the Education Support Services.

Cost and Length of the Current BAC

142. In our view, the cost and the length of the current BAC can only be seen as an impediment to admission for a large number of candidates, particularly those from groups under-represented in the legal profession. BAC costs to students are substantial. Traditionally and currently, students who have secured jobs at large and even mid-size firms have their BAC tuition paid and are often paid a salary while taking the course. For these students, the length of the course and its cost are irrelevant. The opposite is true, however, for those who are employed by small firms or who have not yet secured employment. In the Law Society's experience, candidates from groups traditionally under-represented in the profession tend to make up a disproportionately high percentage of this group. Moreover, the cost burden to candidates for admission is exacerbated by the spiralling costs of undergraduate and law school tuition. The average debt load of BAC students is over $40,000. This represents an increase of approximately $7,000 since 2000.

143. Although the number of locations in which the BAC is offered has increased, there are still students who must take jobs away from their homes and families, finding or maintaining accommodations away from their permanent residences. For those with family responsibilities and debt loads from law school this geographic reality adds a further burden. In addition, given that students now take the BAC during the summer months, there are further implications for those with children who are out of school during this period. Given that the average age of BAC students is now 31, familial responsibilities have become far more prevalent than in the past.

144. The BAC's length also creates lost opportunity costs. For each month that a self-supporting candidate is not called to the bar and not working, the burden increases. Economic burdens create additional personal and family pressures that may have an impact on candidates' ability to complete the licensing requirements successfully. The current BAC, including articling, lasts 62 weeks. The proposed BAC, including articling,

will last 51 weeks. A first-year lawyer, earning approximately $65,000 could earn $13,750 in the 11-week period freed up under the proposed model. Whatever a first year lawyer's income, reducing the BAC's length will reduce financial burdens.

145. The Law Society has recognized the economic pressures that some students face and has had a long history of bursaries and loans to assist. In 2001, Convocation created a fund of approximately $615,000 and paid $171,000 in grants to students. For the fiscal year 2002, Convocation approved the addition of $100,000 to the balance remaining in the fund and will budget that amount in each year. In 2002. the Law Society paid out $213,000.

146. The Law Society now encourages those who wish to donate prizes for BAC students to give bursaries instead and is investigating options to do the same with currently existing prizes.

147. While it is to the Law Society's credit that it assists as it does, the degree of need has persuaded us of how important it is to assess whether the length of the course, with its cost implications, is actually necessary to ensure that those called to the bar demonstrate entry-level competence. We believe that the financial burdens the BAC imposes must be alleviated. As will be seen in the budget section that follows the Task Force's proposal is projected to result in savings to students in the range of $1,800.

FINANCIAL IMPLICATIONS OF THE PROPOSED MODEL

148. The Task Force has considered with staff the financial implications of its proposal. Based upon conservative estimates for the operational requirements of the new program, the savings to students will be in the range of $1,800 from the current fee of $4,400. This savings is coupled with a reduction in the length of the course by about three months, which permits students to be called to the bar and be eligible for employment or to open their practices sooner.

149. If Convocation accepts the Task Force's proposal that the skills program be offered immediately after law school, students will also be eligible for OSAP for at least half of the tuition and during the four-week program.

150. Finally, the Law Society will continue to offer bursaries, as discussed above.

Operational Costs and Projections

151. Appendix 11 provides information on the current and projected costs for the BAC. The costs outlined reflect the new licensing program *if it were established in 2003*. A number of variables will affect the final calculation of the student tuition. These include factors such as member contribution levels, indirect expense allocations for the organization, the number of students enrolled and grant contributions.

Licensing Process Developmental Costs

152. Appendix 12 contains the projected costs for developing the model. These include costs for:

a. establishing the substantive competencies to be tested;
b. examination item/test question writing;
c. developing the competencies and design for the skills program;
d. developing the examination bank; and
e. consulting on and developing examination security.

153. If the proposal is approved by Convocation, major funding and staff time will be assigned to develop a standardized and validated skills training and licensing examination process. Staff will come from within the current PD&C complement. A budgeted expenditure will be used to retain various skilled consultants to assist in training and testing under the new system and to cover the direct expenses of hundreds of lawyers who will be involved in the development phase. In 2004, the amount of $300,000 has been included in the Professional Development and Competence Budget for this development. A similar amount will be requested for 2005.

REQUEST TO CONVOCATION

154. That Convocation approves the Task Force's report and the following model for bar admission:

a. The bar admission process for admission to the Law Society of Upper Canada will consist of:

i. a four-week skills and professional responsibility program and assessments;
ii. 2 licensing examinations: a barrister examination and a solicitor examination, each including a professional responsibility component; and
iii. a 10-month articling program.

b. The licensing examinations will be developed in accord with the framework for licensing recommended in the Performance Assessment Group report (Executive Summary at Appendix 3).

c. The Law Society will provide Reference Materials upon which licensing examinations will be based. The traditional classroom method of teaching substantive law will not continue, but there will be significant, innovative educational and other support for students.

d. The two examinations will be scheduled three times each year (July, October and February). Students will have 1 study week for each examination and 2 days to write each examination (1 free day and 1 writing day). This designated time will be in addition to the articling term, but will comprise part of the articling contract.

e. The four-week skills and professional responsibility program and assessments will precede articles. The program will be designed along the lines of the "preferred option" included in the interim report of Dr. Julie Macfarlane and Professor John Manwaring (Executive Summary at Appendix 9). The competencies, including those specific to professional responsibility and practice management, will be developed in the coming months.

f. Articling will continue to be a ten-month program (44 weeks, including 2 weeks' vacation entitlement). The Law Society will develop further learning support for the articling process, will review and assess articling education plans and the professional responsibility assignment, and explore ways to encourage and support more lawyers to become principals, including through joint and non-traditional articles and co-operative programs.

g. The new program will come into effect in the spring of 2006.

155. If Convocation approves the proposed model, the Task Force will return to Convocation with the design for each component of the model for Convocation's approval.

APPENDIX 1

CONTINUUM OF LEGAL EDUCATION TASK FORCE
CONSULTATION PROCESS
SUMMARY

In April 2002, Convocation directed the Task Force to consult on the proposed direction for admission to the bar it had outlined in its interim report dated April 25, 2002. The Task Force conducted preliminary consultations over the summer and early autumn of 2002. As a result of those consultations, the Task Force advised Convocation in November 2002 that it would continue to consult and undertake further research. Consultants were retained to report on a proposed licensing examination system and on skills training. The consultants provided reports to the Task Force, which then consulted on them.

The Task Force has sought to answer the major points raised in the consultation process within the body of our final report. We do not do so again in this summary.

SCOPE OF THE CONSULTATION PROCESS

The consultation process lasted from May 2002 to September 2003. To bring the consultation process to the attention of the profession and obtain their views the following steps were taken:

- A Notice was placed in the *Ontario Reports* at two different stages, the first in the summer of 2002 respecting the Interim Report and the second in the summer of 2003 respecting the consultants' reports;

- The Notices were also printed in the *Ontario Lawyers Gazette* and posted on the Law Society's website. Eight requests were received for copies of the reports. During the first phase of the consultation, comments were received from 18 individuals;

- In the first part of the consultation process the profession was also advised of the location of an on-line bulletin board for comments. One comment was received;

- Letters and copies of the relevant reports were sent to the legal organizations with which the Law Society regularly consults, including groups representing equity, Aboriginal and Francophone lawyers. Over the period of the consultation the Task Force met with representatives of the following groups:
    - The Advocates Society,
    - l'AJEFO,
    - the Association of Law Officers of the Crown,
    - the Canadian Association of Black Lawyers (CABL),
    - the County of Carleton Law Association,
    - the Equity Advisory Group,
    - Metropolitan Toronto Lawyers' Association (MTLA),
    - Osgoode Hall Law School Student Caucus;
    - Rotiio'taties; and
    - Women's Law Association

- To ensure that lawyers throughout the province were provided with the opportunity to comment on the report, Diana Miles, Director of Professional Development and Competence spoke with David Sherman, Chair, County & District Law Presidents' Association and then wrote to each of the County and District Law Presidents inviting their written comments;

- The Task Force consulted with BAC Section Heads in the initial phase of the consultation, meeting with five of them;

- All Section Heads, Associate Heads of Section were notified of the consultants' reports and invited to discuss their comments with the Task Force. The Task Force met with five Section Heads and Associate Heads of Section to discuss the reports;

- BAC instructors were notified of the consultants' reports and their written comments sought;

- Letters were written to approximately 900 articling principals in July 2002 seeking their views. During the first part of the consultation process the Task Force met with a group of articling principals representing firms from around the province and of varying sizes, including government;

- Letters were written to 28 Directors of law firm student programs respecting the consultants' reports and inviting their participation. The Task Force met with 10 Directors to discuss the reports and articling;

- Former Treasurer Vern Krishna and Diana Miles, the Director of Professional Development and Competence, visited law schools to meet with interested students to discuss the interim report. Two student groups provided submissions;

- The Task Force consulted with Law Deans; and

- The Director of Professional Development and Competence had discussions with Sheila Redel, in charge of the Western Law Societies Bar Admission project.

The Task Force also held an information session with benchers in April 2002 and will hold a second information session on October 22, 2003.

The Task Force received written submissions from the following legal organizations:

After call for input in 2002

- The Advocates' Society
- EAIC/EAG
- Medico-Legal Society
- Refugee Lawyers Association
- Queen's University Law Students' Society
- Osgoode Hall Law School Student Caucus

After call for input in 2003

- The Advocates' Society
- L'AJEFO
- County of Carleton Law Association
- Metropolitan Toronto Lawyers
- Ontario Bar Association
- Osgoode Hall Law School Student Caucus

MAIN POINTS RAISED DURING THE CONSULTATION PROCESS

Meetings and submissions following the call for input in 2002

(Following the interim report there were many comments on the recommendation that skills not be taught in the BAC)

- Positive comments fell into the following categories:
    - Law schools can be trusted to teach substantive law;
    - The current system has outlived its usefulness;
    - The current approach is expensive and creates a "pressure-cooker" environment; and
    - The chosen direction of new lawyers is so diverse as to render it difficult to make the BAC relevant.

- Concerns and opposition fell into the following categories:
    - The recommendation not to teach substantive law is an abdication of a fundamental Law Society role to act as a liaison between the law schools and the profession.
    - The Law Society will give up its the role as "equalizer" for students with different experiences.
    - Teaching provides the opportunity for students to make connections with the profession.
    - Law schools don't teach the right things; BAC teaches problem-solving in substantive law areas.
    - The Law Society's core mandate includes education.

- Student support is important to assist those who need more help than self-study affords.
- The French language program must survive and be properly included in the design.
- Equity and Aboriginal issues must be addressed.
- Private providers might enter the education field.
- Too much will be expected of articling if skills are not taught in the BAC.

Meetings and submissions following the call for input in 2003
(focused on consultants' reports)

- Positive comments noted:
  - approval of the proposal for skills training; and
  - approval of the licensing examination proposal.

- Concerns and opposition reflected a number of themes as follows:
  - Abolition of substantive law classroom teaching is not warranted (See comments above).
  - How will weaker students survive? (student support issue)
  - Will failure rates for students from certain groups be higher than for other students?
  - What is the potential impact of studying for examinations on articling performance?
  - Will Equity, Aboriginal and Francophone groups have input into the design?
  - Skills should not be taught. (comments from those who supported original recommendations)

APPENDIX 2

Summary of Recommendations from the Task Force's Interim Report, dated April 25, 2002

The principal features of the reformed system we recommend are as follows:

a. The Law Society will no longer teach substantive law in the BAC. Instead, it will focus on its regulatory obligation to establish a licensing process that ensures candidates demonstrate pre-determined standards of competence and an understanding of professionalism, including ethics, in the practice of law.
b. Although the Law Society will no longer teach substantive law, it will continue to prepare and provide the Reference Materials for the subjects on which the candidates will be examined. The Reference Materials have a long tradition of excellence and are useful both for the purposes of the licensing examinations and, subsequently, in practice. These invaluable materials are developed with the cooperation of the bar and address important issues relevant to the practice of law. The current nexus between the Reference Materials and the examinations will continue so that candidates for admission will know what is expected of them in the examinations.
c. Licensing examinations, developed for the Law Society by professional educators, will test legal knowledge and analytical capabilities.
d. The Law Society will continue to teach professional responsibility as part of its many-pronged approach to nurturing the ethical values upon which the honour of the profession depends.
e. There will be greater flexibility built into the system, with licensing examinations and the professional responsibility course offered three times a year.
f. The Law Society will renew its commitment to the articling process and will seek ways to foster creative innovation, reinforce the mentorship aspect of articling and encourage collaboration among small or rural law firms to provide students with the opportunity for a meaningful articling experience.
g. The redesigned licensing process will continue to reflect the Society's firm commitment to the goal of improved access to, as well as equity and diversity within, the legal profession.

APPENDIX 3

Report on Establishing a Standardized, Reliable, Valid, Fair and Defensible Licensure Program

Report prepared for the Law Society of Upper Canada
Task Force on the Continuum of Legal Education

Prepared by:
The PERFORMANCE ASSESSMENT GROUP INC.

May 2003

EXECUTIVE SUMMARY

(as prepared by The Law Society)

Background

1. The Performance Assessment Group Inc. (PAG) has been contracted by the Law Society of Upper Canada (LSUC) to review the current Bar Admission Course and, in the context of establishing a licensing examination system, report back on a sound testing methodology for a new system.

2. The PAG presents a step-by-step approach to the development of reliable, valid and defensible competency-based licensure examinations.

3. The PAG's analysis and recommendations rely on the most important source of test development requirements, *The Standards for Educational and Psychological Testing* (1999) (hereafter referred to as *The Standards*), published by the American Educational Research Association (AERA), the American Psychological Association (APA) and the National Council for Measurement in Education (NCME).

4. The PAG outlines six *key phases* (see Process Map on following page) in the development of reliable, valid and defensible licensure examinations:

   Phase 1: Identification and Validation of Competencies
   Phase 2: Blueprint/Test Specifications
   Phase 3: Examination Development
   Phase 4: Administration Process
   Phase 5: Scoring and Results Reporting
   Phase 6: Examination Life Cycle

5. In its report, the PAG:
   a. outlines the requirements, based on *The Standards*, to develop each phase of the process; and
   b. makes recommendations to the LSUC on establishing a licensure examination system.

Process Map

Phase 1
Identification of Competencies
Competencies required to fulfill the requirements of the profession are identified.

⇓

Phase 2
Development of Blueprint Document
The Blueprint document provides the purpose and scope of the examination, the process by which decisions are made, the content to be assessed, the structure of examination, the context of examination and how the examination is scored.

⇓

Phase 3
Examination Development
Questions are developed based on the previously defined and validated competency profile and the Blueprint document.

⇓

Phase 4
Administration Process
Identification and development of activities required for candidates to write the examination such as nature of the information to be provided to candidates and accommodations.

⇓

Phase 5
Scoring and Results Reporting
Identification of procedures involved in the scoring process, pass mark or test scores and feedback for candidates.

⇓

Phase 6
Examination Life Cycle

Requirements and Recommendations

Phase 1: Identification and Validation of Competencies

Requirements based on The Standards

The first requirement to develop reliable and valid licensure examinations is to create a competency profile that will form the foundation of all subsequent examination development activities. The competency profile provides consistency and a valid, fair, and defensible supporting structure to the entire assessment program.

Competencies are defined by experts and refer to the knowledge, skills, abilities, attitudes and judgments required to fulfill the requirements of a profession.

The competency profile will be used as the basis for test specifications (Blueprints), to provide direction to test content developers of the competency profile, as a way of verifying that the items comprising an examination are valid and representative of practice.

Once the competency statements have been developed, they are validated by a cross section of lawyers from across Ontario. Typically, surveys and focus groups are used for competency validation purposes.

Recommendations to the LSUC

The PAG makes the following recommendations to the LSUC:

In adopting the recommendations of the Task Force Review, the LSUC will be required to develop a comprehensive competency profile for each of the two new LSUC licensure examinations. The development of a competency profile will involve meetings of a competency development committee to review existing guidelines and standards for the profession, determine curriculum learning objectives, identify assumptions underlying the population to be assessed, develop a framework for organizing the competency profile and generate an initial draft of the competencies.

The competency development committee should include subject-matter experts who are academics, experienced practitioners representing different legal specialties, sizes of practices, and some exceptional, but relatively newer members of the profession.

The competency profile must be validated. A combination of approaches is recommended, including a series of focus groups and a membership survey.

Phase 2: Development of Blueprint Document

Requirements based on The Standards

The next requirement in the development of valid, reliable and defensible licensure examinations is the creation of a Blueprint document that will be the foundation of all examination development.

The Blueprint document identifies the types of assessment tools and examination item formats to be developed.

The development of the Blueprint document is made by subject matter experts based on an analysis of the competencies and the feasibility of different formats of examinations.

A comprehensive Blueprint document contains five types of information:

a. *Purpose*/*process*: The purpose of the assessment program and the methodology used to develop the contents of the Blueprint document.
b. *Content:* The competencies to be assessed and the relative importance of each competency to ensure the examinations measure the competencies that have the greatest impact on public protection and the effectiveness of lawyers.
c. *Structure:* The format and presentation of the examination questions, the length and duration of the examination and how often the examination is to be administered. The examinations format may include multiple-choice items, open-ended machine scorable items and performance-based items.
d. *Context:* The legal contexts in which the assessment questions will be set (e.g., types of clients, client culture, client legal requirements and the occupational environment of the lawyer).

e. *Scoring:* A description of the methods used for scoring items and for deriving reported scores. The mechanisms for obtaining raw scores, scaled scores and diagnostic scores should also be documented along with the method used to determine the passing score.

Recommendations to the LSUC

A comprehensive Blueprint document is the most essential component of any licensure examination. A structured Blueprint document provides a detailed, step-by-step, account of why the examination(s) should be deemed standardized, reliable, valid, fair, and defensible.

The PAG recommends the establishment of a Blueprint development committee for each of the two proposed LSUC licensure examinations. These committees should comprise subject matter experts with intimate knowledge of the area of law to be addressed by the examination(s) in question and should include academic, practitioner (different types and sizes) and bilingual representation. Each committee will meet with a test development expert for five days to define each Blueprint document.

Phase 3: Examination Development

Requirements based on The Standards

The examination development phase is based on the defined and validated competency profile using the parameters specified in the Blueprint document. In this way, examination content developers are directed to write only those questions that will measure the established and validated competencies and other parameters to be assessed.

The Examination Development phase includes:

a. *Question development:* The questions are developed following criteria based on the format chosen during Blueprint development.
b. *Question validation:* The questions are validated. The question validation process begins with rigorous question development procedures involving subject matter experts. A second validation phase typically involves external subject matter experts who are asked to respond to the newly developed questions and provide detailed feedback on their experience with the new test questions.
c. *Test fairness assessment*: An external review process is undertaken to ensure the test is fair. Fairness is defined as lack of bias, equitable treatment in the testing process, equality of outcomes and opportunity to learn.
d. *Pilot testing:* All new examination content is experimentally tested.
e. *Examination approval:* An oversight committee approves the examination.
f. *Standard setting and pass mark*: A procedure is used to set the standard and provide an indication of whether or not candidates have achieved a sufficient level of mastery to be considered minimally competent to practice. The standard is the level of ability required by candidates in order to be judged minimally competent. The pass mark reflects the numerical score that candidates must achieve on a particular form of a test in order to pass. The standard method and pass mark are set and implemented.
g. *Language/translation:* The examinations are translated and validated. This generally involves having the major development activities carried out in English with translation and validation occurring once the English version of an examination has been approved and the pass mark set. The PAG is aware of no persuasive evidence to conclude that professionally translated and validated examinations are more or less valid than those arising from a fully parallel examination development process.
h. *Item banking:* Item banking ensures that examination data is maintained and protected from improper disclosure. Software is essential for tracking the contents of the item bank, providing feedback to examination content developers on the Blueprint parameters, and in determining the match between the Blueprint specifications and the examination that must be approved by the examination review committee. There are a number of reliable electronic item banking systems available that offer the security and flexibility required for licensure examinations.

i. *Examination security:* The integrity of a licensure program depends upon the fair and impartial assessment of candidates. Maintaining the security of an examination is necessary to support the program's integrity.

Recommendations to the LSUC

The PAG recommends the following examination development process:

a. *Question development*: Groups of subject matter experts meet with measurement experts and receive professional training on question development. The training is followed by question development sessions and group review sessions of the developed questions.

b. *Question validation*: Following a comprehensive editorial review, practising lawyers and educators (item appraisers) from across Ontario representing all areas of practice ensure the appropriateness of each question for the entry-level lawyer, approve the identified correct response, and provide recommendations.

c. *Test fairness assessment*: All examination questions undergo a test fairness/sensitivity review by individuals representing various minority interests. The purpose of this review is to ensure the items do not include negative stereotypes and do not disadvantage candidates from under-represented communities.

d. *Pilot testing*: New questions are pilot-tested with a cross sample of entry-level lawyers.

e. *Examination approval*: An examination review committee considers and approves each operational and experimental question and sets the pass mark.

f. *Standard setting and pass mark*: The Angoff method should be used to set standards. The Angoff method is based on the concept of the minimally competent candidate (the candidate possessing the minimum level of knowledge and skills necessary to perform at a licensure level).

g. *Language/translation*: Every committee used to develop or validate examination content or competencies should include at least one bilingual Francophone member. Also, the English version of each examination is sent to a professional accredited translator familiar with legal terminology for translation. A translation review committee consisting of fluently bilingual lawyers conducts a final review of the translation and validates the examinations.

h. *Item banking:* The Performance Evaluation Technologies (PET) system plus the Logic Extension Resources (LXR-TEST) may be used for item banking. The Law Society currently utilizes the PET system.

i. *Examination security:* Candidates who have failed can, for a fee, request that their exam be scored again. To protect the security of the examination, the candidate would not be permitted to observe the scoring process.

Phase 4: Administration Process

Requirements based on The Standards

Examination administration includes all the activities required for candidates to write the examination.

The Administration Process phase includes:

a. *Nature of the information provided to candidates*: Candidates are presented with information about licensure assessments well in advance of writing an examination to enable them to maximize their performance and demonstrate their true ability. All candidates receive the same information. Candidate information includes descriptions of the examinations, the administration process, the scoring and score reporting process, any appeal processes, information about the confidentiality of results and the uses of results.
b. *Test administration security:* All the provisions to protect examination security during development need to be exercised during the administration process. Examinations must be shipped by secure traceable means and every copy of the examination must be accounted for at all times. On administration day, efforts must be taken to ensure candidates are not given the opportunity to obtain results by illegitimate means.
c. *Test accommodation and fairness:* Credentialing bodies must offer reasonable accommodations for students with special needs. Such accommodations do not relieve the credentialing organization from the obligations to ensure a reliable and valid assessment of competence. *The Standards* provide directions related to testing accommodations and fairness, including a validation process.

Recommendations to the LSUC

Standards related to all the above-noted administration issues have been set out to provide the Law Society with clear and considerable direction for moving forward in this area.

Phase 5: Scoring and Results Reporting

Requirements based on The Standards

Ultimately, the purpose of licensure is to make decisions regarding whether or not to award a credential to candidates. All the work that has gone into developing competencies, drafting a Blueprint document, developing and validating items, approving examinations, setting standards and pass marks and producing examinations in both official languages eventually comes down to scoring examinations, using the results to make decisions and communicating those decisions to candidates.

Key activities include:

a. *The scoring process:* One of the greatest threats to the standardization, reliability, validity, fairness and defensibility of any performance-based item format is the potential for bias and error in the scoring process. There are two prominent strategies for reducing the threat of bias and error: the scoring key must be comprehensive and clear and the examinations must be scored by a group of subject matter experts that can share their rating experience. Following the scoring process, an item analysis must be conducted and poorly performing questions removed from the examination. Finally, borderline scores should be examined for accuracy and perhaps rescored by an independent rater.
b. *Rater analyses:* While scoring for multiple-choice questions is very straightforward, there are some significant challenges involved in ensuring the scoring for performance-based assessments (e.g., short answer, essay) is reliable and valid. It is imperative to continuously assess the quality of the raters and, where necessary, retrain or terminate those raters whose performance has been determined to be substandard.

c. *Adjustments to the pass mark or test scores:* The issue of adjusting the pass mark or a candidate's score following the administration of an examination is an extremely serious one for a licensing program. An examination developed in good faith by attempting to adhere to *The Standards* should result in a standardized, reliable, valid, fair and defensible examination that does not require post hoc adjustments to the pass mark.

d. *Feedback for Candidates:* There is no single prescription for the most appropriate type of feedback to provide to candidates. With respect to licensure, there is a strong argument to be made for simply providing the pass/fail decision. Beyond pass/fail status, there is the potential issue of providing diagnostic feedback to unsuccessful candidates. Whether feedback to candidates involves a simple pass/fail decision or a more comprehensive diagnostic approach, four important caveats must be observed. First, feedback must be accurate. Second, feedback must be timely. Third, feedback must be standardized. Finally, results must only be reported to the candidate.

Recommendations to the LSUC

Without knowing the structure and content of the future LSUC licensure examinations, it is impossible to advise the LSUC regarding the nature of the feedback to be provided to candidates (pass/fail versus diagnostic information). Lengthy multiple-choice examinations may well provide the opportunity for reliable diagnostic feedback; however, narrative response items generally will not. To protect the security of the examination, candidates cannot be provided with details regarding their answers to specific questions. Valid examination questions are difficult and expensive to develop and contribute greatly to the LSUC's mandate of public protection. Equally important, feedback must be based on a reliable sample of questions. Incorrect answers to one or two questions will not be reliable and valid indicators of performance on a competency.

The PAG urges the LSUC to exercise caution when communicating results turnaround times to candidates or committing itself to an ambitious timeframe. Unforeseen complications can arise in testing (e.g., results being withheld due to technical problems or investigations of testing irregularities). Such complications can affect the scoring of even the most objective of item formats (e.g., multiple-choice). When examination formats requiring the judgment of subject matter experts are used (e.g., narrative response formats) reliable and valid scoring will require a considerable time commitment. Candidates' need for timely results reporting must always be tempered by the LSUC's absolute imperative of ensuring those results are accurate.

Phase 6: Examination Life Cycle

Requirements based on The Standards

The activities in the life of a licensure process repeat on a continuous cycle. Once the program is well established, most of the activities are repeated for maintenance and to ensure security. In addition, licensure programs typically need to come under periodic review on a regular cycle.

With respect to the extent to which the legal profession changes over time, the LSUC and its members are in the best position to address this question. A profession that undergoes rapid change will require more new content compared to one that remains relatively stable over time.

Recommendations to the LSUC

The PAG strongly recommends yearly maintenance of all licensure examinations as well as a predetermined cycle for review of the competencies and blueprint. The exact life cycle of the LSUC examinations can only be determined based on the judgment of the subject matter experts comprising either the Blueprint Development Committee and/or the Examination Review Committee.

APPENDIX 5: REFORMS TO THE BAC SINCE 1988 (Summary Table Follows)

1. From its inception, the Law Society has concentrated much of its energy and resources on legal education. To some degree, that focus shifted to the law schools after 1957, but wrestling with the difficult issue of how best to prepare lawyers for practice has been no less a significant component of the Law Society's attention since that date.

2. Both the former Legal Education Committee and the current Admissions Committee have expended enormous time and energy, over decades:

   a. reviewing the goals of the BAC;
   b. proposing reforms;
   c. implementing reforms;
   d. reconsidering earlier decisions;
   e. determining appropriate methods of evaluation;
   f. determining appropriate pass rates and evaluating implications of failure rates;
   g. evaluating the efficacy of articling;
   h. considering cost issues;
   i. considering equity issues;
   j. implementing different modes of delivery for the program; and
   k. assessing appropriate course content.

3. The Chart at the end of this Appendix illustrates the major shifts and "reforms" that have occurred to the teaching term of the program since the early 1980s.

4. In the period between its inception in 1957 and the late 1980s when the Spence Sub-committee proposed major change the BAC remained essentially unchanged.

5. In 1988 when the Bar Ad Reform Subcommittee reviewed the BAC, the teaching term was approximately four months, following twelve months of articles. This was a reduction from the six month course that ran earlier in the decade. A summary of the content of the BAC in 1987-88 is attached at the end of this Appendix.

6. It is worth setting out the concerns about the program that were highlighted in the Executive Summary of the Spence report:

   1. The design of the Course does not reflect an agreed upon definition of what equips beginning lawyers to practise law competently, nor does it build upon a clear understanding of the knowledge and abilities students have acquired prior to entry into the Course.

   2. *There is insufficient emphasis upon the lawyering and other skills needed for the competent practice of law.*

   3. *The overall length of the Course has a detrimental effect upon the educational environment.*

   4. *The knowledge students require is still taught in the teaching term through methods that are not always effective and consume too much of the available time for instruction.*

   5. *Students are not well prepared for the articling experience.*

   6. *Insufficient attention has been given to how the Continuing Legal Education Program can assist new lawyers to acquire the knowledge needed for practice.*

7. The Spence model was predicated on the view that the Bar Admission Course's emphasis on teaching substantive law was unnecessary and should be substantially reduced, giving way instead to skills training, the teaching of professional responsibility and practice management, and transactional learning. Efforts to reduce the substantive components of the course were not entirely successful. For this and other reasons Convocation authorized another review of the BAC in December 1993 that considered issues and presented a report in April 1995, which Convocation approved for consultation.

8. The report affirmed the importance of the teaching of professional responsibility and practice management, and skills and transactions, but reiterated that although the students must pass licensing examinations to demonstrate entry-level competence the Course should not focus on teaching substantive law. To some degree it anticipated passage of a mandatory continuing education program and included proposals for post-call learning for the newly-called lawyer in such a regime. The 1995 proposals were not adopted.

9. Another review of the BAC followed, this time to address the issues raised in the 1993 review and 1995 report as well as additional issues arising from concern with equity issues, the impact that a new definition of competence should have on the course, and funding. This review resulted in a discussion document for consultation in February 1998. It proposed a skills teaching program followed articling, followed by a licensing examination self-study period and examinations. In December 1998, a further consultation document was prepared with three options for discussion:

the status quo;
the 12-week summer school model (from the February 1998 discussion paper);
a skills-focused model.

10. In February and March 1999, Convocation considered and approved further proposals for change to the BAC, flowing from the consultations on the December 1998 report. The model approved is the basis of the current program, which was implemented for the spring 2001 BAC class. The first substantive law session, for those who elected to split the teaching portion, will run in the summer of 2002. The current program integrates skills with transactional learning, but continues to have the attendant weaknesses of a "cram" course identified in the program since the 1990s with respect to the substantive law portions.

11. In addition to the detailed "reform" proposals that Convocation has considered since 1990, there have been numerous changes to specific policies within the BAC to address areas of concern, or complaint or to ameliorate policies that have been determined not to advance the goals intended.

12. So, for example, bar admission examinations have undergone many changes since the 1980s in terms of format and passing grade. The passing standard has included:

a. a percentage grade;
b. pass/fail/honours;
c. percentage pass of 60%;
d. norm-referencing;
e. a separate marking scheme for French language examinations to address problems engendered by applying norm-referencing to such a small group;
f. a capped norm-referencing pass standard;
g. aegrotat standing; and
h. "borderline group methodology" and Angoff methodology.

13. The format of the examinations has been relatively stable since 1996, but underwent changes before that time from open-book, to closed-book to essay questions, to drafting questions, to short-answer and multiple choice.

14. Similarly, the appeal process within the BAC has varied as follows:
1993-95written appeal based on review of failed paper and marking guide;

1995 no appeal, but re-grade based on reviewing examination without notes, in supervised room;

1996 a re-grade possible if exam received a grade within 10 marks of the pass; there was no further appeal;

1998 students permitted to review failed exams and marking guide. Students could request re-grade if received grade equal to or greater than 80% of the pass. In fact all failed exams were routinely re-graded;

1999 re-introduction of right to appeal.

15. In addition there have been numerous changes made over a number of years to policies related to the following:

a. accommodation of special needs;
b. mandatory versus voluntary attendance;
c. location of teaching centres; and
d. course delivery

These reviews have been engendered by changing educational approaches. They have also reflected the growing expectation that the licensing process should not be "one-size-fits-all", but should address differing learning needs and requirements.

CHART SUMMARIZING BAC CHANGES

Years	Program/Proposal	Concerns raised and reforms proposed	Examination Issues
1980s	Program in place 6 months (September-February; Call to the Bar in April subsequently reduced by a few months "Multiple Options" section introduced to broaden areas addressed and introduce skills. No assessment.	Lengthy course, "cram" school nature, uneven teaching quality; uneven examination Uneven quality in Multiple Options courses	mainly essay; issue identification and analysis; approximately 10 examinations; open or closed book at the choice of the section head; pass based on percentage grade; later Pass/Fail
1990	New program introduced Spence model 4 week "skills" program followed by 12 months articling followed by 4 months substantive law courses and examinations Mandatory attendance	Spence report envisioned significant increase in skills training and substantial decrease in teaching of substantive law – not fully realized; use of transactions to teach not fully realized Recommendation for challenge exams in one or two areas before course – not implemented "cram" issues still a factor in substantive portion of program mandatory attendance a substantial irritant	7 skills assessments; 8 substantive law examinations Pass: 60%
1993-1995	April 1995 Report distributed for consultation with the profession	Review authorized by Convocation (December 1993) to consider issues arising out of first years of implementation of the Spence report implementation;	Licensing examinations would be scheduled twice yearly during and after articling

		April 1995 report approved by Convocation for consultation: - proposed 8 week teaching term: - 1 week professional responsibility - 1 week practice management and loss prevention - 2 week practice skills - 2 week solicitor transaction to learn "how-to" of solicitor practice - 2 week barrister transaction to learn "how-to" of barrister practice mandatory two-year mentoring Not Implemented	
1995-Feb. 1998	Further report approved for consultation with profession to re-consider 1995 report and address equity issues and funding issues	The review proposed, - a three month teaching term to address transactional learning and skills; - a self-contained examination period with self-study, and videos and internet chat rooms to facilitate self-study; - tutorials for those who needed them; These components could be taken on either end of articling. Students could obtain credit for skills course taken in law-school and avoid retaking them in the BAC. Mandatory mentoring determined to be impractical, but voluntary program recommended. Not approved	licensing examinations over two days (comprehensive exams).
1996-1999	Review of examination system	Serious concern about lack of rigour and consistency in examination system and marking process. Convocation approved introduction of norm referencing and creation of confidential bank of examination questions. Expert in educational measurement and testing retained. Norm-referencing marking system introduced; varied with respect to French-language exams; then pass standards capped. Norm referencing abandoned new system introduced, with *aegrotat* standing	Pass varied from examination to examination determined by comparing candidates' scores with scores attained by all other candidates form of examinations multiple-choice and short answer focused on statutory analysis in 1996 30% of entire class wrote 1 or more supplementals
1997	Task Force on Examination Performance	Inquired into disproportionate failure rate of aboriginal and visible minority students and students in the French language BAC	

		Some recommendations from this report were implemented as part of BAC reform including (a) creation of Student Success Centre; (b) tutoring; (c) longer writing time per examination; (d) changed appeal process; (e) changing marking method.	
Dec. 1998	Further consultation report for BAC reform	Three models presented for discussion a. The status quo b. The 12-week Summer school model (from the February 1998 discussion paper) c. Skills Focused model Model (c) proposed a focus on skills identified in the definition of competence; was premised on reasonable access through multiple locations and computer-supported self-study; more flexible learning environment to support equity goals. Not approved	Substantive law would be tested with computerized self-study modules, with computer-administered examinations. Students could take examinations at any point in the BAC period.
1999-2001	BAC Reform Report presented to Convocation	Teaching of substantive law to continue Better integration of skills into transactional approach Current Program 8 week skills program before articling (one barrister-focused course; one solicitor-focused course) 12 week substantive law program either before or after articling recommendation for computer-assisted learning if funds permit 3rd scheduling option approved to combine skills phase with articling (done weekends or evenings) – Not implemented. No mandatory attendance In substantive law component – goal to teach analysis of legal problems faced by clients, determination of appropriate courses of action and completion of transactions rather than teach black-letter substantive law.	No substantial change to number or type of exams. During skills phase 3 substantive law examinations and a number of skills assessments Balance of examinations (5) done in substantive law phase accounting exam
1993-1999	Appeals Issue	1993-95 written appeal based on review of failed paper and marking guide 1995 no appeal, but re-grade based on reviewing examination without notes, in supervised room 1996 students could request a re-grade if exam received a grade within 10 marks of the pass; there was no further appeal	

		1998 students permitted to review failed exams and marking guide. Students could request re-grade if received grade equal to or greater than 80% of pass. In fact all failed exams were routinely re-graded. 1999 Re-introduction of right to appeal.	

SUMMARY OF THE CONTENT OF THE BAR ADMISSION COURSE – 1987-88 (excerpted from the Spence Subcommittee Report)

Substantive Materials Given	Substantive Areas Taught & Examined	Skills Programs	Other Programs
Civil Procedure Family Law Business Law Real Estate Criminal Procedure Estate Planning and Administration Creditors' & Debtors' Rights Basic Tax) Computer Accounting) taught Public Law Business of the Practice of Law Profession of Law	Civil Procedure Family Law Business Law Real Estate Criminal Procedure Estate Planning and Administration Creditors' & Debtors' Rights Accounting Public Law Multiple Options: Residential Tenancies Exceptional Client Workers' Compensation Employment Law Profession of Law	Practice Skills: Mandatory: Interviewing/Counselling Drafting Recognizing and Dealing with Ethical Problems Negotiation Optional: Trial Advocacy Criminal Advocacy Legal Writing Computer Skills	The Business of the Practice of Law Legal Aid Money Management Alternate Careers Women in the Practice of Law

SUMMARY OF THE CONTENT OF THE BAR ADMISSION COURSE 2002

Substantive Courses and Examinations	Skills taught and/or Assessed
Accounting Business (Corporate, Tax, Insolvency) Civil Litigation Criminal Estate Planning and Administration Family Professional Responsibility and Practice Management Public Real Estate	Agreement drafting Affidavit drafting Civil litigation advocacy (motion argument; appeal factum writing) Criminal advocacy (sentencing submission) Examination for discovery Examination of witnesses at trial Interviewing Legal research Negotiation Opinion letter Statutory analysis

APPENDIX 6: DEFINITION OF THE COMPETENT LAWYER (RULE 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,

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

APPENDIX 7: A BRIEF HISTORY OF LEGAL EDUCATION IN ONTARIO

1. The current Bar Admission Course has its roots in the complex history of legal education in the province of Ontario. The long and sometimes difficult transition from a preparatory system focused primarily on reading law and articling in law offices to one that placed emphasis on professional education in a university setting continues to have repercussions today. The BAC evolved out of that transition and the fundamental assumptions underpinning it remain largely the same today.

2. Since its establishment in 1797 the Law Society of Upper Canada has been involved in the qualification process for those wanting to become lawyers. Although initially the sole elements of training were reading law and apprenticeship, examinations were soon added. After examinations were introduced as an element of the training regime, some lectures followed, but for many years they were provided intermittently and

without any settled curriculum or coherent approach. Whereas other provinces in Canada had, by the 1880s, established a legal education system through their universities, the Law Society declined to follow that path.

3. In 1889, the Law Society founded a law school at Osgoode Hall under the direction of Convocation. Those holding a university degree attended a three-year program at Osgoode Hall involving a few hours of classes, with most of the day spent reading law and apprenticing in a law office. Those without a university degree were required to apprentice for two years before attending the three-year program at Osgoode. This approach remained unchanged for many years despite the emergence of innovative approaches to legal education in the United States, including, for example, the "case" method of instruction and despite the endorsement of this approach by the Canadian Bar Association and western Canadian Law Societies. Although the University of Toronto established a law school, the Law Society did not give credit toward the admission process to graduates of that program.

4. The first serious challenges to Convocation's authority over education occurred in the 1920s and 1930s. These challenges were based on the increasingly-held view that the education of the professions should be done in universities. Critics charged that the notion of law as a "trade" that could best be taught by those already in it was limited and limiting. Legal education, they insisted, must not be simply about learning existing rules of practice, but about the principles, context, and science of the law. Over time, these views gained increasing favour, not only outside the Law Society, but also within it where, for example, Cecil (Caesar) Wright, dean of Osgoode Hall Law School, became a strong proponent of reform.

5. Still, a majority of benchers continued to believe that university education would be too theoretical and research-oriented to be of use to most candidates seeking to practise law. During this period, however, the increasingly uneven nature of students' articles weakened the argument that practical education made for the best lawyers. The Law Society's response was to cut back on the class lecture component of the program so as to enhance articling, rather than opt to approve university-based legal education. Nonetheless, the push for fundamental reform, including the abolition of articling, continued unabated.

6. Following the Second World War, the issue of who should control legal education and what that education should involve came to crisis, intensified by the significant increase in numbers of those seeking admission to the bar and the attendant pressures on the capacity of the Law Society to accommodate them.

7. In 1949, a Law Society Committee examining legal education acknowledged that the system was troubled, but controversy arose out of the nature of the Committee's recommendations. In response to recommendations with which the faculty of Osgoode disagreed, Dean Wright and most of the faculty resigned. Wright became the Dean of the law school at the University of Toronto and sought to have the provincial government remove authority for legal education from the Law Society.

8. The legal education issue had become a serious problem for the Law Society and the profession. After the faculty resigned, Convocation approved a new approach by introducing a four-year program consisting of two years of full-time study, followed by one year of office work, and one year combining lectures and articling.

9. When the University of Toronto asked that its three-year degree be counted as the equivalent of the two-year student program at Osgoode, the Law Society accepted. The resulting shorter route to call through Osgoode (four years instead of five) worked against the University of Toronto program, because candidates wanted to be called to the bar as quickly as possible. The University's subsequent requests for its graduates to be exempted from three of the four required years were rejected, reflecting the Law Society's continuing concern that the university's degree did not adequately prepare candidates to practise law.

10. By the mid 1950s, however, the Law Society's rationale for exercising control over legal education and its will to do so in the fact of over-burdened resources had dissipated. Over several years, discussions took place with the universities. In 1957, the Law Society and the universities negotiated a "New Deal" in legal education.

11. Pursuant to the agreement, any university could develop a three-years LL.B. program. The pre-requisite for admission to the LL.B. program would be two years of undergraduate education. The Law Society would recognize these degrees, provided the LL.B. program followed certain criteria for curriculum, staff and libraries. Graduates wishing to practice law would serve a twelve-month period of articles. To supplement articles there would be a post-LL.B. training program in substantive law, at Osgoode Hall, supervised by law school faculty and practising members of the profession.

APPENDIX 12

Licensing Process Development Costs

1. Establishing the competencies to be tested
    a. Two examinations
    b. Includes consulting fees and potential payments to practitioners forming the Design Team and Focus Groups
    c. Approximate cost of $150,000 to $200,000 per examination
    d. Total suggested development budget = $300,000 to $400,000.

2. Item writing/test question writing
    a. Costs include consultant facilitation, hourly payments to practitioners
    b. Anticipated that we will require 200 items
    c. Can complete 10 items per session = 20 sessions
    d. Assumes a cost of $35 per hour for practitioners time (slightly higher than we currently pay instructors)
    e. Assumes 5 practitioners per session
    f. Total suggested development budget = $50,000 to $75,000.

3. Skills training unit
    a. Practice based learning environment using files to move a student through applications of skills and professional responsibility
    b. Includes assessments of approximately 10 component skills and professional responsibility either within each unit, or separately (to be determined)
    c. Total suggested development budget = $100,000.

4. Examination Bank development
    a. Requires updates to current configuration and some new software, but overall the current PET system is already configured for this usage
    b. Total suggested development budget = $25,000.

5. Examination security consultation and establishment of security requirements
    a. Critical that the system be secure and that processes are put into place to ensure that it is secure
    b. Consultant will be required to assist in establishing security benchmarks and processes in keeping with standards in the industry
    c. Total suggested development budget = $25,000.

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

(1) Copy of the Examples of Practical Legal Skills Taught at Ontario Law Schools, in Relation to Current BAC Courses.

(Appendix 4)

(2) Copy of the United States Licensing Requirements.

(Appendix 8)

(3) Copy of the Interim Report on Skills Training and Professional Responsibility. (Appendix 9)

(4) Copy of Enhancing the Articling Experience – Potential Supports for Students. (Appendix 10)

(5) Copy of Bar Admission Course Financial Summary – Current Program as at 2003. (Appendix 11)

Equity & Aboriginal Issues Committee/
Comitϑ sur l'ϑquitϑ et les affaires autochtones Report
- Aboriginal Initiatives Report
- Equity and Diversity Training Programs
- Public Education Events and Dates

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
October 23, 2003

Report to Convocation

Purpose of Report: Information

Prepared by the Equity Initiatives Department
(Josée Bouchard; 416-947-3984)

THE REPORT

Terms of Reference/Committee Process

1. The Committee met on October 9, 2003. Committee members in attendance were Joanne St. Lewis (Chair), Mary Louise Dickson, Dr. Sy Eber and William J. Simpson. Other Benchers in attendance were Andrea Alexander and Heather Ross. Staff members in attendance were Josée Bouchard, Margaret Froh and Lucy Rybka-Becker.

2. The Committee is reporting on the following matters:

- Aboriginal Initiatives Report
- Equity and Diversity Training Programs
- Public Education Events and Dates

INFORMATION

EQUITY INITIATIVES DEPARTMENT - ABORIGINAL INITIATIVES REPORT

3. This report provides information about the key Aboriginal initiatives currently underway at the Law Society.

Policy Review And Development

Bencher Committees

4. Recent and ongoing policy matters at the committee level involving Aboriginal issues include:
    a. Professional Regulation Committee (PRC) and Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (EAIC) Joint Working Group on Aboriginal Residential School & Institutional Abuse:
        - The Working Group conducted consultation on the draft guidelines with the membership and various community stakeholders throughout 2002 and early in 2003. The guidelines were revised in light of the feedback received and presented to both PRC and EAIC in September 2003. Both PRC and EAIC approved the guidelines. The guidelines are now being put to Convocation with a motion for their approval in October 2003
        - Various issues have been identified in relation to implementing the guidelines, in particular the need to increase awareness about the Law Society and its role within Aboriginal communities, ensuring that Law Society services are accessible to Aboriginal people, and ensuring Law Society services and programs are sensitive to the needs of Aboriginal people. Furthermore, there is the need to develop and maintain relevant resource tools and education programs for members of the legal profession on these issues.
    b. Concerns coming forward from the Aboriginal community relating to the proposed regulatory framework for paralegals in Ontario.
        - The community had asked that Convocation amend the proposed regulatory framework should it be considered for approval; the proposal has not yet gone to Convocation for approval. This issue will continue to be monitored.
    c. Submissions of Rotiio> taties Aboriginal Advisory Group to the Task Force on the Continuum of Legal Education on the proposed changes to the licensing process in Ontario (September 17, 2002 & September 8, 2003).

Rotiio> taties Aboriginal Advisory Group

5. In addition to the ongoing administrative support provided to Rotiio> taties by the Aboriginal Issues Coordinator, support is also provided on Rotiio> taties' various projects and policy oriented initiatives.

6. Rotiio> taties has four subcommittees including the Education Subcommittee, the Residential School Issues Subcommittee, the Access to Justice Subcommittee and the Fund Raising Subcommittee. The subcommittees have undertaken significant projects many of which will generate reports identifying significant policy issues for the Law Society bencher committees' consideration. In particular, the Education Subcommittee's ongoing *Report Card on Aboriginal Issues in Legal Education and Practice in Ontario* seeks to not only review several reports that have been issued across Canada and their recommendations specific to Aboriginal Peoples in law, but also seeks to consult with Aboriginal lawyers and law students across Ontario on issues of importance. Assuming that funding is obtained for the project, the project will generate a substantive report for consideration by the Law Society and other stakeholders in legal education and practice. It will also lead to a groundbreaking conference bringing together these various stakeholders to address Aboriginal issues arising in legal education and practice, to promote partnerships to advance these issues across the legal spectrum.

Community Outreach and Relationship Building

7. Community outreach and relationship building occurs on several layers, through work with Aboriginal law students, BAC students, lawyers, as well as with the broader Aboriginal community. In addition, community outreach and relationship building is underway with legal institutions, such as law schools and

organizations of staff and faculty that support legal education. In each of these areas, the participation of Rotiio> taties has been vital to the success of Law Society initiatives.

Outreach to the Aboriginal Bar

8. Outreach to members will be greatly furthered through participation in the Rotiio> taties Aboriginal Advisory Group's Report Card Project. The focus of the community outreach at this stage is to promote awareness within the membership regarding Aboriginal initiatives at the Law Society, and to support active networks of members across Ontario through the growth and expansion of Rotiio> taties.

9. Increasing awareness and connections across the Aboriginal bar in Ontario and across Canada will assist in the promotion of various initiatives, including the Law Society's Mentorship Program, and the law Society's support services regarding education including articling. This work will continue to be accomplished through the Aboriginal Issues Coordinator's ongoing active participation in the Aboriginal legal community, travel and meetings with Aboriginal lawyers and law students, and ongoing participation with Rotiio> taties Aboriginal Advisory Group. This includes ongoing work by the Aboriginal Issues Coordinator as Vice-President and Director of Aboriginal Legal Services of Toronto, as well as her continuing work as a Member, Director and Vice-President of the Indigenous Bar Association in Canada.

Aboriginal Law Student Outreach

10. Work specifically focussed on outreach to Aboriginal law students includes regular visits and speaking engagements at Ontario law schools, at the Program of Legal Studies for Native People operated out of the Native Law Centre at the University of Saskatchewan, as well as on a national level at Indigenous Bar Association conferences and student days. The Aboriginal Issues Coordinator receives invitations to consult on issues relating to supports and outreach to Aboriginal law students from institutions across Ontario, as well as across Canada and beyond. One of the key messages to students is the promotion of mentoring relationships with lawyers.

11. Two very successful initiatives in this regard occurred in September 2003. On September 5th the Aboriginal Issues Coordinator participated in a joint University of Ottawa Faculty of Law, Indigenous Bar Association, Rotiio> taties and Law Society sponsored "Welcoming Reception" for Aboriginal law students at the University of Ottawa. On September 17th the Aboriginal Issues Coordinator attended the launch of the Chippewas of Mnjikaning/McCarthy Tetrault Aboriginal Law Student Award at the University of Windsor Faculty of Law, addressed the first year class on the Rule of Law and Aboriginal Peoples, and hosted a very effective discussion group for Aboriginal law students, the Chief and staff from Mnjikaning First Nation, and representatives of McCarthy Tetrault.

12. Similar initiatives are being organized for October and November 2003 for the remaining four Ontario law schools. The Aboriginal Issues Coordinator works with faculty, career development officers and various other administrative staff at the law schools to coordinate these events. Members of Rotiio> taties Aboriginal Advisory Group and various other local community members are encouraged to participate in the events.

Law School Network And Alliance Building

13. As noted above, relationships are being built with staff and faculty in law schools and other institutions supporting the development of programs and initiatives supporting Aboriginal law students and lawyers. Further to the visits and speaking engagements previously noted, the Aboriginal Issues Coordinator has also been invited to assist as a resource to career development officers in Ontario and across Canada who seek to create supports for Aboriginal law students.

14. Also furthering network and alliance building with law schools, the Aboriginal Issues Coordinator continues as a member of Adjunct Faculty at the University of Toronto Faculty of Law, and co-teaches an upper year seminar at University of Toronto Faculty of Law with Jeffery Hewitt, entitled *Aboriginal Peoples in Law: Our Legacy*.

Aboriginal Legal Scholars

15. Related to the two sections above, the Aboriginal Issues Coordinator continues to participate in a community of Aboriginal legal scholars organizing around legal education issues. We continue to work towards developing forum for scholars to meet and discuss various issues relating to legal education and practice, including licensing course curriculum, content and delivery, law school admissions, curriculum, pedagogy, programs, as well as issues of jurisdiction for Indigenous lawyers, teaching Indigenous Law, creation of an Indigenous law school, and other issues of importance to Aboriginal Peoples.

Aboriginal Community Outreach

16. In addition to the outreach noted above, work is also done to promote relationship building with the broader Aboriginal community. This includes partnerships with many Aboriginal community organizations and governments on public legal education and various other projects and initiatives.

17. On August 21, 2003 the Aboriginal Issues Coordinator attended at the Grand River Post Secondary Education Office's Annual Awards Ceremony and Reception, at the Six Nations of the Grand River Territory. The Law Society sponsors an award to Six Nations students in the BAC, which is shared each year between the students in the BAC. These types of initiatives are significant in building the relationship between the Law Society and community.

18. On November 12, 2003 the Aboriginal Issues Coordinator will host a booth at the Grand River Post Secondary Office's Career Fair at Six Nations. This outreach will be focussed at Six Nations citizens considering law as a career and raising awareness of the role of the Law Society within the Six Nations community.

Continuing & Public Legal Education

19. The Law Society has continued to sponsor events commemorating days of significance for Aboriginal Peoples. In June 2003 we partnered with the City of Toronto in sponsoring various events celebrating National Aboriginal Day 2003. On June 12, 2003 we partnered further with Aboriginal Legal Services of Toronto, Rotiio> taties Aboriginal Advisory Group in offering the very successful program *Experiences in the Gladue (Aboriginal Persons) Court: Innovations in Implementing R. v. Gladue*.

20. We are currently working with the City of Toronto, Rotiio> taties Aboriginal Advisory Group, the Métis Nation of Ontario, and the Métis National Council in hosting a program on November 14, 2003 commemorating Louis Riel Day 2003. That program will explore the implications of the Supreme Court of Canada's recent landmark decision in *R.* v. *Powley*.

21. Further to building relationships with Aboriginal community stakeholders, these programs offer an important CLE opportunity to the membership, as well as opportunities for important dialogue between the Aboriginal community and the bar, raising awareness within the profession and within the Aboriginal community of pressing legal issues.

Program Review & Development Supporting Legal Education And The Bar Admission Course

BAC Student Programs and Supports

22. Key student support programs have included cultural, academic and professional development focussed initiatives. The Elders Program (Toronto) provides all BAC students access to local elders and traditional teachers, as well as local members of the Aboriginal bar to discuss issues of importance and obtain support in a culturally supportive and appropriate manner. We hope to extend this program in some way to Ottawa area students, however the protocol required in working with elders requires significant staff support.

23. Academic supports for all BAC students are offered through the Education Support Services Office, which includes administration of the accommodation policy and articling supports. The Aboriginal Issues Coordinator works with Aboriginal students in the BAC in identifying and coordinating the necessary supports, including tutoring.

24. In addition, professional development supports are offered through the various outreach initiatives with Aboriginal law students and the bar outlined above.

EQUITY AND DIVERSITY TRAINING PROGRAMS

25. The following provides an overview of the equity and diversity training programs designed and delivered by the Law Society of Upper Canada in 2003.

26. The Equity and Diversity Program offered workshops on preventing and responding to harassment, discrimination and on other topics related to equity and diversity to associates, partners, paralegals and staff of large, medium and small law firms and other legal organizations. The workshops are custom designed to address the needs of the specific law firms or legal organization.

Workshops for Lawyers, Law Clerks and Articling Students

Identifying and Responding to Harassment and Discrimination

27. Workshops on identifying and responding to harassment and discrimination are custom-designed and delivered by two lawyers, the Discrimination & Harassment Counsel and the Acting Equity Advisor. In 2003, the workshops were delivered to members of law firms and legal organizations including Torys LLP and Miller Thomson LLP. The workshops are one to three hours in length, depending on the needs identified by the organization. The workshops appeal to associates, partners, law clerks and articling students. In 2003, approximately 600 lawyers, law clerks and law students attended the workshops.

Format

28. The workshops include a presentation on the legal developments in the area, an overview of relevant legislation, case law and policies, case study analysis, an overview of the law firm's policy and the *Discrimination and Harassment Counsel Program.* All workshops are interactive.

Materials

29. The Law Society provides participants with:
- X Agenda and scenarios;
- X An outline of legal developments in the area;A resource list;
- X The law firm's policy.

30. The Law Society also provides relevant publications such as model policies on equity.

Evaluation of the workshops

31. Participants evaluate the workshops formally by completing evaluation forms. In 2003, the workshops were well attended and evaluations were extremely positive.

Train the Trainer Program: How to Deliver Effective Equity Education Programs

32. The Equity and Diversity Education Program designed and delivered a train the trainer education program on "How to Deliver Effective Equity Education Programs". The pilot project was successfully delivered to the Ottawa University Community Legal Clinic in the spring, 2003. The workshop focused on the

principles of adult education and inclusive pedagogy. The workshop enabled lawyers involved in the delivery of equity education program to build on their existing expertise in human rights law, community legal work and the provision of services to low-income and racialized communities by increasing their knowledge and skills to deliver effective equity educational programs. This allows for long-term sustainability of the program, as faculty acquires the practical knowledge and expertise to deliver effective equity education programs.

Workshop for Directors and Managers.

Identifying And Responding To Harassment And Discrimination

33. A workshop on identifying and responding to harassment and discrimination and addressing equity issues was designed and delivered by a staff lawyer of the Law Society and an expert in organizational change. This three hour long workshop appeals to managers and directors of law firms and other legal organizations. The workshop was delivered to all managers of the Law Society of Upper Canada.

Format

34. The first part of the session focuses on identifying and addressing harassment and discrimination. The study of a case scenario allows for a discussion on the following topics:
    - X identifying harassment and discrimination in the workplace;
    - X understanding the responsibilities of managers in addressing issues of harassment and discrimination in the workplace, i.e. in an informal or formal setting;
    - X understanding the options available under the Policy.
    - X resolving conflicting rights;
    - X addressing issues of discrimination or harassment as a team and with individual employees.

35. The second part of the session deals with performance management practices free of discrimination and bias and promotion of equity in the workplace. The study of a performance management review allows for a discussion on the following issues:
    - X identifying common assumptions and biases;
    - X developing performance management review free of discrimination and biases and promoting equity and diversity in the workplace.

Materials

36. The Equity and Diversity Training Program provides a guidebook for managers. The guidebook includes checklists for managers, the scope and application of the policy, an outline of informal and formal options, workplace legislation and external remedies available for victims, behaviours, attitudes, misconceptions and biases and the policy.

Evaluation of the workshops

37. Participants of the workshops filled out evaluation forms of the workshops. The workshops were well attended and the evaluations of the programs, in format, content and presentation, are outstanding. The results are available on request.

Workshop for Advisors Appointed under a Workplace Harassment Policy

Identifying and Responding to Harassment and Discrimination

38. A workshop for advisors appointed under a workplace harassment and discrimination policy has been designed and delivered by an expert in organizational change and a lawyer. The workshop is 1 to 3 days in length. The Law Society offers this workshop to its advisors.

Format

39. The workshop provides advisors with the knowledge of how to address issues of harassment and discrimination and the appropriate interviewing and communication techniques to undertake the advisor role. Although advisors have to know how to identify harassment and discrimination and how to apply the policy, their role as impartial individuals who can provide advice and information about harassment or discrimination makes it important for them to learn how to interview complainants and respondents and how to communicate effectively.

40. The first part of the training assists advisors in identifying harassment and discrimination and being able to provide advice on all options available to a complainant or a respondent. The following topics are discussed:

- X internal options under the relevant policy, including the informal process and the formal complaint process;
- X the investigation process and remedies;
- X external options for the complainant and respondent;
- X support or counseling services available to members of the firm;
- X issues that may be raised by complainants, respondents or witnesses.

41. The second part of the session allows participants to practice interviewing techniques and communicating skills. All participants practice these skills through structured learning activity that assist in learning:

- X how to prepare for an interview;
- X the interview structure;
- X distinct interviewing skills based on the interviewee;
- X how to deal with emotional interviewees;
- X how to address our own biases.

42. The exercises build on each other and allow participants to interview a complainant and a respondent to resolve an allegation of harassment. Participants have the opportunity to work as advisors as well as respondents and complainants. The Law Society provides a detailed guidebook to all participants.

Materials

43. The Law Society provides participants with a detailed guidebook containing the following information: checklists for advisors, the scope and application of the law firm's policy, an outline of the informal and formal options under the policy, workplace legislation and external remedies available to the victims, the role of advisors including how to prepare and conduct an interview and communicating skills, documenting interviews and the policy.

Evaluation of the workshops

44. Participants evaluate the workshops formally by completing evaluation forms. Evaluations of the program are extremely positive.

Training for New BAC Instructors

Inclusive Pedagogy

45. In the Spring 2003, staff members of the Law Society facilitated discussions with all new BAC instructors on inclusive pedagogy. The presentation is part of a two hour workshop on teaching techniques for BAC instructors.

Format

46. The presentation provides instructors with techniques on how to address issues of harassment and discrimination in the classroom and how to use inclusive teaching techniques.

Materials

47. The Law Society provides participants with materials on inclusive pedagogy techniques and Law Society policies on discrimination and harassment.

PUBLIC EDUCATION EVENTS AND DATES

October 17, 2003
Women Legal Education and Action Fund (LEAF) Persons Day Breakfast
Keynote speaker: Patricia Monture-Angus
Location: downtown Sheraton Centre
Time: 7 a.m.
Law Society sponsors the event. One table purchased.

October 23, 2003
Tribute Reception for the Honourable Mr. Justice Irving W. André
Location: Law Society of Upper Canada, Convocation Hall
Time: 6 p.m.
Partners: Canadian Association of Black Lawyers

October 23-24, 2003
Professional Women's Symposium: Networking – Women in Untraditional Fields
Location: Sheraton, Hamilton
Time: October 23, 2003: 3 p.m.
October 24, 2003: 7:30 a.m. until 4:30 p.m.
October 24, 2003: 6:00 p.m. Dinner
Law Society sponsors the event.

November 14, 2003
Commemoration of Louis Riel
Location: Law Society of Upper Canada
Time: Panel discussion: 4 p.m. – 6 p.m.
Reception to follow
Partners: The Métis Nation of Ontario, City of Toronto, Rotiio> taties, Metis National Council.

November 27, 2003
Continuing Legal Education Program: Offering Legal Services to Clients with Disabilities
Location: Law Society of Upper Canada
Time: Morning
Partners: Pro Bono Law Ontario, Advocacy Resource Centre for Persons with Disabilities

November 22, 2003
Canadian Association of Black Lawyers celebrates the Honourable Julius Alexander Isaac – Black tie dinner
Location: The Marriott Toronto Airport
Time: Reception 5:00 p.m., Dinner 6:00 p.m.
Law Society sponsors the event. One table purchased.

December 5, 2003
National Day of Remembrance and Action on Violence Against Women

Law Society Staff Lunch & Learn

The following event dates are confirmed. Details of events are forthcoming.

December 10, 2003
United Nations Human Rights Day

Black History Month
February 12, 2004

International Women's Day
March 8, 2004

International Day for the Elimination of Racial Discrimination
March 18, 2004

South Asian Heritage Month
May 13, 2004

National Access Awareness Week
May 28, 2004

National Aboriginal Day
June 10, 2004

Litigation Committee Report

- Intervention Request: *In the Matter of an Application under s. 83.28 of the Criminal Code*
- Money Laundering Litigation

Litigation Committee
October 23, 2003

Report to Convocation

Purposes of Report: Information

Prepared by Legal Affairs
(Elliot Spears – 416-947-5251)

THE REPORT

Terms of Reference/Committee Process

1. The Committee met on October 1, 2003 by telephone conference call. Committee members in attendance were Neil Finkelstein (chair), Earl Cherniak (vice-chair), Paul Copeland, Clayton Ruby and Bonnie Warkentin. Staff in attendance were Katherine Corrick, Malcolm Heins and Elliot Spears.

2. The Committee is reporting on the following matters:

Information

- Intervention Request: *In the Matter of an Application under s. 83.28 of the Criminal Code*
- Money Laundering Litigation

INFORMATION

REQUEST FOR INTERVENTION: *IN THE MATTER OF AN APPLICATION UNDER S. 83.28 OF THE CRIMINAL CODE*

3. At the end of September 2003, the Law Society of British Columbia requested the Federation of Law Societies of Canada to intervene in the matter of *In the Matter of an Application under S. 83.28 of the Criminal Code.*

4. Under the Federation's "Intervention Policy", interventions in the name of the Federation must be approved unanimously by all member law societies of the Federation.

5. All member law societies were required to vote on the intervention request by October 3, 2003, as the Supreme Court of Canada abridged the time period for filing applications for leave to intervene.

6. The Committee considered the request to intervene and approved it.

7. Since the Committee's meeting, it has been learned that all other law societies approved the request to intervene, and the Federation has sought leave to intervene.

MONEY LAUNDERING LITIGATION

8. In July 2003, the Federation of Law Societies of Canada and the Attorney General (Canada) reached an agreement on the amount of costs to be paid by the Attorney General with respect to litigation commenced by the Federation and law societies across Canada to challenge the application of sections of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to legal counsel.

9. The costs agreement follows an agreement, reached in April 2003 between the Federation, the Attorney General and the Law Society of British Columbia, under which the Federation and the Law Society agreed to adjourn the hearing of their challenge of the legislation to November 1, 2004 and the Attorney General agreed to reimburse the parties for all "costs thrown away" in relation to all proceedings for interlocutory relief (including appeal proceedings) commenced and pursued across the country. Appendix 1 contains a copy of the Order of the Supreme Court of British Columbia incorporating this agreement.

10. Under the costs agreement, the Attorney General will pay $600,000 in costs. Appendix 2 contains a chart setting out the apportionment of this amount between the Federation and the law societies across Canada.

11. Appendix 3 contains a chronology (produced and maintained by the Federation) of events in the challenge of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

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

(1) Copy of the Order of the Supreme Court of British Columbia.

(Appendix 1, pages 6 – 13)

(2) Copy of a chart re: Breakdown of $600,000 Settlement Offer by Attorney General.

(Appendix 2, page 15)

(3) Copy of Chronology of Events re: Money Laundering.

(Appendix 3, pages 17 – 34)

Professional Development, Competence & Admissions Committee Report

- Director's Quarterly Report

Professional Development, Competence & Admissions Committee
October 23, 2003

Report to Convocation

Purpose of Report: Information

Policy Secretariat
(Sophia Sperdakos 416-947-5209)

INFORMATION

1. In March 2001 Convocation approved the Professional Development and Competence Committee's report entitled *Implementing the Law Society's Competence Mandate: Report and Recommendations*. The report recommended a competence model to regulate and support lawyers in their efforts to maintain competence.

2. Appendix 1 is a report from the Director of Professional Development and Competence, outlining the initiatives and projects her department is undertaking to implement the competence model and to communicate those initiatives to the profession.

QUARTERLY REPORT
PROFESSIONAL DEVELOPMENT & COMPETENCE DEPARTMENT

(July – September 2003)

FOR INFORMATION ONLY

Prepared by:

Diana Miles
Director, Professional Development & Competence
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October 2003

Quarterly Report of the Professional Development & Competence Department

Introduction

The following information is provided to Convocation of the Law Society of Upper Canada to update activities in the Professional Development & Competence Department. The report focuses on the status of the development of competence products and programs and member usage. Going forward, a condensed version of this report will be presented to Convocation on a quarterly basis.

This particular report has also been prepared to specifically address queries that arose at the September 2003 meeting of Convocation regarding Law Society efforts to ensure that members are aware of available competence supports. The queries arose in the context of a statistical review noting the high percentage of conduct matters and liability claims related to practice management deficiencies.

Professional Development & Competence Department Vision Statement

A fully integrated one-stop resource centre for education, practice support and remedial assistance focusing on establishing, maintaining and enhancing the competence of the profession, enhancing the reputation of the Law Society in the eyes of members and, in turn, the reputation of lawyers in the eyes of the public.

Background

In 2001, with the approval of a Competence Mandate, the Law Society embraced a dual focus of core services: competence and regulation. One of the Law Society's mandates is to support the establishment and maintenance of the competence of lawyers in Ontario.

Embracing a competence regime also means supporting that regime. Expectations of competence must have some way of being fulfilled. The Competence Mandate outlined five (5) areas in which new products or programs were to be developed to enhance competence: practice guidelines; practice enhancements; continuing legal education; specialist redesign; remedial supports.

The day-to-day maintenance of competence involves much more than large-scale tools and programs. It also requires and demands that lawyers reacquaint themselves with the traditional, every day activities that make up the bulk of their learning process. Activities such as reading, research, efficient practice management, seeking advice and mentoring, and other continuing education must be top of mind.

To ensure that the Law Society is positioned to assist members to achieve these goals, the PD&C Department has undergone substantial realignment in the effort to fulfil the vision. In brief, the Department's strategic plan is as follows:

Phase 1 – Restructuring of PD&C Department (completed June 2002)

The reorganization of the Department aligned activities by function or competency rather than by the name of a program or historical division. It brought comparable skill sets within the staff together into fewer, more focused divisions, with fewer skilled managers taking responsibility for team activities, and all of the units working toward the same goals and objectives.

Phase 2 – Realign and revise existing PD&C products/develop new products and services (ongoing)

All products and programs were assessed for adequacy. The Department focused heavily on streamlining processes, revising existing products and developing new products and services to enable the learning efforts of the membership and students.

Phase 3 – Product Awareness Campaign – becoming top of mind (began September 2003)

This is the current phase of development in the PD&C Department. A Product Awareness Plan developed by the Department was introduced to the organization in June of 2003. Implementation of the plan began immediately thereafter, and the first efforts in creating increased top of mind awareness within the membership of Law Society competence products began early in September 2003.

Product Awareness Plan Objective: To effectively promote to student members and practising lawyers in Ontario that the Law Society has a wide range of relevant, accessible and affordable products available to them in support of their efforts to establish, maintain and enhance competence. The marketing to members will proactively cross-sell to target groups using a variety of promotional activities. The goal is to achieve top of mind awareness of the Law Society as a provider of competence support services.

Products are segmented into three groups: Substantive, Practice Management and Programs.

- Substantive products are designed to give members substantive legal information in a variety of formats. For the purposes of the plan, delivery formats themselves are considered substantive products.
- Practice Management products are designed to give members practice management information and tools to improve their skills and abilities in conducting the business of practising law.
- Programs are designed to involve the members and encourage them to participate in Law Society initiatives designed to serve the public, give back to the profession or to improve their skills.

In each category, professional responsibility and ethical issues have been incorporated into the learning objectives.

The chart below provides the listing of the current platform of products and how they are segmented into these three areas. Convocation should now be seeing advertising and other efforts which focus on consistent messaging, establishing the Law Society brand and positioning as a support services provider, and advising members of the fact that we provide "Legal information and support designed for you". Benchers will be receiving a product information binder, the PD&C Product Guide, from the Department outlining the available products and will continue to receive updates and product sheet additions for inclusion in the binders as they become available.

Substantive	Practice Management	Programs
AdvoCAT Catalogue	Bookkeeping Guide (November 2003)	Articling Program
BAC Materials Online	Client Service & Communication Guideline	Lawyer Referral Service
CLE Materials on CD-ROMs	Closing Down Your Practice Guideline	Mentoring Program a) Articling b) Post-call
CLE Materials	Equity & Diversity Training	Specialist Certification
CLE Substantive Programs	File Management Guideline	
e-Learning Site (BAC)	Financial Management Guideline	
e-Transactions (CLE page)	Guide to Leaving Your Practice (November 2003)	
Interactive Learning Network (ILN)	Personal Management Guideline	
Legal Research Seminars	Practice Advisory	
Library Tours	Practice Management Guidelines	
Legal Research Services	Practice Management Education Programs	
Stay Informed	Preventing & Responding to Harassment & Discrimination in the Workplace	
Teleseminars	Professional Management Guideline	

Video Replays	Self-assessment Tool (March 2004)	
	Technology Guideline	
	Time Management Guideline	

Phase 4 – Evaluation and Ongoing Development

Member feedback is the Department's most valuable source of information. It is important that the Law Society, if expecting members to engage in the process of life long learning, also be seen to be engaging in the process of continuous improvement with respect to the information and support services provided. By communicating directly with the membership, either through intake and client service or through more direct intervention such as formal surveys and focus groups, the Department will undertake a systematized evaluation of all competence products and services with a view toward continuous improvements that meet the needs of lawyers in our ever-evolving profession.

Competence Mandate Update

Following Convocation's approval of the plans for design and implementation of various components of the Competence Mandate, the Department has worked and is continuing to work diligently to bring those products to the membership. The following provides an update.

1. Practice Guidelines

Approved in November of 2002, the Practice Management Guidelines are available online for members at no cost. There are eight components to the guidelines, each addressing key competencies for developing and maintaining practice management requirements and efficiencies at the acceptable practice level. The tools and resources attached to the Guidelines are continually being expanded and are intertwined with the tools and resources that will be developed for the self-assessment and other tools referred to below. This will ensure continuity and consistency in Law Society competence products.

Web Traffic Report for Practice Management Guidelines (number of visits)

Guideline	November 2002 to September 2003
Executive Summary	5,174
Client Service & Communication	1,255
File Management	679
Financial Management	467
Technology	502
Professional Management	471
Time Management	658
Personal Management	307
Closing Down Your Practice	438
Total	9,951

2. Specialist Certification Redesign

In June 2002, Convocation approved the redesign and development of an enhanced Specialist Certification program. The enhanced program is developmental in focus, as compared to the previous designation process. Under this new model, lawyers who are new to the profession or have made a decision earlier in their careers to specialize, will be able to embark upon a course of incremental learning using the specifications set out in specialty areas. The new

process recognizes both the need for experiential as well as developmental education to form the basis of credentials and ability in the profession as a Specialist.

Each specialty is currently deriving learning objectives for the essential, intermediate and enhanced levels of learning in its practice area. Learning objectives have been provided to the entire group of not-for-profit CLE providers in a search for programs to fill those requirements, many of which already exist. The Specialty Committees will accredit these programs as fulfilling a requirement(s) towards designation.

There are currently ten (10) specialty areas, with three (3) further specialties approved in early 2003, for a total of 13 practice areas for the official launch of the new program. Marketing of the new program will begin in late October 2003 to raise awareness in the profession and the new processes and administration for Specialist Certification will be applicable as at January 1, 2004. Additional areas of specialty will be added in 2004 and 2005 with a goal of reaching 20 specialty areas available for certification.

3. Practice Enhancement: Self-assessment Tool

The Practice Enhancement section of the Competence Mandate included the development of a tool that would allow members to self-assess their competencies in key areas of practice management. Convocation approved a plan of development in September 2002 and the request for proposal for the design and development of the product commenced immediately thereafter. Development of the content for the tool began in February of 2003.

At this time, the Best Practices Self-assessment Tool (BPSAT) is complete and preparations are underway to design and establish the online capability.

The BPSAT mirrors the Practice Management Guidelines, in keeping with the Law Society's goal to provide consistency in competence products and goals. The competencies tested by the Tool were determined following extensive work with exemplar practitioners in the profession as well as Law Society and LawPRO staff (the Design Team), a broad survey (2000 recipients) and further focus groups to confirm and test the results. In all, over 300 lawyers from varying demographic groups have had substantial input into the design and development of this product including input as particularized as sentence structure and terminology editing.

There will be five (5) key areas of competency assessment in the Tool. The following elaborates on the competencies to be self-assessed and supported:

Competency Category	Competencies Assessed
Client Service and Communication	Identification of clients; determination of ability to act for client; initial consultation; retainers; timely and effective communications; skills for effective communication; withdrawal of services
Professional Behaviour and Development	Legal knowledge and skills (competence); self-study and CLE; participation in professional and community activities; confidentiality; conflicts of interest; civility and professionalism; delegation; fees and disbursements; coaching and mentoring
Personal Management	Managing physical and emotional health; recognizing sources of stress; recognizing symptoms of dysfunction; impact of stress on personal and family relationships; recognizing and dealing with personal concerns
Practice Management	File management; financial management (business); financial management (regulatory); time

	management; office management; contingency plans; advertising, marketing and client development; practice arrangements; closing down the practice; transferring between law firms
Technology	Basic legal technology; electronic communications; web-based technologies; electronic document and information management and storage; contingency plans; security, integrity and confidentiality

Each individual competency assessed (the right hand column in the chart above) will have multiple tools and resources linked to it providing users with support for undertaking improvements. Those supports are currently being determined and designed. It is anticipated that the supports and resources will be completed to a sufficient level and amount late in 2003.

There will be a marketing awareness campaign in January and February of 2004 and the product launch is scheduled for March 2004.

The BPSAT is strictly confidential. Cognizant of the need to assure members that the Law Society will not use their results against them, the BPSAT will be hosted on an independent server by a third party provider. The Law Society will only receive aggregate information on usage and demographics of users – we will have no access to individual results. Confidentiality is an essential feature to support member use of this tool.

Incentives will also be introduced in order to promote usage of the product. For instance, we will be providing each lawyer who completes one of the five sections (in full, resulting in an assessment for that section) with a credit to apply to any registration fee for a continuing legal education program or purchase of materials. LawPRO has also agreed to provide a credit on insurance premiums for the same completion.

4. Continuing Legal Education

Relevant, accessible, flexible and affordable. The Competence Mandate used this terminology to express the goals for professional development going forward. In the past 1½ years, the PD&C Department has made tremendous strides in all of these areas.

In the professional development area, which includes both the attendance at continuing legal education programming (either live or archived) as well as access to information resources, there have been substantial improvements to the learning platforms offered by the Law Society.

a) Relevance: Practice Management and Professional Responsibility

The PD&C Department is dedicated to ensuring that the membership continues to receive substantial exposure to both substantive learning as well as practice management and professional responsibility issues pursuant to the Competence Mandate.

Statistics show that practice management and related matters are responsible for the majority of conduct matters and liability claims within the profession. In order to address this reality, practice management and professional responsibility topics are now being integrated into all substantive learning developed by the Department. This makes practice management learning more relevant and valuable to the member because it is placed within the context of substantive law issues and practice area preferences.

In the past, the membership has not shown an interest in attending programming that focuses solely on practice management and professional responsibility issues. In the three years prior to 2002, attendance at practice management and related seminars offered for free to the members averaged only 15 delegates. Independent practice

management programming has now been completely revised to reflect the needs of the membership and individual topics are now also integrated into the substantive education stream for promotion and marketing efforts. Recently, the Starting Up Your Practice Workshop was held. This one-day program was fully marketed, because member awareness is the key to improved attendance, and offered at a price of $50 per member. Elevating the quality and perceived value of the program through the improved content and the registration fee and the application of a full marketing campaign resulted in an attendance of 132 members and exemplary program evaluations. The Department continues to develop new independent practice management programs to add to our line-up of member opportunities.

b) Accessibility and Flexibility

Outreach has improved tremendously as a result of diversified delivery platforms. Attendance figures confirm that members are interested in participating in learning activities but require the information in a timelier manner and on a more accessible basis.

Programming developed by the PD&C Department is now being diversified both by way of format and delivery. Shorter increments of learning are being offered to lawyers in both standard live seminar formats and numerous other formats in order to address the needs for flexibility and affordability. The Interactive Learning Network (interactive videoconferencing), Teleseminars (interactive teleconferencing) and asynchronous (archived) webcasting through the Law Society's e-Transactions site as well as educational materials offered in paper, PDF and CD-ROM formats all provide answers to the concerns about flexibility and accessibility. In October 2003, we will also add synchronous (live) webcasting available through our partner BAR-eX.

In 2004 we will begin to offer the same program content on multiple days in an effort to assist members to coordinate attendance dates that are most convenient for them. You will also see more of our programs held via Teleseminars, a format that members have told us is a particularly good use of their time and a focussed, high quality learning experience. Overall, our programming will continue to become more focussed on critical learning objectives while becoming more flexible for learners.

Improved target marketing resulting in increased top of mind awareness of educational opportunities, improved production systems allowing for longer lead times in the market and greater decision making flexibility for lawyers, and diversification of educational platforms in both delivery and content, have combined to result in dramatically increased attendances.

In 2002, attendance at Law Society continuing legal education programs increased by 38%, from 8,500 participants to almost 12,000. In 2003 to date (September 30) we have already surpassed 12,000 attendances and we expect to reach 16,000 attendances by year end – doubling attendance in fewer than two years across the same number of programs.

c) Responding to member demographics

Working with the Association des jurists d'expression francais de l'Ontario (AJEFO), the PD&C Department will be providing French programming in 2004. The Department has conducted a needs survey with Francophone members to assess their preferred learning delivery options and topic choices and, based on this input, will be working with the Francophone legal community to develop programs. At this time, lawyers who self selected that they are capable of providing legal services in French make up approximately 5% of our total membership. This pilot will be conducted for a one year period after which AJEFO and the PD&C Department will assess results and going forward plans.

d) Self-study support systems

The Law Society offers self-study materials in paper, PDF and CD-ROM formats and distributed 12,000 publication units in 2002, with many of those going to local law libraries for broader dissemination and use by members within the counties and regions.

In Fall 2003, the Bar Admission Course materials, fully searchable, will be available online for members for free. The Department continues to work with bar admission instructors and writers to improve and establish editorial consistencies in the materials. Significant improvements have already been made to all of the materials throughout 2002 and early 2003 for the purpose of establishing a broader base of usage within the profession.

The BAC e-Learning Site for our students has enjoyed great success since its inception in July of 2002. The BAC French e-Learning Site was completed in early 2003 and available for our Francophone students. In 2002, 60% of the BAC students utilized the site. In 2003, 88% of the students made substantial use of the tools available to them on the site. The options on the site continue to be enhanced based on student input and we expect the results of our second survey of students to be available shortly. Using this information, we will again assess the site's potential and incorporate new learning options as appropriate.

e) Legal Research and Information Services

The legal research and information resources activities of the Law Society includes the Great Library, Library Co., and CanLII, and address the specialized research and information needs of the practising bar of Ontario. Their function is to make information available to members when it is needed and to do so in a cost-effective and efficient manner, minimizing the amount of time that members must spend locating information. In doing so, all three access points are utilizing technology and sophisticated research tools.

The issue of the continued provision of relevant and adequate legal information and research services was canvassed by a Working Group of the Emerging Issues Committee in Spring of 2003. That Group reviewed the delivery and application of library information and resources through all of the vehicles subsidized by the members. The study focused on the development of a "single point of entry" system of information and research support services which will respond to members efficiently and effectively with minimal duplication in services, as well as streamlined administration and financial management. The Working Group has directed staff, through the CEO and Director of PD&C, to develop a strategy for future consideration.

BENCHMARKS AND KEY INDICATORS

Minimum Expectations for Professional Development

Total number of Members' Annual Report forms: 28,550

Activity	Number reported	% undertaking activity	Other statistics
Self-study a) File specific reading or research	24,793	86.84	Avg. hours 142.01
a) General reading or research	25,919	90.78	Avg. hours 102.84
Tools Used a) Printed Material	26,365	92.35	
b) Online CLE	1,614	16.16	
c) Internet	21,230	74.36	
d) CD-ROM	6,832	23.93	
e) Video Tapes	2,254	7.89	
f) Audio Tapes	2,021	7.08	

CLE Activities a) Live CLE programs	19,650	68.83	
b) Interactive online CLE	1,040	3.64	
c) Telephone CLE	1,075	3.77	
d) Video replay, group setting	1,404	4.92	
e) Discussion group	5,885	20.61	
f) Participation in post-LL.B. programs	961	3.37	
g) Preparation for and teaching in CLE, BAC	3,922	13.74	
h) Writing published texts, articles or CLE materials	5,417	18.97	
CLE offered by: a) Professional organizations (LSUC, OBA, etc.)	15,029	52.64	
b) In-house	11,036	38.65	
c) Law Schools	2,181	7.64	
d) Private sector CLE	7,072	24.77	
Approximate total number of CLE hours	22,474	78.72	Avg. hours 66.02

Practice Management Guidelines

Web traffic report for Practice Management Guidelines (number of visits)

Guideline	November 2002 to September 2003
Executive Summary	5,174
Client Service & Communication	1,255
File Management	679
Financial Management	467
Technology	502
Professional Management	471
Time Management	658
Personal Management	307
Closing Down Your Practice	438
Total	9,951

Self-assessment Tool

The Best Practices Self-assessment Tool will debut in March of 2004.

Continuing Legal Education

	2001	2002	To August 2003
Number of programs	67	63	39
Average attendance per program	127	187	230
Total attendance at CLE programs	8,539	11,788	8,991
ILN Located attendance only	-	-	2,218
Bursaries provided	140	151	163
Units/publications sold	8,249	11,424	6,776

e-Transactions Site

Web traffic report for CLE portion of e-Transactions site

Month	Number of visits
February	69
March	494
April	1,724
May	1,629
June	1,541
July	1,783
August	1,473
September	2,526
Total	11,239

Web purchase report for CLE portion of e-Transactions site

Product	February to September 2003
Books Purchases	329
Program Registrations	498
ILN Program Registrations	305
Video Replays	4
Video Streams	18
PDF Purchases	23
CD-ROM Purchases	8
Teleseminars	70
Total	1,255

Number of Law Society CLE Webcasts Purchased on BAR-eX

	2001	2002	To August 2003
Number of asynchronous (archived) webcasts purchased	N/A	21	71
Number of synchronous (live) webcasts purchased	N/A	N/A	Begins November 2003

Specialist Certification

Key Indicators: current program. The Specialist Certification Redesign will be effective as of January, 2004.

	2001	2002	To August 2003
Number of Specialists	617	611	621
Specialists in Toronto Area	349	344	340
Specialists outside Toronto	268	267	281
Number of Specialty Areas	10	10	10

Practice Advisory

	2001	2002	To August 2003
Total member calls for advice	5,435	5,715	3,473

Breakdown of Callers

Member	2001	2002	To August 2003
Sole Practitioners	2,363	2,465	1,603
Other Members	2,150	2,354	1,592
Non-members*	922	896	278
Totals	5,435	5,715	3,473

*non member category consists of the following: Articling students, Secretary or Bookkeeper at firm, Manager or Administrator at firm, Law Society staff, Law Clerk or Paralegal at firm and other (sales person, lawyer outside Ontario, etc.)

Practice Advisory Mentor Program Matches

	2001	2002	To August 2003
Number of Matches	N/A	30	44

Spot Audit

Number of Audits Conducted

	2001	2002	To August 2003
Books & Records Audits	718	506	227
Complex Audits	319	401	261
Total Audits	1,037	907	488

Audits referred to Investigations/undertakings obtained	42	70	44

Practice Review

	2001 (first year new process)	2002	To August 2003
Number of authorizations into program	16	20	12
Number of authorizations through internal referrals	3	8	10

Bar Admission Course

	2001	2002	To August 2003
Enrolment	1,247	1,312	1,317
Average attendance skills phase	80%	72%	74%
Average attendance substantive phase	48%	42%	48%
Tuition Fees	$4,400	$4,400	$4,400
Transfer candidates	61	93	see below
National Mobility Agreement transfer candidates	-	-	19
Non-National Mobility Agreement transfer candidates	-	-	11

BAC e-Learning Site

Web traffic report for BAC e-Learning Site

Month	Number of visits
May	7,786
June	11,947
July	14,922
August	11,441

Total	46,096
Percentage of students who visited the site during the course (unique visitors)	88%

Articling and Placement Services

94.8% of the all the students who entered the 45th Bar Admission Course in 2002 and who were actively looking for an articling position were placed within six months of the usual start of articling.

The placement rates for self-identified groups of students (Aboriginal, Disability, Francophone, Gay/Lesbian, Mature, Visible Minority) were somewhat lower than the rate for the entire class at the usual articling start date (September 2002). However, by the end date of the usual articling term (June 2003) all of the equity-seeking groups, save for the Francophone students, experienced greater than 90% placement rate. Francophone students experienced a placement rate of 88.4%.

In early 2003 the Education Department developed and maintained their own website at http://education.lsuc.on.ca. This has allowed job postings to be posted within 24 hours. This has improved the service delivery to both students and employers as job postings and information related to students in the BAC will be up to date.

	2001	2002	To August 2003
International Articles	29	16	8
National Articles		14	12
Part time Articles		5	2
Joint Articles		0	0
Biographic Paragraphs Posted	53	62	81
Job Postings	163	129	92
Unplaced Students	94*	66	179

*As at October 12, 2001

Education Support Services

	2001	2002	To August 2003
Distance education – number of locations	15	29	33
Distance education – number of students	28	46	60
Number of students who have received Accommodation*	11	29	23
Number of students who have been assisted with a Special Needs Accommodation**	47	33	47
Number of students who have received tutoring	60	72	22
OSAP – number of applicants	333	258	342
Repayable Assistance Program approvals	47	57	34
Repayable Assistance Program amount awarded	$170,700.00	$213,395.40	$104,167.00

* Accommodation requests cover issues such as bereavement, pregnancy and time conflicts
**Special Needs Accommodation requests cover issues such as disabilities, medical conditions, dyslexia, hearing and vision impairments

Great Library

	2001	2002	To August 2003
Materials catalogued and classified	1806	2005	1430
Number of visits on the Great Library Web site	N/A	651,826	406,094
Catalogue searches on Web site	N/A	398,769	323,419
Number of research requests	71,000	47,000	30,240
Pages copied in custom copy service	68,437	56,159	27,538
Pages copied on self-copiers	481,473	397,957	225,930
Seminars held	4	6	6
Attendance at orientation tours and general instruction	413	350	302
Corporate Records and Archives new entries into records database	N/A	2,157	2328

CONVOCATION ROSE AT 12:05 P.M.

The Treasurer and Benchers had as their guests for luncheon Mr. Kirk Makin, Tasha Kheiriddin and Greg Mulligan.

Confirmed in Convocation this 27th day of November, 2003

Treasurer

ENDNOTES

[1] The original Task Force members were: Edward Ducharme (Chair), now the Honourable Mr. Justice Ducharme of the Ontario Superior Court of Justice, George Hunter, Barbara Laskin, Greg Mulligan, and Neils Ortved. Current members of the Task Force are George Hunter (Chair), Professor Constance Backhouse, Earl Cherniak, Holly Harris, Professor Vern Krishna, and Harvey Strosberg. Julia Bass, Diana Miles and Sophia Sperdakos assisted the Task Force.

[2] Appendix 1 contains information from the consultation process.

[3] This information was received from the law schools in 2002.

[4] There are 18,530 members in private practice; 9,624 employed other than in private practice; 6,138 not employed in Ontario.

[5] Now the Honourable Mr. Justice Spence, of the Ontario Superior Court of Justice.

[6] Mandatory attendance was eliminated for the skills portion of the course, except for the assessments, in 2002.

[7] Attendance is based on instructors noting the numbers in the classroom at the beginning of a seminar. Staff and instructors note attendance falls after the break. Because attendance is not mandatory there are no statistics per student to know if attendance is topic based, subject based or course based. In 2003 the highest attendance in Toronto was in the morning during the family law course (61%) and the lowest in the afternoon during the public course (27.64%). The attendance range was similar in all locations. Attendance fell in the afternoons wherever there were afternoon sessions.

[8] The total number of students enrolled in bar admission courses in Canada annually is approximately 2,900 students.

[9] See BAR-BRI at www.barbri.com.

[10] The Law Society will determine what substantive law competencies a newly-called lawyer should have. This profile provides consistency and a valid, fair and defensible supporting structure to the entire assessment process.
[11]This is the most essential component of any licensing examination. It provides a detailed account of how and why the examination should be structured in the way recommended.

[12] Examination development includes question development and validation, test fairness assessment, pilot testing, examination approval, standard setting and pass mark, language or translation issues, item banking and examination security.

[13] Developing the administration process includes (a) determining what information students should receive about the examinations before the test date; (b) determining examination security; and (c) developing accommodation policies.

[14] The 1992 ABA "MacCrate Report" on lawyering skills recommended that American law schools drastically increase the skills training courses offered. To date this would appear not to have happened.

[15] The actual number of students articling was greater than this, but complete data is not yet available.