

MINUTES OF CONVOCATION

Wednesday, 21st February, 2001
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Arnup, Banack, Bindman, Boyd, Braithwaite, Campion, Carey (by telephone), Carpenter-Gunn, R. Cass, Chahbar, Cherniak, Coffey, Curtis, E. Ducharme, Elliott, Finkelstein, Furlong, Gottlieb, Hunter, Jarvis, Lalonde, Laskin, Lawrence, MacKenzie, Manes, Marrocco, Martin, Millar, Mulligan, Murray, O'Brien, Ortved, Potter, Robins, Ross, Ruby, Simpson, Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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TREASURER'S REMARKS

The Treasurer drew to Convocation's attention correspondence he received from Justice Ian Binnie, Justice James Spence and Mr. David Scott, Q.C. thanking Convocation for honouring them with the degree of Doctor of Laws, honoris causa at the Call to the Bar ceremonies.

The Treasurer informed Convocation that on behalf of Convocation he had expressed his sympathy in a letter to the mother and two sons of Catherine MacLean who was killed in a motor vehicle accident. He wished it recorded on behalf of all the Benchers that Ms. MacLean's death was a great loss to the entire profession. He said Ms. McLean was truly a leader at the Bar, for employment equity and for the advancement of women in the workplace.

The Treasurer also reported on the Canadian Bar Association meeting in Mont Ste. Anne in Quebec on the MDP debate where the main motion underlining the necessity for lawyer control of MDPs was passed.

The Treasurer and Benchers expressed their best wishes to Tom Carey who recently had surgery and who was attending Convocation today by telephone. Mr. Carey thanked everyone for their support.

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MOTION - DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Ruby, seconded by Mr. Murray that the Draft Minutes of Convocation for January 25th, 2001 be adopted.

Carried

MOTION - APPOINTMENTS TO THE CHIEF JUSTICE ADVISORY COMMITTEE ON PROFESSIONALISM

It was moved by Mr. Ruby, seconded by Mr. MacKenzie that the lawyers' names set out in the motion distributed to Convocation be appointed to the Chief Justice Advisory Committee on Professionalism.

Not Put

It was moved by Mr. Ruby, seconded by Mr. MacKenzie that Andrew Coffey be appointed as the Lay Benchers representative to the Chief Justice Advisory Committee on Professionalism.

Not Put

It was moved by Ms. Ross, seconded by Mr. Gottlieb that the Ruby/MacKenzie motions be tabled.

Withdrawn

The Treasurer agreed to stand the motion down until the afternoon session.

MOTION - APPEAL PANEL

Mr. Ruby spoke both personally and on behalf of Convocation in thanking Mr. Arnup for his great contribution during his term as Chair of the Appeal Panel.

It was moved by Mr. Ruby, seconded by Mr. MacKenzie that Sydney L. Robins, Q.C., LSM be appointed Chair of the Appeal Panel.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE

Mr. Manes presented the Report of the Professional Development & Competence Committee for consideration by Convocation.

Professional Development & Competence Committee
February 21, 2001

Report to Convocation

Purpose of Report: Policy - Decision Making
Information

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

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee (“the Committee”) met on February 8, 2001. Committee members in attendance were Eleanore Cronk (Chair), Earl Cherniak (Vice-Chair), Ron Manes (Vice-Chair) Stephen Bindman, Kim Carpenter-Gunn, Ron Cass, Greg Mulligan, Judith Potter, and Bill Simpson. Staff in attendance were Bob Bernhardt, Felecia Smith, Sophia Sperdakos, Ursula Stojanowicz, and Paul Truster.

2. The Committee is reporting on the following matters:

Policy - For Decision; Information

- Appointment of Practice Reviewers
- Information
- Report on Specialist Certification Matters Finalized by the Working Group of the Committee on January 17, 2001 and Approved in Committee on January 18, 2001.
- Report on Specialist Certification Matters Finalized by the Working Group of the Committee on February 7, 2001 and Approved in Committee on February 8, 2001.

POLICY - FOR DECISION; INFORMATION

APPOINTMENT OF PRACTICE REVIEWERS UNDER SECTION 9 OF THE *LAW SOCIETY ACT*

1. Under section 42 and By-law 24 of the *Law Society Act*, the Law Society has authority to conduct a practice review of a member’s practice where there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence.
2. Practice reviewers are appointed to conduct these mandatory practice reviews and to make recommendations with respect to members’ practices. By-law 24 provides that practice reviewers are appointed by the Professional Development and Competence Committee.
3. At its meeting on February 8, 2001 the Committee confirmed and approved the appointment of staff members Lorne Giacomelli and Ajit S. John to conduct practice reviews, pursuant to By-law 24.
4. Some concern has been raised that in order to ensure that external practice reviewers fall within the category of persons who, under section 9 of the *Law Society Act*, receive immunity from proceedings for damages arising from acts done or not done, in good faith, under the *Act*, they should be appointed by Convocation under section 9, which reads:

No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society, or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power.

Request to Convocation

5. Convocation is requested to appoint the practice reviewers (both current and new) listed in Appendix 1 as practice reviewers for the Law Society, pursuant to section 9 of the *Law Society Act*.
6. The Committee has requested the Chief Executive Officer of the Law Society to consider the scope of section 9 of the *Act* and the available means to ensure protection is afforded thereunder to members of the staff of the Law Society and appointed agents of the Law Society who carry out, in good faith, authorized activities for the Law Society under the *Act*.

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON JANUARY 17, 2001 AND APPROVED IN COMMITTEE ON JANUARY 18, 2001

1. The Committee is pleased to report final approval of the following lawyer's application for certification, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation

Paul J. Bates (of Toronto)

2. The Committee is pleased to report final approval of the following lawyers' applications for re-certification, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation

Ernest Du Vernet (of Toronto)
L. Thomas Forbes (of Toronto)
Frederick E. Leitch (of Hamilton)
Jonathan Speigel (of Brampton)

3. The Committee is pleased to report final approval to changes in specialty committee membership, as follows:

- a. Isabel M. O'Connor (of Toronto) for the Environmental Law Specialty Committee to replace Roger Cotton (also of Toronto) who left full time practice in spring of 2000.

The membership on the Environmental Law Specialty Committee is as follows:

Harry Poch (of Toronto) - Chair	Stephen R. Garrod (of Guelph)
Jack D. Coop (of Toronto)	Thomas R. Lederer (of Toronto)
Isabel M. O'Connor (of Toronto)	Dianne S. Saxe (of Toronto)
J. Lloyd Greenspoon (of Manitoulin Island)	Heather Smith (of Ottawa)

- b. Ian Stauffer (of Ottawa) for the Civil Litigation Specialty Committee to replace James O'Grady, Q.C. (also of Ottawa) as part of its turnover plan.

The membership on the Civil Litigation Specialty Committee is as follows:

Nancy J. Spies (of Toronto), Chair	Donald H. Jack (of Toronto)
James E. Lewis, Q.C. (Of Mississauga)	Edward J. Orzel (of Hamilton)
Owen Smith, Q.C. (Of New Liskeard)	Ian R. Staufer (of Ottawa)
Bonnie A. Tough (of Toronto)	David B. Williams (of London), Vice-Chair

- c. Jennifer A. Treloar (of Mississauga) for the Family Law Specialty Committee to replace Francine Van Melle (of St. Catharines) who was appointed to the bench.

The membership on the Family Law Specialty Committee is as follows:

Terrence W. Caskie (of Toronto), Chair	Ian R. Fisher (of Windsor)
Terry W. Hainsworth (of London)	Judy M. Shea (of North Bay)
Susan Hodgson (of Ottawa)	Lorne H. Wolfson (of Toronto)

The Committee thanks departing specialty committee members for their contribution and dedication to the Specialist Certification program.

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON FEBRUARY 7, 2001 AND APPROVED IN COMMITTEE ON FEBRUARY 8, 2001

1. The Committee is pleased to report final approval of the following lawyers' applications for certification, on the basis of the review and recommendation of the Certification Working Group.

Construction Law	Ken Crofoot (of Toronto)
	Harvey J. Kirsh (of Toronto)
	Jonathan Speigel (of Brampton)

2. The Committee is pleased to report final approval of the following lawyers' applications for recertification, on the basis of the review and recommendation of the Certification Working Group.

Criminal Law	Leonard Miller (of Toronto)
	Michael J. Neville (of Ottawa)

Family Law	Allan S. Cooper (of Toronto)
	A. Burke Doran (of Toronto)

Immigration Law	Stephen W. Green (of Toronto)
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Labour Law	James Hayes (of Toronto)
	Elizabeth J. Shilton (of Toronto)
	Russell W. Zinn (of Ottawa)

APPENDIX 1: LIST OF PRACTICE REVIEWERS (as of February 8, 2001)

ADDINALL, Richard M.
ALLISON, Nancy L.
ARCHI, Donald A.
BALINSKY, Ronald A.
BISHOP, Glenda R. J.
CARLYLE, Susan J.
CASTLE, Mark L.
CRANE, Micheal T.
DEMARAY, Jane C.
DART, Thomas C.
DAVIS, Ronald D.
DAVIS, G. Ross
DINGLE, Q.C., Mary Lou
DIZENBACH, Carrol A.
DONIHEE, Tilton T.
DURWARD, Mark P.
EDWARDS, David L.
FUERST, Michelle K.
GOODWIN, John G.
GAUTHIER, Gordon, F.
HIGGINSON, James D.
HOWSON, Roger A.
JACKLIN, David E.
JENKINS, Jennifer J.
KERSHMAN, Stanley J.
KELLY, Q.C., J. Robert
KITELEY, Paul D.
KNIGHT, Q.C., Frederick W.
KONRAD, Larry C.
LEE, Frederick J.
LINTON, James D.
LIPSON, Norman B.
LITTLE, Q.C., James H.
LOVELL, David L.
MAKINS, John W.
MALCOLM, Wendy B.
MARSHALL Q.C., Alan T.
MCCARTNEY, Robert K.
MCCLELLAND, Glenna G.
MCCLELLAND, Ronald G.
MCDOWELL, Roderick H.
MCGEE, Heather A.
MUNN, M. Kathryn
O'GRADY, Q.C., M. James
OTTEWELL, J. Richard
PAVEY, Donovan W.
PICKELL, Norman B.
REBLE, John H.
RÉMILLARD, Peter J.

RICCI, Frank C.
ROBSON, Craig M.
SAVONE, Luigi
SHEPPARD, W. Graydon
SHOREMAN, Rosemary
SOLOMON, E. Bruce
STELMACH, Bohdan P. E.
STUTZ, William W.
THOMSON, Donald V.
TOMAS, Norman W.
TROUGHTON, Thomas W.
TROUSDALE, Anne C.
TROUSDALE, Peter J.
TURNER, Q.C., Paul D.
UREN, Thomas C.
VANDERGUST, Victor L.
WAITE, Q.C., R. Bruce
WEBBER, Q.C., Paul A.
WEXLER, Beverly E.
WILLIS, Q.C., Roland J.
WINBAUM, Daniel L.
WOOLFREY, C. Richard
ZWICKER, Milton W.

Re: Appointment of Practice Reviewers

It was moved by Mr. Manes, seconded by Mr. Cherniak that the practice reviewers listed in Appendix A be appointed as practice reviewers for the Law Society, pursuant to section 9 of the Law Society Act.

Carried

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:40 P.M.

The Treasurer and Benchers had as their guests for luncheon, Fox Scholars, Zimba Moore and Shaman Kapoor.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Aaron, Bindman, Boyd, Braithwaite, R. Cass, Chahbar, Cherniak, Coffey, Curtis, E. Ducharme, Finkelstein, Gottlieb, Hunter, Lalonde, Laskin, Lawrence, MacKenzie, Manes, Millar, Mulligan, Murray, Pilkington, Porter, Potter, Ross, Simpson, Swaye, Topp, Wilson and Wright.

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RESUMPTION OF THE CHIEF JUSTICE ADVISORY MEMBERSHIP MOTION

An amended motion was distributed to Convocation.

It was moved by Mr. MacKenzie, seconded by Mr. Cherniak that the following membership motion be adopted with an amendment to include the designation of those lawyers chosen by their office.

That Andrew Coffey be appointed as the Lay Benchers representative to the Chief Justice Advisory Committee on Professionalism and the following lawyers be appointed to the Chief Justice Advisory Committee on Professionalism:

Nathalie Boutet	Toronto -	(President - Association des juristes d'expression française de l'Ontario)
Herbert Boyce	Owen Sound	
Paul Bragagnolo	Timmins	
Larry Eustace	Fort Frances -	(President - County & District Law Presidents' Association)
Alan Gold	Toronto -	(President - Criminal Lawyers' Association)
Marvin Huberman	Toronto	
Helen Kohner Freidman	Kitchener	
Tracy Lyle	Pembroke	
Thomas Marshall, Q.C.	Toronto -	(President - Canadian Bar Association - Ontario)
Paul Perell	Toronto	
Helen Pierce	Sault Ste. Marie	
Jean Polak	Bracebridge	
Bram Potechin	Ottawa	
Mary Reilly	Toronto -	(President - Family Lawyers' Association)
Ronald Slaght	Toronto -	(President - The Advocates' Society)
Sandra Thomas	Toronto	
Janet Whitehead	Sarnia	

Carried

Mr. Millar introduced Ms. Julia Bass, the new Policy Advisor who would be working with the Admissions Committee.

REPORT OF THE ADMISSIONS COMMITTEE

Mr. Millar presented the Report of the Admissions Committee for Convocation’s consideration.

Admissions Committee
February 21, 2001

Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee (“the Committee”) met on February 8, 2001. Committee members in attendance were Derry Millar (Chair), Edward Ducharme (Vice-Chair), John Campion, Pamela Divinsky, Dean Alison Harveson-Young, Dean Peter Hogg, and George Hunter and Tom Carey. Staff in attendance were Bob Bernhardt, Katherine Corrick, Ian Lebane, Susan Lieberman, and Zelia Pereira.

2. The Committee is reporting on the following matters:

 Policy - For Decision
 Articling Abridgements and National and International Articles

 Information
 Articling Placement Report, 2000

POLICY - FOR DECISION

ARTICLING ABRIDGMENTS AND NATIONAL AND INTERNATIONAL ARTICLES

I. ISSUE

3. During its last three meetings, the Admissions Committee has considered issues related to articling abridgments and national and international articles. The Committee has developed a comprehensive policy covering these matters, and seeks Convocation's approval of it. The policy appears at Appendix 1.

II. BACKGROUND

4. The Bar Admission Course consists of a teaching term, with skills assessments and examinations, and an articling period. The majority of applicants who register in the BAC have completed law school in Ontario or elsewhere in Canada, and proceed directly to the Bar Admission Course, including articling, and then to call to the bar of Ontario.
5. There are, however, a number of applicants who have additional or other qualifications that differentiate them from the majority of BAC applicants.
6. The Law Society's policies concerning the Bar Admission Course, including articling, give special consideration to candidates whose particular qualifications and experience may justify such consideration.
7. On September 21, 2000, Convocation approved the reduction of the articling term from 12 months with four weeks vacation, to 10 months with two weeks vacation. Certain aspects of the articling policies require adjustment so that they are consistent with the reduced length of articles. In particular, provisions dealing with abridgments, waivers, and national and international articles were re-examined by the Committee.
8. At the same time, the Committee considered it appropriate to introduce additional policy changes concerning abridgments, waivers, and national and international articles to provide a more consistent and coherent approach to these issues.
9. This reports sets out in some detail the underlying issues considered by the Committee, together with the Committee's decision on each issue.

III. ABRIDGMENTS/WAIVERS/NATIONAL AND INTERNATIONAL ARTICLES

10. The chart set out in Appendix 2 outlines the current provisions relating to abridgments, waivers, and national and international articles. The chart demonstrates the range of provisions, the variety of considerations used to determine whether an abridgment or waiver should be granted, and the range of abridgment lengths available.
11. The provisions have been applied in the context of the basic articling requirement of 12 months, now reduced to 10 months. The articling portion of the Bar Admission Course is intended to provide students with the opportunity to obtain practical legal experience while under the supervision of a lawyer that will enhance their qualifications for call to the bar of Ontario. The abridgment policy was created with this context in mind.
12. A number of factors are relevant to creating and adapting both the articling policy in general and the abridgment policies specifically. These include the following:

- a. Professional Standards/Public Interest: All lawyers qualifying in Ontario must meet requirements of competence and high ethics and have a basic understanding of the specific Ontario legal context/culture of which they will be a member.
 - b. Globalization: With the advent of national law firms and international offices, there is an emerging demand for expanding the geographical scope of articling placements.
 - c. Equity: The policy should ensure that all candidates are treated equitably, and that quality articles are obtainable for all law students.
 - d. Transparency of Policy and Standards: Policy should be defined in a manner that will ensure that standards are clear and appropriate and include mechanisms to minimize abuse of the policy.
 - e. Flexibility: Bar Admission Course Reform identified a goal of providing a training program that would be flexible to meet the demands of individual students.
13. A number of issues arise in considering the most effective way to consider and determine abridgment and waiver requests. Although the current policies address most of the issues, in some circumstances they do so inconsistently or in a manner that practical experience has demonstrated may not be the most appropriate. These issues include the following:
- i. Should the Head of Articling make abridgment/waiver decisions upon receipt of the abridgment application or at some other point in the process?
 - ii. Should the policy specify that appeals are to be in writing only and, if so, to whom?
 - iii. Should there continue to be different considerations for each type of abridgment request or should more general principles be applied regardless of the geographical location and nature of the applicant's qualifications and training?
 - iv. What range of abridgment periods, based on practice experience, should be available?
 - v. What is the impact, if any, of the reduction of the length of articles on approval of national and international articles?
- i) SHOULD THE HEAD OF ARTICLING MAKE ABRIDGMENT/WAIVER DECISIONS UPON RECEIPT OF THE ABRIDGMENT APPLICATION OR AT SOME OTHER POINT IN THE PROCESS?
14. Currently, in most situations, requests for abridgments are considered and determined within a reasonable period after the application is made. The exception to this has been in the case of National Committee of Accreditation (NCA) candidates, with respect to whom decisions have been postponed until the applicant has fulfilled all the requirements of the NCA certificate. The reason for this approach has been that the length and recentness of the applicant's experience is a factor in determining whether an abridgment should be granted and the length of the abridgment. In many instances the Law Society receives inquiries regarding abridgments long before the potential candidate has completed the NCA requirements, which might include attendance at law school for one or two years.
15. The approach for NCA candidates creates difficulties for the candidates' planning process, particularly as it relates to finding an articling principal. It also results in inconsistent treatment among applicants for abridgments.

16. A means of addressing the Law Society's concern that candidates' qualifications or practical experience be recent in order to justify the abridgment, and at the same time accommodating the candidates' desire for an early determination of their status, would be to allow for an early determination of the abridgment request, which would be valid for a specified period of time. The process might be as follows:
 - a. Upon receipt of a candidate's application for an abridgment of the articling requirement, and supporting documentation, the Head of Articling would, within a reasonable time, make a determination of the request.
 - b. If an abridgment is granted, it would be on condition that the candidate completes the entire articling requirement within three years from the date of the granting of the abridgment.
 - c. If a candidate is unable to complete the entire articling period within three years from the date the abridgment was granted, the candidate must file a new application for consideration.
17. The three year period chosen dovetails with the period used in By-Law 11 regarding transfer candidates.

Committee's Decision

18. The Committee felt that the approach set out in paragraph 16 should be substituted for the current procedure.
- ii) SHOULD THE POLICY SPECIFY THAT APPEALS ARE TO BE IN WRITING ONLY AND, IF SO, TO WHOM?
19. The *Proposals for Articling Reform* provided that decisions on abridgments and waivers would be made, in the first instance, by the Articling Director (now Head of Articling), with a right of appeal to the Articling Subcommittee.¹ The nature of the appeal was not described.²
20. This process for appeals continues to be used with the exception that the Articling Subcommittee no longer exists and the appeals are considered by the Admissions Committee. This has the effect of turning the Admissions Committee, a body that is essentially a policy advising entity, into a quasi-judicial body in certain circumstances.
21. The practice has grown up that appeals are in writing. The written appeal usually consists of a letter filed by the candidate setting out his or her position on the decision. The Committee reviews the material. Staff may be asked to present the material and answer questions, somewhat akin to oral submissions.

¹The exceptions to this were applications for waivers of articles and abridgments for those with experience from non-common law jurisdictions. At some point in the 1990s the requests for abridgments from non-common law jurisdictions began to be considered in the first instance by the Head of Articling.

²In 1995, as amended in 1998, an additional category of abridgments was created. It permits the Head of Articling to abridge articles by 4 weeks on compassionate grounds, with the Committee being entitled to increase that to six weeks. The appeal from the Head of Articling's decision is in writing to the Committee.

22. In a few instances an oral hearing has been granted to a candidate. It has not been clear what, on the facts of the case, justified an oral hearing, other than that the candidate requested one. The difficulty with such an *ad hoc* approach is that it cannot be uniformly applied, is not offered across the board, and may result in a very different decision-making approach to that taken when there is a written appeal only.
23. Because the appeals are heard by the entire Committee, candidates must wait until scheduled Committee days for a decision, precluding any decisions in July, August, or December.
24. It is important that the appeal process be transparent and consistent. For that reason it is proposed that the following approach to appeals be introduced:
 - a. Appeals from the decision of the Head of Articling will be in writing.
 - b. The appeal will consist of the written decision of the Head of Articling, with reasons for the decision, and the written appeal of the candidate, with supporting documentation.
 - c. There will be no oral appeals and no oral submissions from staff, save and except if factual information is sought.
25. The Committee considered the appropriateness of providing that written appeals be decided by the Chair or Vice-chair of the Admissions Committee, or designated bench member of the Committee, rather than by the Admissions Committee as a whole.
26. The advantages of such an approach may be that,
 - a. the appeal decision can be made more expeditiously because it would no longer be necessary to wait for committee days, which occur once a month for only nine months of the year;
 - b. the approach would be similar in nature to other decision-making roles assumed in other committees. For example, the Chair or Vice-chair of the Professional Development and Competence Committee, not the entire Committee, determines whether there are reasonable grounds to require a member to undergo a practice review;
 - c. the approach would remove the possible appearance of unfairness engendered by appeals being heard on Committee day, when staff are present and participating in the discussion and the appellant is not; and
 - d. there may be greater consistency of approach from decision to decision.
27. The disadvantages may be that,
 - a. there is less opportunity to obtain a broad range of views on the issues before a decision is rendered;
 - b. the candidate's appeal is considered by one person instead of six or seven.

Decision of Committee

28. The Committee was of the view that the approach set out in paragraph 24 was a fairer approach than the one currently used, and ought to be adopted. It further felt that appeals could be considered and determined by the Chair or Vice-Chair of the Admissions Committee, or designated bench member of the Committee.

iii) SHOULD THERE CONTINUE TO BE DIFFERENT CONSIDERATIONS FOR EACH TYPE OF ABRIDGMENT REQUEST OR SHOULD MORE GENERAL PRINCIPLES BE APPLIED REGARDLESS OF THE GEOGRAPHICAL LOCATION AND NATURE OF THE APPLICANT'S QUALIFICATIONS AND TRAINING?

a) Abridgment Categories

29. There are two abridgment categories. The first, and more frequent type, is the category that encompasses applications for abridgment based on experience. The second is the category encompassing compassionate grounds.

b) Practice Experience Category

30. As can be seen from Appendix 2, a different approach is taken to the various abridgments based on practice experience. The methods for calculating the appropriateness of an abridgment or waiver are somewhat inconsistent. Some of the inconsistencies include the following:

a. Some categories have formulae included in the policy itself (eg. one month for each full year of practice), while other categories do not.

b. The articling provisions do not impose a recency requirement to the experience that is being relied upon to justify the abridgment or waiver. The transfer provisions in By-law 11 do so.

c. Those with practice experience of at least seven years from common law foreign jurisdictions may be eligible in exceptional circumstances for a waiver of articles, while those from non-common law foreign jurisdictions can only ever be granted a maximum abridgment of six months.

d. The provisions relating to abridgments based on practical experience in a foreign common law jurisdiction provide that an applicant may be granted a reduction of one month for every full year of practice to a maximum of six months subject to a further abridgment for exceptional circumstances, where the applicant has practised law or worked in a law-related endeavour for seven years. The provisions related to international articles permit such articles for a maximum of six months, such that one month of international articles is treated as the equivalent of one month of Ontario articles.

The potential result of these two provisions is that a person could article for an international firm and receive credit for up to six months of articling, while the lawyer for whom the person articulated, in theory at least, might apply for admission to the Ontario bar and be denied an abridgment.

31. In assessing whether an applicant should be entitled to a reduced articling requirement the Law Society's goal is to consider whether the reduction is consistent with the public interest and the need of the candidate to become acclimatized to the Ontario legal context.

32. The inclusion of different formulae in the current provisions (eg. one year experience in a common law jurisdiction may equal one month less of required articles, one year practice in a province in Canada may result in an abridgment of up to 8 months) is somewhat arbitrary.

33. It is proposed that an alternate approach might be more appropriate, transparent, and clear to applicants. The proposed approach is as follows:

- a. Abridgments would be articulated in one of two general categories:
 - i. Applications based on experience outside of Ontario (which would include other Canadian legal experience; foreign jurisdiction experience, both common law and non-common law; and other relevant experience); and
 - ii. Applications based on compassionate grounds.
 - b. The determination of abridgments in category (i) would be made based on the following considerations:
 - i. the length, recentness, nature, scope, and diversity of the applicant's experience; and
 - ii. the relevance of the experience to Ontario's legal context in particular as it relates to articling and legal practices and institutions.
34. The criteria considered and approved by the Admissions Committee for the granting of an articling abridgment based on practical experience is set out in Appendix 3.
35. The determination of abridgments in category (ii) would continue to be based on the nature of the compassionate grounds.

Decision of the Committee

36. The Committee felt that the approach suggested in paragraph 33 was more consistent and coherent than the current approach, and provided a clear and transparent policy for applicants, and approved it.
- c) Compassionate Category
37. Currently, the Head of Articling determines requests for up to four weeks abridgment of articles based upon compassionate grounds, with a right of appeal. The Committee has, on occasion, increased the abridgment to six weeks.
38. Students who qualify for an abridgment on compassionate grounds were described in the February 8, 1995 report to the Legal Education Committee, and the Admissions and Equity Report to Convocation of May 29, 1998. These continue to be the relevant considerations and include students,
- a. who take parental leave during the articling term,
 - b. who are unable to article because of an accident or prolonged illness,
 - c. whose close relatives become gravely ill, and who must travel out of the province to attend to their needs,
 - d. who work in a law office where non-management staff go on strike for a short period of time, and who are unable to attend at the office, and
 - e. who have difficulty securing an articling position and commence their articles a few weeks beyond the usual September 1 deadline.
39. In addition to these circumstances, two additional situations have led to the Head of Articling granting compassionate abridgments:
- a. Where a student who is articling after having successfully completed the teaching term of the BAC and is very close to completing the articling term by the date of the next call to the bar ceremony, a compassionate abridgment may be granted to enable the student to qualify for that call; and

- b. A compassionate abridgment equal to vacation not taken until the end of articles, may be granted to permit an earlier call.
40. In view of the shortened articling period, it is appropriate that, in most cases, the maximum compassionate abridgment period should remain four weeks. As a result of the articling requirement being reduced, however, some students such as unplaced students who elected to take Phase Three of the BAC prior to articling, will be required to article for the longer 12 month period while their colleagues article for 10 months.
41. It is anticipated that there will be applications for a six week³ abridgement in the articling period from some of those students who are negatively affected by the change in rules. Under the current provisions the Head of Articling would not be permitted to grant these applications. The students' recourse would then be an appeal.

Committee's Decision

42. The Committee decided that the Head of Articling and Placement ought to have authority to grant compassionate abridgments of up to six weeks in the circumstances described in paragraphs 40 and 41. The Committee further decided that the grounds for and maximum length of compassionate abridgments, in all other circumstances, ought to remain the same.
- iv. WHAT RANGE OF ABRIDGMENT PERIODS BASED ON EXPERIENCE SHOULD BE AVAILABLE?
43. Currently, the Head of Articling may grant the following abridgments based on experience:
- a. Up to 8 months based on successful completion of the BAC in another province, including articling;
 - b. Up to 6 months for those admitted to the foreign bar of a common law jurisdiction;
 - c. Up to 6 months in exceptional circumstances based on experience other than in articling or practice.
44. Originally the Admissions Committee considered abridgments of up to 6 months for those candidates admitted to a foreign bar of a non-common law jurisdiction based on practice experience. At some point in the 1990s, the practice changed to provide that the Head of Articling make these determinations, with an appeal to the Committee.
45. In addition, there are two instances in which a complete waiver of articles may be granted, as follows:
- a. The Head of Articling may grant a waiver of articles based on call to the bar and practice of at least one year in another province of Canada; and
 - b. The Admissions Committee may grant a waiver of articles for those admitted to the foreign bar of a common law jurisdiction in exceptional circumstances (where the candidate has practised at least seven full years).

³A six week abridgment would make it possible for a person to effectively article for 9.5 months (12 months - 4 weeks for holidays - 6 weeks abridgment) which is the same as the person required to article for 10 months with 2 weeks vacation..

Issues

46. Three questions are raised by the current range of possible abridgments, including waivers. They are as follows:
- a. Is there a rational policy basis for different maximum abridgment lengths?
 - b. In view of the reduction in the length of articles from 12 months with four weeks vacation, to 10 months with two weeks vacation, should there be a *pro rata* or other reduction in the maximum abridgment that may be granted, including the appropriate reduction for vacation?
 - c. Is the granting of a complete waiver of articles appropriate in the public interest and for the need of the candidate to become acclimatized to the Ontario legal context?
- a) Different Maximum Abridgment Lengths
47. It is unclear why the current policies contain different maximum abridgments lengths. If the policy approach set out in paragraph 33 is adopted there would be little rational reason for such differences, since each abridgment application would be assessed on the basis of the considerations set out in that paragraph.
48. Although in practice it may be common for those who have qualified in provinces in Canada to receive a greater abridgment than those who have qualified elsewhere, the setting of arbitrary figures undermines the policy rationale on which such determinations should be based.
- b) Pro Rata Reduction in Maximum Number of Months of Abridgment
49. Currently, candidates who have had their articles abridged have been obliged to serve at least four months of articles. Similarly, those approved for national articles have been required to serve at least four months of their articles in Ontario.
50. Although the rationale for this has not been articulated, there are at least two likely explanations:
- a. Four months provide a reasonable amount of time for a candidate to be exposed to some of the Ontario-specific components of legal practice, including exposure to the rules of professional conduct, procedural realities, and possibly the role of the Law Society in the professional's life; and
 - b. It may be easier to find an articling placement for four months than for any shorter period. There is an investment of time and training that goes into being an articling principal and it is possible that a shorter period would not be worth a principal's investment of time.
51. Although it is possible to leave the maximum abridgment period at eight months, so that a candidate would only have to serve two months of articles, it is questionable whether such a brief period serves any real purpose.
- c) Complete Waiver of Articles
52. As seen above, there are two possible instances when waivers may be granted. The waiver policy is based on the principle that the kind of experience a candidate has is such that the entire "apprenticeship" process is unnecessary. In both situations a waiver is only permissible when the candidate's experience is from a common-law jurisdiction.

53. However, even candidates who have many years of practice in other provinces or common-law jurisdictions, have not had exposure to the Ontario-specific components of legal practice. For this reason, there may be merit to requiring that all candidates, no matter what level of experience, article for a number of months in Ontario.

Decision of the Committee

The Committee determined that,

- a. the maximum abridgment period available for all types of abridgments based on experience should be the same;
 - b. the abridgment period available should never be more than six months (subject to an adjustment to the vacation allotment), so that all candidates must article in Ontario for at least four months; and
 - c. the Head of Articling and Placement may grant a complete waiver of articles where the applicant has, for at least seven full years, practised law or been employed in the substantially law related endeavour, and has developed the skills essential to a practising lawyer.
- v. WHAT IS THE IMPACT OF THE REDUCTION OF THE LENGTH OF ARTICLES ON APPROVAL OF NATIONAL AND INTERNATIONAL ARTICLES?
55. When the articling period was 12 months, applicants approved for national articles⁴ were required to spend at least four months articling in Ontario, while applicants approved for international articles were required to spend at least six months articling in Ontario. The original policy with respect to national and international articles was developed at a time when it was unusual to receive and consider requests for credit for articling experience outside of Ontario.
56. If a straight *pro rata* reduction is applied to the national and international articling policy to reflect the change in the length of articles overall, applicants approved for national articles would be required to spend at least two months articling in Ontario, while applicants approved for international articles would be required to spend at least four months articling in Ontario.
57. For reasons similar to those articulated in section iv. above, there is no clear reason for mandating different maximum periods for articling in Ontario under the national and international articling rules.
58. The policy rationale underlying the national and international articling rules is that all students should have exposure to the Ontario context at some point during their articles. The rules for national and international articles should be similar to those proposed for abridgments, namely that all students experience *at least* four months of their articles in Ontario, and that the national or international portion of their articles be no more than six months.
59. Provisions requiring the filing of education plans and written documentation to meet the criteria should continue. The criteria considered and approved by the Admissions Committee is set out in Appendix 4.

⁴National articles also include the rare situations in which a student in Ontario articles for a federal government lawyer in Ontario who is not called to the Ontario bar.

- 60. If this approach is adopted it should be made clear that the minimum four months of articles in Ontario applies to any combination of abridgments and national or international articles, so that no matter what the combination, each student experience at least four months of their articles in Ontario.

Decision of the Committee

- 61. The Committee was of the view that there was no sound basis for the distinction between national and international articles and felt that the approach set out in paragraphs 56 to 59 was appropriate.

IV. REPEAL OF SECTIONS OF *PROPOSALS FOR ARTICLING REFORM*

- 62. The document entitled *Proposals for Articling Reform* has been amended on a number of occasions, but no consolidated version has been completed.
- 63. If Convocation adopts the policy set out in Appendix 1, it will replace sections 12 (national articles) and 13 (international articles) of the *Proposals for Articling Reform*, which then ought to be repealed. Section 14, including all the subsections, except the second paragraph of 14.1.4 ought to be repealed as well. The relevant sections of the *Proposals for Articling Reform* are attached in Appendix 5.

Decision of Committee

- 64. The Committee approved the repeal of the above mentioned sections of the *Proposals for Articling Reform*.

V. REQUEST OF CONVOCATION

- 64. Convocation is asked to approve the policy set out in Appendix 1.
- 65. Convocation is also asked to repeal the sections of the *Proposals for Articling Reform*, which will be replaced by the new policy.

INFORMATION

ARTICLING PLACEMENT REPORT, 2000

- 66. Appendix 6 contains the Articling Placement Report, 2000 prepared by the Head of Articling, Susan Lieberman.

APPENDIX 1

ABRIDGMENT AND NON-TRADITIONAL ARTICLING POLICIES

SECTION 1 - CITATION AND DEFINITIONS

- 1.01 Citation
- 1.02 Definitions

SECTION 2 - ABRIDGMENTS

2.01 Approval of abridgements

2.02 Appeal

2.03 Abridgment based on compassionate grounds

2.04 Abridgment based on grounds other than compassionate grounds

2.05 Length of abridgment

2.06 Expiration of abridgment entitlement

SECTION 3 - NON-TRADITIONAL ARTICLING PLACEMENTS

3.01 Approval of non-traditional placements

3.02 Appeal

3.03 National and international articles

Section 1 - Citation and Definitions

1.01 CITATION

1. These policies may be cited as Abridgment and Non-Traditional Articling Policies.

1.02 DEFINITIONS

1. In these policies, unless the context requires otherwise,

“abridgment” means a reduction of the traditional articling term;

“applicant” means a person who applies for consideration to abridge or alter the traditional articling term;

“approved law program” means a law course that is offered by a university in Canada and is approved by Convocation pursuant to section 3 of By-Law 12 made pursuant to the *Law Society Act*;

“articling placement” means an arrangement that has been approved by the Articling & Placement Office in which a student may serve an articling term;

“articling term” means a period of time when a student is registered in the articling component of the Bar Admission Course;

“experience of a legal nature” means experience involving the application of legal principles and practices to the resolution of issues;

“international articles” means

- (a) an articling placement served outside Canada that is supervised by a lawyer in good standing who has been called to the bar in another jurisdiction, or
- (b) an articling placement served outside Canada that is supervised by a principal who will not be providing the student with an experience that substantially deals with laws and practices applicable to the practice of law in the province of Ontario;

“national articles” means

- (a) an articling placement served within Canada that is supervised by a lawyer in good standing who has been called to the bar in another Canadian jurisdiction, or

(b) an articling placement served within Canada that is supervised by a principal who will not be providing the student with an experience that substantially deals with laws and practices applicable to the practice of law in the province of Ontario;

“non-traditional articling placement” means any articling placement other than full-time Ontario articles and includes joint, part-time, national and international articling experiences;

“Ontario articles” means an articling placement served with a principal who is providing the student with an experience that substantially deals with laws and practices applicable to the practice of law in the province of Ontario;

“principal” means a member who has been approved by the Articling & Placement Office to supervise a student during an articling term;

“Society” means The Law Society of Upper Canada;

“traditional articling term” means the full articling term of the Bar Admission Course as established from time to time by Convocation.

Section 2 - Abridgments

2.01 APPROVAL OF ABRIDGEMENTS

(1) The Head of Articling & Placement may grant an abridgment based on a written application submitted with required documentation and the applicable fee.

2.02 APPEAL

(1) The decision of the Head of Articling & Placement may be appealed in writing to the Chair or Vice-Chair of the Admissions Committee, or designated bench member of the Admissions Committee, whose decision is final.

2.03 ABRIDGMENT BASED ON COMPASSIONATE GROUNDS

(1) The Head of Articling & Placement may grant an abridgment of the articling requirement of up to six weeks on compassionate grounds.

(2) Compassionate grounds may include applicants who take parental leave, become unable to article due to prolonged illness or accident, or are adversely affected by policy changes related to the Bar Admission Course.

2.04 ABRIDGMENT BASED ON GROUNDS OTHER THAN COMPASSIONATE GROUNDS

(1) The Head of Articling & Placement may grant an abridgment of the articling requirement on the basis that the applicant has,

- (a) been admitted to the Bar of another province or foreign jurisdiction,
- (b) practised as a lawyer in another jurisdiction, or
- (c) experience of a legal nature other than in articling or practice.

(2) In evaluating an applicant's request for an abridgment under this subsection, the Head of Articling & Placement will assess,

- (a) the length, recency, nature, scope and diversity of the applicant's legal experience; and
- (b) the relevance of the legal experience to the legal skills, practices and systems ordinarily experienced during Ontario articles;

based on criteria determined by the Admissions Committee.

- (3) Experiences of the following types do not qualify an applicant for abridgment consideration:
 - (a) summer or part-time experience in law firms;
 - (b) clinical education experiences received by an applicant before completing the approved law program requirements;
 - (c) full-time experience in law firms or clinical education experiences received while enrolled in an approved law program.

2.05 LENGTH OF ABRIDGMENT

(1) Except as provided in subsection (2) (waiver of articles), under any combination of abridgments, national and international articles granted, at least four months of the articling term, which includes up to one week of vacation, shall be Ontario articles.

(2) In exceptional circumstances where an applicant has qualified for the maximum abridgment permitted under subsection (1) and for at least seven full years has

- (a) practised law, or
- (b) been employed in a substantially law-related endeavour, including as a law teacher or in a judicial or quasi-judicial capacity, and has developed the skills essential to a practising lawyer,

the applicant may apply for further abridgment up to and including a complete waiver of articles.

2.06 EXPIRATION OF ABRIDGMENT ENTITLEMENT

(1) An abridgment entitlement expires three years from the date of the letter granting such abridgment. If an applicant is not able to complete the entire articling period within this three-year period, the applicant must submit a new application for consideration and pay the applicable fee.

Section 3 - Non-Traditional Articling Placements

3.01 APPROVAL OF NON-TRADITIONAL PLACEMENTS

(1) The Head of Articling & Placement may approve a non-traditional articling placement based on a written application submitted with required documentation and the applicable fee.

3.02 APPEAL

(1) The decision of the Head of Articling & Placement may be appealed in writing to the Chair or Vice-Chair of the Admissions Committee, or designated bench member of the Admissions Committee, whose decision is final.

3.03 NATIONAL AND INTERNATIONAL ARTICLES

(1) In evaluating an applicant's request for national or international articles, the Head of Articling & Placement will assess,

- (a) the length, nature, scope and diversity of the proposed legal experience; and
- (b) the relevance of the proposed legal experience to the legal skills, practices and systems ordinarily experienced during Ontario articles;

based on criteria determined by the Admissions Committee.

(2) Except as provided in subsection 2.05(2) (waiver of articles), under any combination of abridgments, national and international articles granted, at least four months of the articling term, which includes up to one week of vacation, shall be Ontario articles.

Criteria for Abridgment Assessment

In assessing an applicant's application for abridgment, the Head of Articling & Placement will evaluate each application on an individual basis, taking into account the particular circumstances of that individual's legal experience. The following criteria are used to evaluate the individual's legal experience and to facilitate the application of consistent standards to applicants with similar backgrounds, thus treating similar cases in a similar manner.

Recentness of applicant's legal experience	
Date of applicant's call to the bar of other jurisdiction(s)?	N/A, less than 3 years, 3 - 5 years, 6 - 10 years, more than 10 years ago
Date of applicant's legal experience?	Less than 3 years, 3 - 5 years, 6 - 10 years, more than 10 years ago
Length of applicant's legal experience	
Length of applicant's legal experience	Less than 3 years, 3 - 5 years, 6 - 10 years, more than 10 years
Scope of applicant's legal experience	
Complexity of legal issues dealt with	Highly complex, some complexity, routine matters
Degree of responsibility for legal matters	Sole responsibility, lead counsel, professional support, clerical/administrative support
Diversity of applicant's legal experience	
Variety of legal experience	More than four areas, two to three areas, one area of law (describe)
Variety of legal practice	Barrister and solicitor, barrister, solicitor (describe)
Variety of lawyering skills	Engaged in all thirteen lawyering skills, between eight and twelve, less than eight. For descriptions, see <i>Nature of Lawyering Skills</i> below.
Nature of applicant's legal experience	

Type of legal jurisdiction	Common law, hybrid jurisdiction, other legal systems
Setting of legal experience	In a legal practice setting (e.g. in a law practice, government, court or tribunal, law school, legal clinic, legal department of a corporation), in a non-legal practice setting (e.g. union, accounting practice, social work setting, police force)
Type of legal experience	Substantive/procedural legal aspects (e.g. interpreting legislation, structuring of commercial transactions, negotiating labour agreements, tax planning): most of the time, some of the time, little of the time
Nature of Lawyering Skills	For <i>each</i> skill area listed in the table following, provide a detailed description, indicate whether there was much, some or little legal experience, and identify examples.

<h3>Legal Experience in the Thirteen Lawyering Skill Areas</h3>	
<p>1. PROFESSIONAL RESPONSIBILITY The applicant has experience with: complying with a formal code of professional conduct that addresses basic duties, responsibilities and ethical practices such as conflicts of interest, client confidentiality, proper approaches to business development, appropriate delegation of work, and withdrawal of services. The applicant has practice in: using a system to avoid conflicts of interest, a tickler system, setting and billing of fees and explanations to clients, and uses of trust and general accounts.</p>	
<p>2. PLANNING AND CONDUCT OF A MATTER The applicant has experience with: making legal services available in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the profession. The applicant has practice in: communicating effectively with clients, lawyers and others; applying resource-saving techniques; providing legal options in light of needs and financial resources; developing plans for conduct of various matters; and drafting reporting letters.</p>	
<p>3. OFFICE SYSTEMS The applicant has experience with: maintaining effective and efficient office systems. The applicant has practice with: precedent file system, process for recording expenses and disbursements (including reimbursement procedures), computer software packages available (e.g. word processing databases, CanLaw, QuickLaw, WestLaw).</p>	
<p>4. FILE AND PRACTICE MANAGEMENT The applicant has experience with: basic file and record-keeping practices, procedures for opening and closing files, documenting/organizing a file (ie. recording phone calls). The applicant has practice with: time-docketing system, method of keeping client informed about the progress of matter, tickler system re follow-ups and limitation dates, client retainer and/or payment schedule, billing practices, prepared case plan or checklist for a new file.</p>	

5. INTERVIEWING

The applicant has experience with: proper interviewing techniques and conducting interviews of clients, witnesses (including experts), and consultants.

The applicant has practice with: preparation of clients or witnesses for trial or other examinations or meetings, preparation of statements or affidavits based on interview, initial interviews with new clients, interviews with witnesses or clients.

6. FACT INVESTIGATION

The applicant has experience with: investigating facts for the purpose of serving legal needs.

The applicant has practice with: reviewing documentary evidence (e.g. client's personal or internal files, corporate minute books, files maintained by government or administrative bodies), conducting searches under various public record systems, interviewing clients/witnesses/consultants, following-up of examinations for discovery (e.g. preparation of list of undertakings), preparation of summary of transcripts of evidence.

7. LEGAL RESEARCH

The applicant has experience with: legal research materials and facilities (ie. firm library, local libraries, inter-firm lending arrangements, precedents, computer search databases), researching points of law, and preparing reports and written memoranda of law.

The applicant has practice with: critique or responses to opponent's pleadings/factum.

8. PROBLEM ANALYSIS

The applicant has experience in: determining client's legal problem and options, strategy development for resolution of client's problem.

The applicant has practice with: writing reports based on legal research and investigation.

9. ADVISING

The applicant has experience in: proper legal counselling techniques, duties and responsibilities of advising clients, preparing memoranda to advise of available legal options/remedies and/or memoranda to file about advice given.

The applicant has practice with: advising clients, client meetings, drafting opinion letters outlining legal options/remedies and/or letters confirming instructions received.

10. DRAFTING

The applicant has experience with: proper use of precedents.

The applicant has practice with: drafting facta, pleadings, notices of motion, orders, offers to settle, judgments, correspondence, affidavits, agreements, opinion letters, retainers, etc.

11. WRITING

The applicant has experience in: clear and accurate writing in the legal context.

The applicant has practice with: writing documents such as, memoranda, letters, reports, opinion letters, articles, texts, speeches.

12. NEGOTIATION

The applicant has experience in: negotiation techniques and strategies.

The applicant has practice with: conducting negotiation of legal matters.

13. ADVOCACY

The applicant has experience in: advocacy techniques and the basic duties and responsibilities of an advocate.

The applicant has practice with: appearing as an advocate in motions, trials and tribunal hearings, and some or all of: applications, pre-trial conferences, references, assessments of cost, discoveries and cross-examinations on affidavits, judgment debtor examinations, Crown wardship applications, and passing of accounts in estate matters, etc.

Education Plan for National and International Articling Placement
Description of The Proposed Legal Experience to Be Provided to Student

The following draft education plan is one example of what an articling education plan might look like. It was drafted with an Ontario law firm setting in mind. It is expected that the education plan of a student articling in a national or international setting will have an education plan unique to the setting. However, the education plan should address a substantial number of the thirteen skills areas set out in the following sample draft plan and must address Professional Responsibility. A supervising lawyer developing an education plan may borrow from what follows to whatever degree is appropriate. Only those experiences that will be provided to the student should be listed.

The supervising lawyer will be expected to fulfil whatever is set out in the plan.

Description of Proposed Legal Experience in the Thirteen Lawyering Skills
<p>1. PROFESSIONAL RESPONSIBILITY The student will be instructed on: basic duties and responsibilities of a lawyer such as conflicts of interest, client confidentiality, proper approach to business development, appropriate delegation of work to non-lawyers, withdrawal of services. The student will receive explanations of: system used to avoid conflicts of interest, tickler system, setting and billings of fees and explanations to clients, purpose of trust and general accounts.</p>
<p>2. PLANNING AND CONDUCT OF A MATTER The student will be instructed on: effective means of communication with clients and their counsel, cost and time-saving techniques, options available to client in light of client's needs and financial resources. The student will: formulate plan with lawyer for conduct of various matters and draft reporting letters to clients.</p>
<p>3. OFFICE SYSTEMS The student will be instructed on: precedent file system, process for recording expenses and disbursements (including reimbursement procedures), computer software packages available (e.g. word processing databases, CanLaw, QuikLaw, WestLaw).</p>
<p>4. FILE AND PRACTICE MANAGEMENT The student will be instructed on: basic file and record-keeping practices, procedures for opening and closing files, documenting/organizing a file (ie. recording phone calls), time-docketing system, method of keeping client informed about the progress of matter, tickler system regarding follow-ups and limitation dates, client retainer and/or payment schedule, billing practices, prepared case plan or checklist for a new file.</p>
<p>5. INTERVIEWING The student will be instructed on: proper interviewing techniques. The student will: prepare clients or witnesses for trial or other examinations or meetings, prepare statements or affidavits based on interview, attend with lawyer at initial interviews with new clients, observe interviews with witnesses or clients, conduct interviews of clients, witnesses (including experts) or consultants.</p>
<p>6. FACT INVESTIGATION The student will: review documentary evidence (ie. client's personal or internal files, corporate minute books, files maintained by government or administrative bodies), conduct search(es) under various public record system(s), assist lawyer with interviewing clients/witnesses/consultants, assist in the follow-up to examinations for discovery (ie. preparation of list of undertakings), prepare summary of transcripts of evidence, interview clients/witnesses/consultants.</p>

<p>7. LEGAL RESEARCH The student will be instructed on: research materials and facilities available (ie. firm library, local libraries, inter-firm lending arrangements, precedents, computer search databases). The student will: research points of law, report verbally to lawyer, prepare written memoranda of law to lawyer, critique or respond to opponent's pleadings/factum.</p>
<p>8. PROBLEM ANALYSIS The student will be instructed on: client's problem and options, strategy for resolution of client's problem. The student will prepare: written report of options and strategies for client, from research and investigation.</p>
<p>9. ADVISING The student will be instructed on: proper legal counselling techniques, duties and responsibilities of advising clients. The student will prepare: memoranda to lawyer for advising clients of options/remedies available to client and/or memoranda to file about advice given to client. The student will attend: client meetings with lawyer. The student will advise: client under supervision of lawyer. The student will draft: opinion letter to client outlining options/remedies and/or letter to client confirming instructions received from client.</p>
<p>10. DRAFTING The student will be instructed on: proper use of precedents. The student will draft: pleadings, notices of motion, orders, offers to settle, judgments, correspondence, affidavits, agreements, opinion letters, facta, retainers, bills of costs, notices of appeal.</p>
<p>11. WRITING The student will be instructed on: methods for improving the accuracy and clarity of expression in the legal context of documents such as, memoranda, letters, reports, opinion letters, articles, texts, speeches.</p>
<p>12. NEGOTIATION The student will be instructed on: negotiation techniques and strategies, negotiations in action, the success of negotiations. The student will: conduct negotiation of small claims court matters or other matters under guidance of a lawyer.</p>
<p>13. ADVOCACY The student will be instructed on: advocacy techniques, basic duties and responsibilities of an advocate. The student will observe: advocacy in motions, trials and where applicable some or all of the following optional areas: applications, tribunal hearings, pre-trial conferences, references, assessments of cost, discoveries and cross-examinations on affidavits. The student will attend at/on: assignment court, uncontested and consent motions, status hearings, judgment debtor examination, contested motions, Crown wardship application (student attendance permitted in exceptional cases only), passing of accounts in estate matters (subject to discretion of Judge of Ontario Court (General Division)), trial of provincial court matter, trial of summary conviction matter The student will conduct: simple tribunal hearing, small claims court trial.</p>

PLACEMENT REPORT 2000 AS AT DECEMBER 12, 2000

I PURPOSE OF THIS REPORT

1. The purpose of this report is to provide a snapshot of the Placement program as at December 12, 2000. This report provides background and data for placement activities of the Articling & Placement Office. It presents current and previous years statistics, describes current programs, explains recruitment procedure activities, and describes surveys administered.

II BACKGROUND

2. Year 2000 has been a relatively successful year for placement of graduates and articling students. At December 12, 2000, only nine students who had entered the 43rd Bar Admission Course and were actively looking for positions were unplaced. This number compares favourably with the previous year's twenty-two students. Also, the percentage of graduates who were called to the bar in February 2000 who had employment positions at the time of signing the rolls for call to the bar was approximately 70%, the highest level in ten years.
3. The improvements in placement rates appear to mirror improvements in the Canadian general unemployment rate for 2000¹.
4. The statistics presented in Section III provide a break-down of placement results in terms of self-identified characteristics of the students. By December, 2000, rates of all groups compared favourable with the overall unplaced rate.
5. The Articling & Placement Office administers various programs to aid placement of articling students and graduate lawyers which are described in Section IV.

III PLACEMENT STATISTICS

6. *Articling Placements:*

- a. As Table 1 shows, at December 12, 2000, only nine students who were looking for articling placements remained unplaced out of a total of 1153 students who registered in the 43rd Bar Admission Course and who enrolled in Phase One in 2000². This unplaced number represents 0.8% of the total. At December 14, 1999, 22 students who were actively looking for articling placements remained unplaced out of a total of 1095 students who registered in the 42nd Bar Admission Course and who enrolled in Phase One in 1999. This unplaced number represented 2.1% of the total.
- b. Table 1 also shows that the number of unplaced students who have not responded to inquiries, not been able to be contacted or have indicated that they are no longer looking for an articling position has decreased from 1999. At December 12, 2000, twenty such students were identified, compared with fifty-six at December 14, 1999.

¹Statistics Canada (www.statcan.ca): 1996: 9.6%, 1997: 9.1%, 1998: 8.3%, 1999: 7.6%, Nov. 2000:6.9%.

²This number also includes those students who were granted Phase One exemptions.

- c. Statistics for years prior to 1999, also displayed in Table 1, may not be comparable. Because of a change in staff and record-keeping, the basis of the statistics for these years is unclear.
- d. Beginning in April 2000, monthly articling placement statistics were maintained for the 2000-2001 articling term. These statistics, summarized in Table 2 (a and b), tracked placement of students who self-identified as being a member of one of the following groups: visible minority, Aboriginal, students with disabilities, mature (≥ 40 years) and gay/lesbian. Students were able to self-identify as being a member of more than one group, and although Year 2000 did not track multiple group self-identification through-out the year, this tracking will be done in 2001. The December statistics in the table were based on a total of 1153 students who registered in the 43rd Bar Admission Course and who enrolled in Phase One in 2000.
- e. As was noted in the Equity Initiatives Memorandum included with the October 2000 Admissions Committee Agenda, Year 2000 statistics of unplaced students who self-identified compared very favourable with previous years.
- f. A summary of total students registered in the 43rd Bar Admission Course, enrolled in P1 in 2000, and who self-identified as members of groups for the years 1998, 1999 and 2000 is presented in Table 3.
- g. Profiles of unplaced students as at December 12, 2000 are presented on an anonymous basis in Table 4.

Table 1: Percentage of Students Placed by December, 1991 - 2000

Year	% Students Placed by December	% Actively Looking Students Placed by December*
2000	97.5 (Dec. 12)	99.2
1999	92.9 (Dec. 14)	97.9
1998	97.0 (Dec. 31)	n/a [†]
1997	97.7 (Dec. 31)	n/a
1996	98.4 (Dec. 31)	n/a
1995	98.4 (Dec. 31)	n/a
1994	99.0 (Dec. 31)	n/a
1993	99.5 (Dec. 31)	n/a
1992	99.7 (Dec. 31)	n/a
1991	99.8 (Dec. 31)	n/a

* Adjusted for students who are no longer looking for positions, have not responded to inquiries or were not able to be contacted. Some students pursue other careers or continue their legal studies.

† The basis of previous years' statistics is unavailable. Thus, the previous years' data may or may not be comparable to that used in 1999 and 2000.

Table 2 (a)
Percentage of Unplaced 43rd Bar Admission Course Articling Students
by Self-identified Groups*, Year 2000

	Percentage of Group Unplaced at Date				
	April 3	July 3+	Oct. 6	Dec.12+	Dec.12+ Actively Looking
Unplaced Student Total	21.9	12.2	7.6	2.5	0.8
Male	24.2	15.0	10.1	3.8	1.1
Female	19.3	9.8	5.6	1.3	0.5
Visible Minority	34.5	19.8	14.1	3.2	0.5
Mature (>=40)	38.8	23.4	15.6	7.0	0.0
Person with Disability	31.3	26.7	13.0	4.2	0.0
Aboriginal	25.0	17.6	9.5	9.5	4.8
Gay/Lesbian	33.3	11.1	7.1	7.1	0.0

Table 2 (b)
Number of Unplaced 43rd Bar Admission Course Articling Students
by Self-identified Groups*, Year 2000

	Number of Students in Group Unplaced at Date				
	April 3	July 3+	Oct. 6	Dec.12+	Dec.12+ Actively Looking
Unplaced Student Total	252	141	88	29	9
Male (558)	135	83	55	21	6
Female (595)	117	58	33	8	3
Visible Minority (186)	61	34	24	5	1
Mature (>=40) (57)	19	11	7	4	0
Person with Disability (24)	5	4	2	1	0
Aboriginal (21)	4	3	2	2	1
Gay/Lesbian (14)	3	1	1	1	0

* Groups are not mutually exclusive and are based on voluntary self-disclosure. Statistics are obtained from the Bar Admissions Course database, searching for students enrolled in the 43rd Bar Admission Course, registered for Phase One in 2000 (December 12: 1153 students). Statistics for 2001 will also track NCA and Francophone students.

† In June/July, the Articling & Placement Office attempted to contact all unplaced students, many of whom had secured articling positions but who had not notified the Bar Admission Course.

‡ By November, the Bar Admission Course database was updated to include information of Articles of Clerkship filed for students who began articling prior to this time. Thus, the database search was changed to identify students who had filed 'Articles of Clerkship' forms, providing a more accurate analysis.

◆ These numbers have been adjusted to exclude students who have not responded to telephone enquiries, were unable to be reached, or who have indicated that they are no longer looking for an articling position.

Table 3: Percentage of Students who Self-identified as Members of Groups* in 1998, 1999, and 2000

Group	2000	1999	1998
Male	48.4	48.5	51.3
Female	51.6	51.5	48.7
Visible Minority	16.1	14.8	14.9
Mature	4.9	5.7	5.3
Person with Disability	2.1†	1.0	0.9
Aboriginal	1.8	1.1	1.3
Gay/Lesbian	1.2	0.6	n/a‡

* Groups of students are not mutually exclusive. Students voluntarily identify themselves on the Bar Admission Course application form.

† In year 2000, more students self-identified as having a disability, and as being Aboriginal or gay/lesbian. It is unclear whether the increase is a result of there being more students of these groups in the class or a result of the students' growing confidence in identifying themselves as a member of a particular group.

‡ Not tracked in 1998.

Table 4: Profiles of Actively Looking, Unplaced Students, December 12, 2000

	Gender	Law School	Date of Birth	Member of Self-identified Group	Marks	Submitted biography*	Requested mentort
Student 1	F	NCA‡	1966	Visible minority	Honours	yes	yes
Student 2	M	NCA	1969	none		no	no
Student 3	F	Ottawa	1966	Aboriginal		no	no
Student 4	F	Ottawa	1974	none		no	no
Student 5	M	Ottawa	1967	none	C+	yes	yes
Student 6	M	Ottawa	1977	none	C	yes	no
Student 7	M	York	1975	none	B	yes	yes
Student 8	M	York	1975	none	B	yes	yes
Student 9	M	Alberta	1964	none	B	yes	yes

* A summary of biographical paragraphs provided to interested employers was prepared and administered by the Articling & Placement office.

† Participated in the Mentor Program administered by the Articling & Placement Office.

‡ National Committee on Accreditation candidate.

IV PLACEMENT PROGRAMS, YEAR 2000

7. This section of the report describes placement programs administered by the Articling & Placement Office and is organized as follows:

- a. Job postings,
- b. Telephone Hot-lines,
- c. Biographical summaries,
- d. Mentor program,
- e. Job search skills workshop and counselling,
- f. Matures initiative,
- g. Law school visits,
- h. Legal research skill-building workshops, and
- i. Other.

8. *Job Postings:*

a. *Web Site Postings:* Since August 2000, the Articling & Placement Office has been posting articling and professional positions on the Law Society's job web site (www.lsuc.on.ca/jobs/index.shtml). This site has been attracting approximately 5000 hits per month since it was initiated³.

i. *Articling positions:* Only firms who have an approved articling principal may post articling positions. There is no requirement that positions be paid positions. Placements from recruitment agencies are not posted. Placement Service Request Forms are available on the Articling & Placement Office information web site (www@lsuc.on.ca/services/phase2/Articling.shtml). 73 articling positions were posted on the articling job web site from July through November, 2000.

ii. *Professional Positions:* The graduate placement service lists positions suitable for recent graduates and lawyers with experience at the bar. In the first six months of Year 2000, the service listed 284 (1999 - 250) positions. From July through November, 134 positions were posted on the jobs web site.

b. *Paper-based Initiatives:*

i. Prior to August 2000, the Articling & Placement Office maintained an articling vacancy list of new positions which was sent by fax and email to approved law schools. This list was also posted at each of the Bar Admission Course sites. A bulletin of professional positions was also prepared monthly and sent to those who requested it. Due to the introduction of web-based postings, paper-based services have been discontinued. However, professional positions continue to be posted on the bulletin board at Osgoode Hall. Response about the change to web-based postings has been positive.

³One reason for such a high number is that a hit is recorded each time a job position is reviewed. Someone entering the site might review several job positions, resulting in several hits.

- ii. A two-sided Articling & Placement postcard, in French and English, with Braille overlay, provides contact information for the Articling & Placement Office: address, phone number, and web information. This card is being distributed to all the Ontario law schools and McGill Law School.
9. *Telephone Hot-lines:* The Articling & Placement Office maintains two voice mail boxes. One is a general information line (1-800-668-7380 ext 4888 or 416-644-4888) which provides general placement information. The other is a "Job Hotline" with 24 hour direct dial access. Information is updated weekly to provide information about new articling and professional vacancies.(1-800-668-7380 ext 3980 and 416-947-3980).
10. *Biographical summaries:* In June 2000, students who were not yet placed were sent "Candidate Information Sheets". They were asked to sign a waiver and send the Articling & Placement Office a short biography that would succinctly describe their backgrounds, interests and qualifications. Originally, seventy five students submitted biographical paragraphs. After editing these biographical paragraphs, the Articling & Placement Office provided them to potential employers, providing either the entire list or a tailor-made list according to geographical requests or interest of law. This initiative was begun at the end of 1999 for then unplaced students. Anecdotal evidence supports the continuance of this initiative. Both firms and students appear to have benefited from and enjoyed having this initiative in place.
11. *Mentor program:* The Articling Placement Mentor Program (Mentor Program) was created to assist students who are still seeking articles after having registered in the Bar Admission Course. The objective of the mentor program is to provide unplaced students with a support link by pairing them with a member of the profession who will provide advice, support and encouragement in the search for an articling position. Mentors meet with their assigned student periodically for approximately one hour from time to time to discuss issues of concern to the student and to provide advice on strategies the student might employ in their job search. The mentor is expected to encourage the student to maintain a positive, constructive attitude and approach to securing an articling position. In Year 2000, 36 students requested and received mentors.
12. *Job search skills workshop and counselling:*
 - a. *Strategic Career Planning Consultants:* Two job search skills workshop were offered in Toronto, one during each of the Phase 1 sessions. These workshops were videotaped and the tapes were sent to the Ottawa, London, Kingston and Windsor locations. All students were eligible for individual follow-up job search skills counselling with the career counsellor (Toronto students in person; other students by telephone). Of the 9 students who were counselled, 6 have subsequently been placed. It appears that less students are taking advantage of these workshops and the individual counselling than in the past, likely because law schools are providing stronger career development support through their Career Development Offices.
 - b. *Other Support:* Office hours set aside by the Head of Articling & Placement each week (usually Tuesday afternoons) were often used to meet or telephone conference with individual students to discuss career and search skill issues. The Head of Articling & Placement reviewed resumes, covering letters, job search skill strategies and interview skills, presented options, and made suggestions.

13. *Matures initiative:* A new program to help mature students was initiated in 2000. This coaching program was designed to broaden participants' job search skills through confidential discussions of their personal strengths. This initiative will be supported by the use of personality profiling questionnaires and sessions which will include rehearsals of interview strategies showcasing the individual's personal strengths. Because of the relatively small number of unplaced students at year-end, this program was made available to all unplaced students. Surveys before and after the counselling sessions are being administered to assess the effectiveness of this program, which is expected to get underway in January 2001.
14. *Law School Visits:* Visits by the Head of Articling & Placement to all the Ontario law schools, and McGill, as part of an information outreach effort were initiated in February and March 2000. Visits generally included time set aside to meet with individual third year students who had questions and concerns.
15. *Legal Research Skill-Building Workshops:* In partnership with the Great Library, a series of Legal Research Skill-Building Workshops targeting unplaced students to help improve marketable skills was developed. A QuickLaw session was held in March; five programs scheduled during Year 2000 were cancelled due to lack of interest. This initiative will be discontinued.
16. *Other:* Other activities undertaken by the Articling & Placement Office in 2000 to assist unplaced articling students, particularly those belonging to self-identified group(s) included:
 - a. Publishing notices about available articling students in the ORs and on the Law Society web site;
 - b. Targeted marketing of unplaced students to the profession, including letters sent to legal departments of corporations encouraging the placement of articling students;
 - c. Letter included in the matching program mail-out to principals asking the principals/firms to keep in mind the Law Society's commitment to equity and diversity in their selection of articling candidates;
 - d. First steps made in the preparation of materials to help NCA students with their transition to qualification as lawyers in Ontario;
 - e. Collaboration with the Career Development Officers of the Ontario law schools and McGill to begin the creation of a pamphlet on practical approaches to deal with difficult/illegal/inappropriate interview questions (in process);
 - f. Communication of the Law Society's commitment to equity and diversity at an April meeting of twenty-six Articling Directors/Coordinators for large firms with a request that the firms keep this commitment in mind when hiring articling students for the coming year;
 - g. Meeting with Caron Wishart of LPIC to discuss LPIC's equity initiatives;
 - h. Meeting with C.J. Scott of BLSAC to discuss equity concerns and initiatives (articling vacancy lists were faxed to Ms. Scott on a weekly basis since meeting in early June, 2000) until paper-based services were discontinued;
 - i. Materials obtained from the National Association for Law Placement to aid in the counselling of equity-seeking candidates;
 - j. Collaboration with Rachel Osborne, Equity Initiatives Coordinator, Public Education, to invite students at all the Ontario law schools to attend SOGIC functions to discuss articling concerns of this constituency;
 - k. Emailing information to all Phase Three students about the need for lawyers throughout Ontario, particularly in Northern Ontario.

V RECRUITMENT PROCEDURES

17. The Articling & Placement Office develops and implements recruitment (for articling and summer positions) and matching procedures, including the articling interview guidelines. These procedures are in response to requests from firms and students to formalize the recruitment process and to alleviate some of its inherent problems. Although it is believed that these initiatives have contributed to an improved recruitment program, the Law Society continues to receive reports that some participants in the articling student recruitment program are not complying with the procedures. Compliance with the procedures is required under Rule 5.02(1) of the Society's *Rules of Professional Conduct*.
18. The recruitment procedures are to be followed in spirit as well as in letter. Although deliberate circumvention of the procedures may result in a charge of professional misconduct against the lawyer who participates in or authorizes the circumvention, seldom do students make formal complaints. However, anecdotal evidence suggests that such procedural violations are continuing to occur. In order to better understand how widespread violations are, an anonymous survey, which includes questions about procedural violations, was administered to third year Ontario law students in November 2000 and is currently being compiled.
19. Recruitment procedures provide time lines for receipt of applications, interviews (on campus and otherwise), recruitment activities, offers, acceptances and ranking communications. In 2000, a new set of summer recruitment procedures which included on campus interviewing was developed after consultation with large law firm representatives and law school career development officers. Surveys (created after consultation with law firm representatives and career development officers) will be sent to students, law schools and law firms in early 2001 to assess the effectiveness of these new summer recruitment procedures.
20. Interview Guidelines have been developed to contribute to a better understanding of the concerns that have been raised regarding articling interview questions, and to assist lawyers in reviewing their interview practices to ensure conformity to the ethical standards of the profession and with human rights legislation. The Guidelines should be read in conjunction with Rule 5.03 dealing with discrimination. The Law Society continues to receive reports from students that some lawyers conducting recruitment interviews are asking questions that appear to contravene the Ontario *Human Rights Code* and the *Rules of Professional Conduct*. It is hoped that the anonymous survey administered to third year Ontario law students in November 2000 will provide current data about how widespread this problem is.
21. A matching program was again in place for recruitment of articling students for 2001. Using student and firm preference lists, the program administrator employs a computer algorithm to match articling students with firms. In 2000, 58 firms participated in the match, offering 557 positions. 472 out of 591 students were matched (80%). Both the percentage of students matched and the total number of students matched were the highest in almost ten years. In 2000, the Law Society received \$8,442.54 (\$15.13 per position offered). In 2000, no funds were paid out from the fees received from the match program.
22. A 50/50 Guideline was established in 1989 to encourage firms hiring more than five articling students to reserve 50% of their articling positions for students who did not summer with them. It appears that this guideline is observed more in the breach than in its practice. The original intention was to provide opportunities for students to obtain quality articling positions even though they did not summer with a large firm. The guideline was designed to prevent students from being pressured to secure their articling positions at too early a stage and to afford them the opportunity to have second year marks count more than first year marks. It provided a second chance for students to obtain quality articles with a large firm. Moreover, the major recruitment for articling students took place in the summer, a time that would not be disruptive to their studies.

- 23. However, because of the changes to summer recruitment for second year students and the increasing competition between Toronto firms and American firms, the continuing viability of the match program for articling students is in question. Because firms appear not to be adhering to the 50/50 guideline and are hiring enough summer students to eventually fill all the articling positions, the match for articling students may well be losing its relevance. Still, the match protects a student by providing the student some risk control in being able to rank several firms.

VI SURVEYS

- 24. In order to assess and improve placement programs, surveys are administrated to students, law firms and law schools.
- 25. *Articling Recruitment Interviews:* As mentioned in the section about recruitment procedures, an anonymous survey, which includes questions about procedural violations, was administered to third year Ontario law students in November 2000 and is currently being compiled. The results of this survey will used to update the Recruitment Interviewing Guidelines and to improve the existing recruitment procedures.
- 26. *Employment Survey:* This survey, administered to Phase Three students, will provide information about articling placements (type of experience, geographical location, salary), the articling evaluation process, and future employment. This data will be compiled by early 2001. For 1999, the following information⁴ about articling placements of students in Phase Three 1999 was obtained:
 - private practice firms of two or more lawyers (82%)
 - sole practitioners (2%)
 - government offices or agencies (7%)
 - legal departments of companies (2%)
 - legal clinics (2%)
 - non-traditional settings (5%)

These students also indicated that their articling compensation was as follows:

Salary	% of Respondents
<= 30,000	24%
30,001 - 45,000	37%
>= 45,000	39%

- 27. *Call to the Bar Survey:* This survey, administered to students when they sign the rolls for their call is expected to update the placement information about employment after call. This data will be available in early March 2001.

VII CONCLUSION

- 28. As this snapshot of placement activities indicates, the Articling & Placement Office administers a number of placement programs for articling students and graduate lawyers. Data collected by the Articling and Placement Office continues to identify visible minority, Aboriginal and mature students among those who have a particularly difficult time securing articles. One of the department's ongoing challenges is to successfully promote equity in student recruitment and hiring. Other challenges include tracking the placement of articling students in an informative, accurate and comparable manner, communicating with students and the profession about placement opportunities, and facilitating the employment of articling students and recently graduated lawyers.

⁴309 responses were received. (appr. 1/4 of class)

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

- (1) Copy of the Current Provisions Regarding Articling Abridgments, Waivers, and National and International Articles. (Appendix 2)
- (2) Copy of the Proposals for Articling Reform. (Appendix 5)

Re: Articling Abridgement and National and International Articles

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the policy on Articling Abridgments and National and International Articles set out in Appendix 1 of the Report be approved.

Carried

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that section 12 (National Articles), section 13 (International Articles) and section 14 (except 14.1.4) of the Proposals for Articling Reform be repealed.

Carried

REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Swaye presented the Report of the Finance & Audit Committee for approval.

Finance and Audit Committee
February 8, 2001

Report to Convocation

Purpose of Report: Decision
 Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on February 8, 2001. Committee members in attendance were: Krishna V. (c), Crowe M. (vc), Swaye G. (vc), Chahbar A., Epstein S., Feinstein A., Murphy D., Porter J., Puccini H., Ruby C., White D., Wilson R., Wright B.. Staff in attendance were Heins M., Tysall W., Tinsley R., Grady F., Cawse A..
2. The Committee is reporting on the following matters:
 - Decision
 - Increase in rates paid to Law Society outside counsel;
 - Costs of fence restoration;

Information

- Other.

FOR DECISION

COUNSEL FEES

3. Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society in Professional Regulation Matters were approved by Convocation in May 1998. The Litigation Committee has recommended that, with effect from March 1, 2001, the Law Society raises the maximum hourly rates paid to all outside counsel as set out below:

	OLD RATE	NEW RATE
Senior Counsel (more than 12 years experience)	\$250	\$275
10 - 12 years experience	\$175	\$250
8 -10 years	\$175	\$235
6 - 8 years	\$175	\$215
3 - 5 years	\$120	\$170
Counsel at Bar less than 3 years	\$90	\$120
Law clerks and students	\$50	\$90

4. The increase is required to retain counsel of appropriate quality and specialisation and to maintain parity with amounts paid to counsel in Toronto by LPIC. An increase in the total 2001 budget for outside counsel is not being contemplated, so at maximum rates the increase will reduce the budgeted hours available by approximately 255 hours.
5. The Finance and Audit Committee recommends that Convocation approve the increase in hourly rates for outside counsel, provided that the Finance and Audit Committee is promptly notified if counsel fee budget overruns are expected.

FOR DECISION

OSGOODE HALL FENCE RESTORATION

6. The 2000 Capital Program included funding for the restoration of the perimeter fence surrounding Osgoode Hall. The program was anticipated to span a three year period and at the time of the budget no actual estimates of the total cost were available. The approved capital program included an allocation of \$250,000 in 2000 and projected costs of \$125,000 in each of 2001 and 2002 for a total allocation of \$500,000. The 2001 capital budget has not been formally approved by Convocation yet.
7. The first phase of the restoration was tendered and substantially completed at a cost of \$113,717. This phase of the work was intended to stabilize the fence and prevent it from actually toppling over. The next phase of the work will require actual replacement and repair of large sections of the base and spandrels (stones on top of the base), fabrication of ornamental metal, metal restoration and metal coating. The unspent 2000 funds of approximately \$136,000 could be added to the original planned allocation of \$125,000 for a project budget of \$261,000 in 2001.

8. The remaining elements of the restoration could be completed over the years 2002 and 2003., at an estimated maximum additional cost of \$566,000 excluding taxes and architectural fees.
9. The Finance and Audit Committee recommends that Convocation approve the fence restoration capital program of \$261,000 in 2001.

FOR INFORMATION

OTHER

10. A discussion was held on the recovery of Law Society costs from the Lawyer's Feed the Hungry Program. The CEO advised the Committee that he will be meeting with the program organiser to discuss the issue.
11. The CEO provided the Committee with an interim update on the consultant's review of the LSIS project which is not completed yet. Further updates would be provided on a monthly basis.
12. The Committee discussed the 2002 budget process and agreed that a memorandum from the Chair and CEO on the process and timetable should be circulated to all Committee Chairs and Benchers.

Re: Increase in Rates Paid to Law Society Outside Counsel

It was moved by Mr. Swaye, seconded by Mr. Chahbar that effective March 1st, 2001 the hourly rates for outside counsel be increased as set out on page 2 of the Report provided that the Finance and Audit Committee is promptly notified if counsel fee budget overruns are expected.

Carried

Re: Cost of Osgoode Hall Fence Restoration

It was moved by Mr. Swaye, seconded by Mr. Chahbar that the fence restoration capital program of \$261,000 in 2001 be approved.

Carried

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. MacKenzie presented the Report of the Professional Regulation Committee for approval.

Professional Regulation Committee
February 8, 2001

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 8, 2001. In attendance were:
 - Gavin MacKenzie (Chair)
 - Niels Ortvad (Vice-Chair)

Andrew Coffey
Patrick Furlong
Gary Gottlieb
Ross Murray
Robert Topp

Staff: Janet Brooks, Christina Budweth, Audrey Cado, Lesley Cameron, Margot Devlin, Malcolm Heins, Lucy Rybka-Becker, Elliot Spears, Richard Tinsley, Jim Varro and Jim Yakimovich.

2. This report contains policy reports on

- an amendment to subrule 13.01(1) of the *Rules of Practice and Procedure*
- appointment of a committee of Convocation for the purposes of rule 6.07(3) of the *Rules of Professional Conduct*
- publication of hearing panel members' names in the *Ontario Lawyers Gazette* discipline digests

and an information report on file, caseload management and staffing issues in the resolution and compliance, investigations and discipline departments.

I. POLICY

AMENDMENT TO SUBRULE 13.01 OF THE *RULES OF PRACTICE AND PROCEDURE*

A. INTRODUCTION

3. An issue recently arose relating to administering a reprimand or admonishment and the right of appeal from such an order. As a result, the Committee reviewed the matter and is requesting that Convocation amend subrule 13.01(1) of the *Rules of Practice and Procedure* (the "Rules") to properly identify the parties who may avail themselves of the waiver described in the subrule.
4. Janet L. Brooks, General Regulatory Counsel, assisted the Committee with an explanation of the issue and a suggested amendment to the subrule.

B. EXPLANATION OF THE PROPOSED AMENDMENT

5. An error has been identified in subrule 13.01(1) as it relates to the waiver of appeal rights that is required before the Hearing Panel may administer a reprimand or admonition in a conduct application.
6. In its current form, the subrule permits the tribunal to administer the reprimand or admonition if only *one* of the parties waives its right of appeal even though all parties to the hearing have a right of appeal.¹ The subrule states:

Unless the right of appeal is waived by a party, a reprimand or admonition shall not be administered before the time for serving a notice of appeal has expired. (emphasis added)

¹Section 49.32(1) of the *Law Society Act* states: "A party to a proceeding before the Hearing Panel may appeal a final decision or order of the Hearing Panel to the Appeal Panel."

7. When the Rules were drafted, it was intended that a reprimand or admonition would not be administered unless the appeal rights of the parties had been waived or the appeal period had expired. It was considered unfair to a party to administer the penalty before that party's appeal rights were exhausted. For that reason, another subrule, 13.01(3), provides that on an appeal from an order of reprimand or admonition, the Appeal Panel may administer the reprimand or admonition.²
8. The following amendment to the subrule is proposed:

Unless the right of appeal is waived by the Society and the member or student member, a reprimand or admonition shall not be administered before the time for serving a notice of appeal has expired.

C. DECISION FOR CONVOCATION

9. Convocation is requested to amend subrule 13.01(1) of the Rules as described in paragraph 8 above or with such language as Convocation deems appropriate.
10. A motion for amending the subrule in the language proposed by the Committee appears below.

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON FEBRUARY 21, 2001

MOVED BY

SECONDED BY

THAT rule 13.01 [Orders] be amended by replacing in subrule (1) the words "a party" in the first line with the words "the Society and the member or student member".

APPOINTMENT OF A COMMITTEE OF CONVOCATION DESCRIBED IN
SUBRULE 6.07(3) OF THE *RULES OF PROFESSIONAL CONDUCT*

A. INTRODUCTION AND BACKGROUND

11. The Committee is proposing that Convocation appoint a committee of benchers for the purposes described in subrule 6.07(3) of the *Rules of Professional Conduct*.

² Subrule 13.03(3) states: "Where an order of reprimand or admonition is appealed and where the Appeal Panel decides that a reprimand or admonition is the appropriate disposition, the reprimand or admonition may be administered by any member of the Appeal Panel."

12. Subrule 6.07(3) is the new and amended version of former Rule 20, and prescribes lawyers' obligations to the Society when hiring lawyers who, for example, have been disbarred or suspended. One of the amendments to the rule, reflected in subrule (3), permits lawyers who wish to hire lawyers suspended for other than disciplinary matters to seek the approval for the hiring from a "committee of Convocation appointed for this purpose", rather than Convocation.
13. Subrules (2) and (3) of rule 6.07 state
 - (2) Without the express approval of Convocation, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, suspended, undertaken not to practice, or who has been involved in disciplinary action and been permitted to resign, and has not been reinstated or readmitted.
 - (3) Where a person has been suspended for non-payment of fees or for some reason not involving disciplinary action, the express approval referred to in subrule (2) may also be granted by a committee of Convocation appointed for this purpose.

B. PROPOSAL FOR THE COMMITTEE UNDER SUBRULE (3)

14. The Committee, after reviewing material prepared by Janet L. Brooks, General Regulatory Counsel, is proposing that benchers who are the members of the Hearing Panel established under the *Law Society Act* be appointed by Convocation to hear applications under subrule 6.07(2). The composition of the Hearing Panel is established by section 49.21 of the Act, which states:
 - 49.21 (1) There is hereby established a panel of benchers to be known in English as the Law Society Hearing Panel and in French as Comité d'audition du Barreau.
 - (2) Every bencher is a member of the Hearing Panel, except the following benchers:
 1. Benchers who are members of the Proceedings Authorization Committee.
 2. Benchers who hold office under paragraph 1 or 2 of subsection 12 (1) [*The Minister of Justice and Attorney General for Canada and The Solicitor General for Canada*] or under subsection 12(2) [*The Attorney General for Ontario and every person who has held the office of Attorney General for Ontario*].
15. The Committee also proposes that three benchers hear applications under subrule 6.07(3). Typically, three benchers sit on applications under the Act and By-laws.
16. The Committee believes that by using the members of the hearing panel,
 - the applications will be considered on a regular basis (the applications can be dealt with by hearing panel members on scheduled hearing days)
 - the responsibilities will be more evenly distributed among benchers
 - the creation of a new bencher committee and associated administration will be avoided.

C. DECISION FOR CONVOCATION

17. For the purposes of subrule 6.07(3), Convocation is requested to
 - (a) appoint a committee comprised of every benchers except for benchers who are members of the Proceedings Authorization Committee and benchers who hold office under paragraph 1 or 2 of subsection 12 (1) or under subsection 12(2) of the *Law Society Act* to hear applications under subrule 6.07(2), and
 - (b) specify that the quorum of the committee so appointed is three benchers.
18. A motion to effect the appointment described above appears below.

THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON FEBRUARY 21, 2001

MOVED BY

SECONDED BY

1. THAT for the purposes of subrule 6.07 (1) of the *Rules of Professional Conduct*, Convocation appoint a committee comprised of every benchers except for benchers who are members of the Proceedings Authorization Committee and benchers who hold office under paragraph 1 or 2 of subsection 12 (1) or under subsection 12(2) of the *Law Society Act* to hear applications under subrule 6.07(2).
2. THAT Convocation make the quorum of the committee described in paragraph 1. above three benchers.

PUBLICATION OF HEARING PANEL MEMBERS' NAMES IN DISCIPLINE DIGESTS IN THE *ONTARIO LAWYERS GAZETTE* ("OLG")

A. INTRODUCTION

19. At its January 2001 meeting, the Committee discussed an issue referred to the Committee, as a request for guidance, by benchers Greg Mulligan of the OLG editorial board that originated with benchers Gordon Bobesich.
20. Mr. Bobesich suggested that the names of the members of a hearing panel be published in the discipline digests that appear in the OLG and that publishing the name of the Society's discipline counsel in the digests be discontinued. The rationale for the suggestion is that publishing the names of hearing panel members would assist lawyers who represent members before hearing panels in preparing for hearings.
21. The matter was reported to January 25, 2001 Convocation as information only, as the majority of Committee members determined that no change should be made to the current format of the digests. At Convocation on January 25, benchers Gary Gottlieb requested that the matter be discussed at the next Convocation.
22. This report has been prepared to inform members of Convocation about the Committee's discussion. The Committee, in accordance with its majority view, maintains that no changes should be made the current format of the digests.

B. THE FORMAT OF THE DISCIPLINE DIGESTS

23. Currently, the digests include the name of the member, a brief description of the matter, the finding and penalty, and the name of counsel for the Society and the member. A copy of the digest from the most recent OLG appears at Appendix 1.
24. Staff in the Society's communications department provided information to the Committee on this issue. They advised that including the name of discipline counsel in the digests has proved useful, given that on occasion members call discipline counsel requesting more information about a particular case or copies of documents (available publicly) from a particular hearing.

C. THE COMMITTEE'S DISCUSSION AND CONCLUSIONS

25. During discussion, a number of opinions were expressed both for and against the change. The Committee also had the benefit of the views of Lesley Cameron, Senior Counsel - Discipline, received through her exchange with communications staff on this issue.
26. Those favouring the addition of hearing panel members' names felt that
 - the digest could be equated with the head note of a reported decision of the courts, where the identity of the judge is part of the case report
 - publishing the names would assist readers in learning how particular benchers decide certain issues
 - accountability for the manner in which benchers decide cases would be added to the disciplinary function of the Society through the hearing panels' decisions
 - the profession would be encouraged to take more interest in the benchers it elects if it received information about a bencher's philosophy through decisions made as a member of hearing panel
27. Those favouring no change to the current form of the digest felt that
 - as far as receiving information is concerned, there may not be any advantage to providing the names of hearing panel members, as it may be inappropriate for benchers to be approached about their decisions in light of their quasi-judicial role in discipline decisions
 - the digest cannot be equated with the head note of case report from the a court, as there is no discussion of the thinking behind the decision or any information about the consideration of the issues
 - the digest also contains no information about whether the hearing panel's decision was unanimous, and the publication of the name of a bencher who dissented either on the finding or the penalty could therefore be misleading
28. The Committee noted that
 - other professional regulatory bodies, such as those regulating medical doctors and accountants, do not include the names of members of the equivalent of the Society's hearing panel in similar publications
 - the names of the hearing panel members are disclosed in the decision and reasons of the hearing panel, which are available to those requesting them through a call to the Society

29. The majority of the Committee concluded that the format of the digest should not change. The identity of hearing panel members is available through the Law Society, as are the reasons and decisions of hearing panels, which identify panel members. The Committee also felt that Society's discipline counsel should continue to be the person with whom those who inquire about a matter should speak, and publication of counsel's names serves that end.
30. At its February 8, 2001 meeting, the Committee proposed one change to the general information accompanying the OLG discipline digests, in that it should indicate that the reasons of hearing panels are available to individuals who wish to receive them.

D. DECISION FOR CONVOCATION

31. Convocation is requested to determine whether the change to the format of the OLG discipline digests as suggested by Mr. Bobesich, but rejected by the Committee, should be made, namely, to delete the name of the Society's counsel and replace it with the names of the members of the hearing panel for a particular case.

II. INFORMATION

REPORT ON COMPLAINTS, INVESTIGATIONS AND DISCIPLINE FILE MANAGEMENT, CASELOADS AND OPERATIONS

32. The Secretary, Richard Tinsley, Lesley Cameron (Senior Counsel - Discipline), James Yakimovich (Manager, Investigations), and Audrey Cado (Team Leader, Resolution and Compliance), reported to the Committee on caseload management in the Resolution and Compliance, Investigations, and Discipline Departments. The reports appear at Appendix 2. These reports are prepared monthly for review by the Committee as part of its monitoring function respecting file management. The Committee receives general information and statistics on file management and caseloads in the departments noted above.³
33. In addition to discussion of the file management and caseload information, staff also updated the Committee with the following information:
- the five new Society discipline counsel, recently hired to complete the full complement of counsel, have all begun their work with the Society;
 - the Society is preparing to make offers to candidates for the two new counsel positions in Investigations, approved in the budget for 2001;
 - the Society is preparing to advertise for the new litigation counsel position in Investigations, approved in the budget for 2001;
 - the job description for the new position to deal with the resolution and compliance component of Investigations work has been finalized and an advertisement for the position will be posted shortly.
34. In other staffing changes, the chair made special mention of Christina Budweth and her outstanding contributions as Society discipline counsel since 1991. Ms. Budweth will be leaving the Society in March 2001. The Committee thanked Ms. Budweth for her commitment to the Society's discipline process, the excellence of her work, and her skill and fairness as counsel.

³The Chair of the Committee, as a member of the Proceedings Authorization Committee, is not a member of the Hearing Panel and accordingly does not and cannot have adjudicative responsibilities. Information received by the Committee, as reflected in the reports appended to this report, does not itemize specific cases.

APPENDIX 1

DISCIPLINE DIGEST FROM THE *ONTARIO LAWYERS GAZETTE*

APPENDIX 2

FILE MANAGEMENT AND CASELOAD STATISTICS FOR RESOLUTION AND COMPLIANCE,
INVESTIGATIONS AND DISCIPLINE TO JANUARY 2001
DISCIPLINE DEPARTMENT

MEMORANDUM

TO: Professional Regulation Committee

FROM: Lesley Cameron
Senior Counsel - Discipline

DATE: January 31, 2001

RE: *Discipline Department Information*

The purpose of this memorandum is to provide information about matters in the discipline process as of January 31, 2001.

Total Matters in Discipline Process

Attached as Chart 1 is a list of the number of each type of file carried by the discipline department at January 31, 2001. It includes only files involving Law Society hearings or appeals from such hearings. It does not include other work done by the department, for example, representing the Law Society in applications by third parties for access to Law Society information in civil or criminal proceedings.

As can be seen from Chart 1:

1. 135 matters are pending hearing or appeal;
2. 38 conduct applications have been authorised for prosecution by the Proceedings Authorisation Committee, but have not yet been issued as conduct applications;
3. 75 conduct applications are in the discipline process: 33 are before the Hearing Management Tribunal with no hearing date set; 42 have hearing dates set or the hearing is underway;
4. 3 appeals are pending before the Law Society Appeal Panel;

5. 3 appeals and 2 judicial reviews are pending before the Divisional Court.

Aging of Matters Authorised but not Issued

Attached as Chart 2 is a breakdown of the age and carriage of the matters which have been authorised for prosecution as conduct applications, but have not yet been issued. The Chair of the Proceedings Authorisation Committee and the Secretary have been provided with the names of the files, a description of the nature of the allegations in each file and a brief status report on each file.

Of the 5 matters over 1 year old, all required further investigation after authorisation for prosecution. The 1 matter over 1 year old handled by Law Society counsel was awaiting further investigation and the subsequent authorisation of new particulars. The Investigations Department obtained this further authorisation on January 16, 2001.

Of the 4 matters handled by outside counsel, two have been authorised by the Proceedings Authorisation to be resolved on undertakings by the members and without proceeding to hearing. In the other two matters, the investigators experienced some difficulties in obtaining the necessary evidentiary support. Outside counsel will be bringing an application for search and seizure in one of these matters to obtain the evidence which remains outstanding.

New Counsel

The Law Society has hired 5 new permanent discipline counsel, representing an increase of 3 permanent counsel from 2001; a replacement for Glenn Stuart who has left the Law Society; and a replacement for Janet Brooks who has accepted another position within the Law Society.

Two of the counsel started in late January and another two are arriving February 5, 2001. The fifth counsel has been a contract counsel in the department since last summer.

Appeals

On December 21, 2001, the Law Society Appeal Panel heard its first appeal on the merits. The appeal was taken by a member from the order of a Hearing Panel finding him guilty of professional misconduct and disbarring him. The Appeal Panel dismissed the appeal. Much of the day was spent arguing the appropriate standard of review of a Hearing Panel's decision by the Appeal Panel. The Appeal Panel reserved on this issue and indicated that it intends to write reasons on this issue. The Member has served a Notice of Appeal from the order of the Appeal Panel.

LC/

Chart 1

Matters in Discipline Process January 31, 2001	
Conduct Applications Authorised But Not Issued	38
Conduct Applications Issued Hearing Date Not Set	33
Conduct Applications Issued Hearing Date Set or Hearing Started	42
Student Conduct Applications	1
Capacity Applications	1
Admission Hearings	6
Readmission Hearings	4
Reinstatement Hearings	4
Appeals to Law Society Appeal Panel	3
Appeals/Judicial Reviews Divisional Court	5
Total Matters	135

Chart 2

Conduct Applications Authorised but not Issued January 31, 2001			
	3 to 6 Months Old	6 to 12 Months Old	Over 1 Year Old
Law Society Counsel	11	4	1
Outside Counsel	2	6	4
Total	13	10	5

Re: Amendment to Rule 13.01(1) of Rules of Practice and Procedure

It was moved by Mr. MacKenzie, seconded by Ms. Ross that rule 13.0(1) [Orders] be amended by replacing in subrule (1) the words "a party" in the first line with the words "the Society and the member or student member".

"Unless the right of appeal is waived by the Society and the member or student member, a reprimand or admonition shall not be administered before the time for serving a notice of appeal has expired."

Carried

Re: Amendment to Rule 6.07(3) of Rules of Professional Conduct

It was moved by Mr. MacKenzie, seconded by Ms. Ross that for the purposes of subrule 6.07 (1) of the Rules of Professional Conduct, Convocation appoint a committee comprised of every benchers except for benchers who are members of the Proceedings Authorization Committee and benchers who hold office under paragraph 1 or 2 of subsection 12 (1) or under subsection 12(2) of the Law Society Act to hear applications under subrule 6.07(2) and that the quorum of the committee be three benchers.

Carried

Re: Ontario Lawyers Gazette - Reporting Names of Panel Members

It was moved by Ms. Curtis, seconded by Mr. Swaye that the names of the hearing panels be published in the Ontario Lawyers Gazette.

Lost

ROLL-CALL VOTE

Bindman	For
Chahbar	Against
Cherniak	Against
Coffey	For
Curtis	For
E. Ducharme	Against
Finkelstein	For
Gottlieb	For
Hunter	Against
Lalonde	For
Laskin	For
MacKenzie	Against
Millar	Against
Mulligan	Against
Pilkington	Against
Porter	Against
Potter	Against
Ross	For
Simpson	For
Swaye	For
Wright	Against

Vote: 11 - Against, 10 - For

Mr. MacKenzie wished it noted that Ms. Christina Budweth has been with the Law Society for ten years. He said that she was a true credit to the Society for her skill and fairness to her position as a discipline counsel and thanked her for her contribution. The Treasurer added that Ms. Budweth is a loyal and extremely able counsel.

REPORT FOR INFORMATION

REPORT OF THE EQUITY & ABORIGINAL ISSUES COMMITTEE

Ms. Potter reported on the Equity and Diversity training program underway for members of the profession and the action plan to assist in analyzing the implementation of the Law Society's French Language Services Policy.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/
COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES

Report to Convocation

Purpose of Report: Information

Prepared by the Equity Initiatives Department

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APPENDICES

A.	EQUITY AND DIVERSITY TRAINING PROGRAM	TAB A
B.	ACTION PLAN ON THE LAW SOCIETY'S FRENCH LANGUAGE SERVICES POLICY	TAB B
C.	UPDATE ON ABORIGINAL ISSUES	TAB C

Terms of Reference/Committee Process

The Committee met on Thursday, February 8, 2000, between 2 and 4 p.m. in Convocation Room. In attendance were:

George Hunter (Vice-Chair)
Don White
Leonard Braithwaite
Stephen Bindman
Natalie Boutet (non-bencher)
Jeff Hewitt (non-bencher)
Susan Opler (non-bencher)

Staff: Charles Smith, Rachel Osborne, Geneva Yee, Lucy Rybka-Bekkar

The Committee reports the following items for Convocation's information:

- 1) Equity and Diversity Training Program
- 2) French Language Services Action Plan
- 3) Update on Aboriginal Issues

FOR CONVOCATION INFORMATION

EQUITY AND DIVERSITY TRAINING CENTRE

1. In June, 2000, the Committee considered a Discussion Document on LSUC Education and Training. This report identified a number of equity and diversity training needs noted by departments in their equity and diversity action plans. It also referred to the proposals for education and training of members of the legal profession and benchers previously reported on by the Equity Advisor.

2. To date, provision of training to LSUC departments is underway in a variety of areas, eg., the Education Department as well as corporate workplace harassment. Training programs have also been developed for lawyers and community representatives who become involved in the Connecting Communities with Counsel Program and further training will be developed to support lawyers involved in the Law Firm Equity and Diversity Mentorship Program.

3. While these activities are underway, the Equity Initiatives Department is now prepared to launch a coordinated program that will provide education and training on equity and diversity issues for members of the legal profession. Entitled the *Equity and Diversity Training Program*¹, the Equity Initiatives Department is in the process of designing and delivering training programs for members of the legal profession. This can be done within firms or as part of the Law Society's ongoing Continuing Legal Education program and will be offered on a cost-recovery basis only.

¹ This concept was first proposed by the Equity Advisor in submitting proposals to the Finance and Audit Committee in August, 1999. This proposal was then approved as part of the Equity Initiatives Department budget and five year forecast in the fall of 1999.

4. A model for this already is in place. In the fall of 2000, the Equity Initiatives Department has worked with the Discrimination and Harassment Counsel to develop training for Goodman Phillips and Vineberg (now Goodman's) and in the near future to Tory's. The Equity Initiatives Department has also provided an orientation session to Sigurdson's and Associates. The training done with the DHC has been done on a cost-recovery basis and has generated revenues for the program which will be used to support training requests by other firms and the promotion of this program. In particular, this will cover the cost of research, preparation of materials and the retention of facilitators to assist in delivering the training. Such funds will also be used to support unforeseen demands placed on the DHC program.

5. To facilitate the further development of the *Training Program*, an advisory group has been struck consisting of expertise from the legal profession and community-based organizations actively engaged in education and training work on equity and diversity issues, including representatives of the National Judicial Institute, the Department of Justice, the Harmony Movement, the Law Society's Equity Advisory Group, AJEFO, Roti io' ta'-kier and others...

FRENCH LANGUAGE SERVICES SURVEY AND ACTION PLAN

6. As a follow-up to the report submitted to the Committee in October, 2000, this report provides an action plan to assist in analyzing the implementation of the Law Society's French Language Services Policy. It is anticipated that the analysis will lead to recommendations for both Committee and Convocation consideration.

7. The action plan comprises activities aimed at engaging Law Society staff, benchers, members of the legal profession and the public. The focus of the plan is aimed at assessing the knowledge these groups have, and the use they have made of, the Law Society's French Language Services Policy and services. It also aims to assess the effectiveness of what is currently in place. To facilitate this, the following steps are required:

- a) A survey has been designed for implementation across the organization. Divided into four sections, it probes such issues as: (i) awareness of the French Language Services Policy; (ii) awareness of the draft Translation Guidelines; (iii) translation of public documents; and (iv) organizational issues, eg., the number of bilingual staff within a department and the testing of staff in designated bilingual positions. It is anticipated that the survey will be filled out by all senior management and management/supervisory staff and team leaders. The survey will also be made available to all staff in all departments. *Timeframe: February - March;*
- b) A survey will be designed to seek response from French-speaking members of the profession. These individuals will be identified through review of the member database and in cooperation with AJEFO. The purpose of this survey is to seek their input on this matter. *Timeframe: Spring;*
- c) Focus groups will be held with representatives of community-based agencies serving the Francophone community to assess their knowledge of, and interaction with, the Law Society and its capacity to provide services in French. *Timeframe: Spring;*
- d) Review of the current policy to ensure it is contemporary and provides the parameters required to enable the Law Society to meet the needs of the French-speaking public and bar. *Timeframe: Summer - Fall.*

8. Following these activities, a report with analysis and recommendations will be submitted to the Committee for consideration.

ABORIGINAL ISSUES

9. This report provides the Committee with an update on the activities supporting Aboriginal students and members of the profession. It provides an overview of outreach initiatives aimed at encouraging Aboriginal youth to seek law as a career and services provided to Aboriginal students to enable them to succeed in the Bar Admission Course.

10. The Committee also received a letter from Mr. J. Hewitt, co-chair Roti io' ta'-kier, requesting that Mr. Kirk Goodtrack, General Counsel for Casino Rama, make a presentation to the Committee regarding employment issues concerning Aboriginal lawyers. The Committee has agreed to invite Mr. Goodtrack to its next meeting to receive the presentation and undertake appropriate action, if required.

Equity and Diversity Training Program

Introduction

1. Convocation recognizes the role and responsibility of the Law Society as the governor of the legal profession and its capacities as a policy-maker, resource to and regulator of the profession, educator and employer. In this context, the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*¹ provides that the Law Society of Upper Canada will strive to create an environment of equality within the legal profession for all people regardless of their race, creed, age, language, nationality, place of origin, ethnic origin, Aboriginal status, disability, gender, sexual orientation, political affiliation and socio-economic status. The Equity and Diversity Corporate Action Plans² state that one goal of the Law Society is to develop opportunities for members of the profession to gain knowledge, experience and skills related to working effectively with diverse communities, and suggests that education and training programs be implemented.

Objectives of the Equity and Diversity Training Program

2. In implementing education and training programs, the Law Society must consider certain relevant characteristics of the legal profession. Changes in the legal profession are usually gradual and the practical application of the idea of equity and diversity within the legal profession is often seen as either challenging or unrelated to competence in practice. The legal profession is competitive and many of its members believe in individual achievement, which may create barriers to the success of under-represented groups as well as in the access these groups have to legal services. A number of lawyers feel alienated by the size and types of practice of large firms, and choose to practice in small firms or as sole practitioners. However, small firms and sole practitioners often do not have the resources and time to deal with equity and diversity issues, or to develop the appropriate expertise to do so effectively. There are also those who may believe that equity does not add value for law firms which already have strong reputations and clients. Further, members of communities may not be aware of the availability of legal services or may feel that their lawyer either does not understand them, treats them differently, harasses or discriminates against them or otherwise violates their rights.

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

²The Law Society of Upper Canada, *Equity and Diversity Action Plans* (Toronto: The Law Society of Upper Canada, 2000).

3. An equity and diversity training program will promote the value of equity and diversity. Law firms and legal practitioners have to offer services to an increasingly diverse population. Further, the legal community will have access to an increasingly larger demographic talent pool. Lewis Brown Griggs suggests that “more and more, organizations can remain competitive only if they can recognize and obtain the best talent, value the diverse perspectives that come with talent born of different cultures, races, and genders, nurture and train that talent, and create an atmosphere that values its workforce. One of the many rewards organizations begin to see when they establish a diverse workforce is an increased market for its services or products”.³

4. The equity and diversity training program requires a strong mandate which states an overall goal for equity and diversity training and addresses the adverse social justice, business, Convocation-mandated and legal reasons for establishing such a resource within the legal profession.

5. The creation of a viable equity and diversity training program will assist in addressing various myths and beliefs regarding the integral value of equity law and social policy, and in removing barriers faced by under-represented members of the profession and the public. The equity and diversity training program will provide:

- direct training to the legal profession;
- a roster of individuals who can provide high quality training in equity and diversity;
- advice on organizational change;
- a resource centre on equity and diversity issues, information on changing demographics;
- guidelines on how to select high quality equity and diversity educators and trainers.

The Creation of an Advisory Committee

6. The development of a viable equity and diversity training program requires partners able to access and influence the different parts of the legal profession and to provide insight into the legal issues and views of diverse communities. The partners will lend credibility to the program and should be representative of different segments of the Ontario legal profession and reflective of advocacy and other organizations who serve Ontario’s diverse communities.

7. The creation of an advisory group is now underway with representatives of such organizations as: the Ontario Human Rights Commission, the Advocates’ Society, the Department of Justice, the Ministry of the Attorney General, LPIC, Legal Aid Ontario, the National Judicial Institute, the Equity Advisory Group, Association d’expression française de l’Ontario (AJEFO), Roti io’ ta’-kier, the Discrimination and Harassment Counsel, the head of Continuing Legal Education of the Law Society of Upper Canada and Connecting Communities with Counsel.

Services offered by the Equity and Diversity Training Program

8. The equity and diversity training program will structure its curriculum, programs and activities with the cooperation of the advisory group. The programs would include updates and briefings on important equity and diversity developments in the legal profession, skills development training, intensive, high content sessions with prominent speakers on leading equity and diversity issues, testimonial events and networking forums for equity-committee members from large law firms. The equity and diversity training program will offer services, such as informal education sessions, continuing legal education, formal training sessions, “train the trainer” sessions to large, medium and small law firms as well as sole practitioners.

³ Lewis Brown Griggs, “Valuing Diversity” in Lewis Brown Griggs and Lente-Louise Louw, ed., *Valuing Diversity New Tools for a New Reality* (New York: McGraw-Hill, Inc., 1995) 1 at 9.

Large and Medium Size Law Firms

9. Large and medium size law firms will have equity and diversity needs that are different from small law firms or sole practitioners. The needs and interests of large and medium law firms will also vary according to a number of other factors such as the type of law practice, the client base, the internal structure of the firm, the number of employees, lawyers and partners. To address these needs, the following models will be developed:

a) *Informal Education Sessions*

10. A number of law firms' organizational structures include equity and diversity committees and other committees that deal with issues of equity and diversity on a regular basis. For example, law firms sometimes have articling committees and hiring committees who deal with issues of equity and diversity within the workplace such as hiring practices and interview techniques. The equity and diversity training program will offer assistance to those committees, or ensure that experts are available to meet with such committees, on an informal basis, to discuss issues such as:

- harassment and discrimination within the workplace and organizational responsibility;
- equity in recruitment practices and in hiring of articling students;
- equity and diversity interviewing techniques;
- accommodation within the workplace;
- use of inclusive language within the workplace;
- the positive aspects of having a workforce reflective of the population.

b) *Continuing Legal Education*

11. A number of law firms have adopted internal continuing legal education programs. Training programs could be coordinated by the equity and diversity training program and in-house directors of continuing legal education, and take into account the firms already existing continuing legal education programs. The delivery of the seminars would be done by experts. Such training could deal with subjects such as:

- working with support staff: equity and diversity considerations;
- dealing with other professionals at the firm: equity and diversity considerations;
- dealing with clients who come from diverse backgrounds.

c) *Formal Training Sessions*

12. A number of law firms have identified a need to educate all staff, lawyers and non-lawyers, on issues of equity and diversity. The equity and diversity training program could coordinate and custom design training sessions, based on the structure of the law firm, its needs and interests, and the objectives of doing the training. The sessions would be offered on a cost recovery basis. Such sessions would deal with issues identified by the law firms. For example:

- harassment and discrimination within the legal profession;
- how to draft a harassment and discrimination policy;

- flexible work arrangements and how to draft a policy;
- accommodations within the workplace and the duty of the organization;
- under-represented groups within the legal profession;
- the discrimination and harassment counsel: mandate and responsibilities;
- equity and diversity in hiring and recruiting;
- the use of inclusive language;
- critical analysis of the law;
- how to create a positive workplace environment, free from harassment and discrimination;
- same sex couples: their rights.

d) *Train the Trainer*

13. Law firms may be in a position to offer firm wide training programs through their own internal expertise. The equity and diversity training program could structure training programs to “train the trainers”. The advantages of such programs are:

- members of law firms are trained and can in turn train others;
- training internal staff by in-house experts might be well received;
- increased cost efficiency;
- creation of in-house expertise on equity and diversity issues.

14. The training programs could be structured to train key lawyers and/or staff regarding pedagogical techniques for instructors and the substance of the training sessions. The training sessions would focus on issues such as principles of adult learning, how to structure a training session regarding equity issues, how to deliver a training session and how to prepare relevant and practical material.

B) *Small Law Firms and Sole Practitioners*

15. Small law firms and sole practitioners may be interested in understanding how to best serve an increasingly diverse community and how to increase their client base by offering services to a diverse community. The education sessions for small law firms and sole practitioners could take the form of continuing legal education seminars offered on issues such as:

- skills development training on how to serve diverse clients’s needs in areas such as immigration law and real estate law;
- updates on important equity-diversity developments in the legal profession;
- how to offer legal services by taking into account the client’s personal cultural background, values and perspectives.

C) *Resource Program*

16. The resource program would provide information, such as:

- documentation and videos on equity and diversity issues;
- documentation and videos on equity and diversity training and education;
- guidelines on how to choose high quality trainer or educator;
- roster of high quality trainers and educators.

Action Plan

17. To facilitate development of the program, the Equity Initiatives Department will undertake the following initiatives:

- i) The creation of an advisory group to assist in the creation and evolution of the equity and diversity training program.
- ii) The scheduling of regular meetings with the advisory group.
- iii) The creation of the equity and diversity training program, with a mandate established by the advisory group.
- iv) Although most of the training and education will be offered on a cost recovery basis, the Equity Initiatives Department should proceed with requests for funding from other organizations.

18. The Equity Initiatives Department has, in the last six months, developed and delivered training sessions on equity and diversity issues to a number of large and medium size law firms. The training sessions have been very well received, the demand for such training is growing and the sessions have produced revenue for the Law Society. This suggests that the creation of the training program is important to further the Law Society's commitment to the promotion of equity and diversity within the legal profession and will provide some financial support to further develop and implement equity and diversity initiatives.

Action Plan on the Law Society's French Language Services Policy

Introduction:

1. At the Committee's meeting on October 12, 2000, members received a report addressing the Law Society's implementation of the French Language Services Policy. Adopted by Convocation in 1989, the policy was to be implemented across the Law Society and resources were added to the Communications and Public Affairs Department to ensure quality translation and interpretation services were available in-house for this purpose. In the report to Committee, it was noted that:

- The coordination of the FLS policy has become one of the priorities of the Equity Initiatives Department and has been included as part of the Corporate Equity and Diversity Action Plans developed in January 2001; and
- A significant part of the FLS policy implementation concerns the capacity of the Law Society to respond to phone and over-the-counter inquiries as well as to provide the Bar Admissions Course, conduct investigatory, audit and discipline proceedings in French and prepare/disseminate public documents in both official languages.

2. To develop strategies on these matters, a working group of benchers, Law Society staff and representatives of AJEFO has been struck. The Law Society staff includes representation from key departments, eg., Communications and Public Affairs, Client Services, Advisory and Compliance Services, and Human Resources.

3. This report provides Committee with an update from the working group and an action plan developed by the working group for Committee's endorsement, including a survey of Law Society staff and self-identified French-speaking members of the profession and the public. It is anticipated that the results of the survey will provide information essential to enabling the Law Society to engage the French-speaking bar and public in Ontario.

The Action Plan:

4. Given the Law Society's capacity to provide services in French, it is critical to ensure that service transfers and referrals are handled appropriately. For example, if a French caller speaks to staff in Client Services Department, can that staff successfully transfer the caller to a bilingual staff person in the appropriate department? In addition, it is essential to ensure consistency in the capacity of the Law Society to provide written communications in French. Currently, a number of key documents are in French and English, eg., the Ontario Gazette, Law Society By-Laws, summaries of the *Bicentennial Report on Equity Issues in the Legal Profession* and other equity and diversity documents. While these documents are available in English and French, it appears unclear to Law Society departments as to when a document should be translated, how such a document will be made available to the French-speaking bar and public, and how the costs for such translations will be covered. The Law Society's French Language Policy is clear regarding proactive intent but provides no guidelines for implementation. This has resulted in an uneven approach to policy implementation.

5. To address this issue, the following steps are required:

- a) To assist in improving Law Society's staff understanding of the policy and, as well, to gain a sense of the issues the Law Society needs to address corporately and within each department, a survey (Appendix "B") has been designed for implementation across the organization. The survey is divided into four sections and probes such issues as: (i) awareness of the French Language Services Policy; (ii) awareness of the draft Translation Guidelines; (iii) translation of public documents; and (iv) organizational issues, eg., the number of bilingual staff within a department and the testing of staff in designated bilingual positions. It is anticipated that the survey will be filled out by all senior management and management/supervisory staff and team leaders. The survey will also be made available to all staff in all departments. Timeframe: January - February;
- b) Discussions will be held to seek response from French-speaking members of the profession. These individuals will be identified through review of the member database and in cooperation with AJEFO. The purpose of this survey is to seek their input on this matter. Timeframe: Spring;
- c) Discussions will be held with representatives of community-based agencies serving the Francophone community to assess their knowledge of, and interaction with, the Law Society and its capacity to provide services in French. Timeframe: Spring;
- d) The current policy will be reviewed to ensure it is contemporary and provides the parameters required to enable the Law Society to meet the needs of the French-speaking public and bar.

6. Following these activities, a report with analysis and recommendations will be submitted to the Committee for consideration. At this time, it is requested that the Committee endorse the directions set out above and, further, that the Committee inform Convocation of these activities.

Aboriginal Issues Report

Introduction

1. This report covers Aboriginal issues and highlights from the work of the Aboriginal Issues Coordinator for the time period October 2000 to present.

Public Education and Community Outreach

2. The Aboriginal Issues Coordinator attended the annual conference and general meeting of the Indigenous Bar Association of Canada, held in Ottawa, October 20th through 22nd, 2000. A brief presentation was made to the assembly regarding the Law Society's ongoing work regarding Aboriginal issues, with particular mention to the creation of the Aboriginal Issues Coordinator position.
3. The Aboriginal Issues Coordinator and Equity Initiatives Department worked in coordination with the City of Toronto, and the Métis Nation of Ontario, to organize several events commemorating Louis Riel Day - November 16th, 2000. This was the first occasion where the Law Society has partnered with the Métis Nation of Ontario, and the continuation of a fairly new but very successful relationship partnering with the City of Toronto around Aboriginal issues.
4. The Louis Riel Day events included:
 - i) *Re-Awakening A Nation*, a Métis Art Show which was displayed in the Museum Room for three weeks in November;
 - ii) a youth program on Métis history, culture and rights;
 - iii) a panel discussion on Métis rights;
 - iv) a flag raising at City Hall;
 - v) a Commemorative Ceremony at the Legislature, and subsequent Moose Feast.
26. The Aboriginal Issues Coordinator created a Law Society display encouraging Aboriginal people to consider law as a career for use in career fairs. The Aboriginal Issues Coordinator attended the Grand River Post Secondary Education Information Day on November 8th, 2000. This career fair for Aboriginal youth and mature students of the Grand River of the Six Nations community was very successful with approximately 300 participants. A letter of appreciation to the Law Society for our participation in the event is attached.
27. According to the Department of Education, this may have been the first career fair for youth which the Law Society has participated in. It can be said with some certainty that this is the first career fair we have participated in geared specifically towards the Aboriginal community.
28. A letter of thanks from John Kim Bell, Founder and President of the National Aboriginal Achievement Foundation (NAAF) is attached for the Committee's reference. The Law Society sponsored the NAAF's *Blueprint For the Future*, Aboriginal Youth Career Fair, held on November 23rd, 2000, at the Toronto Convention Centre.

29. The Aboriginal Issues Coordinator expanded the Department's career fair display and staffed a booth at *Blueprint*, in coordination with the Co-Chairs and members of Roti io' ta'-kier. This was the first time the Law Society has participated in this nationally recognized event. *Blueprint* was very successful with the participation of more than twelve hundred Aboriginal high school students, as well as teachers, guidance counsellors, and community members attending from across the province. Roti io' ta'-kier members gave their time as speakers leading seminars, and as counsel in a mock trial heard by the Honourable Mr. Justice Harry Laforme. A copy of the Law Society message as printed in the fair's program, as well as two newspaper articles about the fair are also included for the Committee's reference.
30. The Aboriginal Issues Coordinator, Jeff Hewitt and Kathleen Lickers, Co-Chairs of Roti io' ta'-kier, and Roti io' ta'-kier members participated in the launch of the Equity and Diversity Mentorship Program on December 1, 2000. Kathleen Lickers will also be participating in the Ottawa launch of the Program.

Supports to Students

31. In addition to the above mentioned activities promoting the legal profession, building relationships with community, and educating the public, the Aboriginal Issues Coordinator provided numerous supports to Aboriginal students currently enrolled in Phases I and III of the Bar Admission Course throughout this reporting period. These supports include academic (organizing various tutorials and exam review sessions), cultural (through initiatives such as the Elders Program), financial (through participation in the Equity Bursary Committee, disbursing funds to Aboriginal students in need via the Law Society's Equity Bursary Program), advising students regarding Law Society requirements, and career development (through building relationships between the Aboriginal Bar and students). Assistance regarding job searches and résumé writing has also been coordinated by the Aboriginal Issues Coordinator.
32. Attached for the Committee's information is a photocopy of a card received from the Director of Student Services and Counselling at the Grand River Post Secondary Education Office, with respect to the support provided to Six Nations students in the Bar Admission Course.
33. Another letter of appreciation was received from Bar Admission Course student, Joseph Schuchert, noting appreciation for the support offered through the office of the Aboriginal Issues Coordinator. Mr. Schuchert is one of ten self-identified Aboriginal students in Phase III in Toronto who accessed tutorials and the Elders Program. A copy of the letter is attached for information purposes.
34. An informal dinner honouring the ten Aboriginal students currently studying in Toronto in Phase III of the BAC was held on December 8, 2000. Approximately twenty people gathered, those being students, members of Roti io' ta'-kier, and Elder Raymond Gould, to very informally and frankly discuss shared experiences in the BAC, as well as how lawyers have marketed themselves, and what to expect in the early years of practice. Unfortunately, neither of the two invited special guests, Justice Rose Boyko or Justice Harry Laforme, were able to attend.
35. We hope to be organizing traditional Feasts in the future in the Ottawa, Toronto and London areas, to celebrate the successes and struggles of Aboriginal students in the BAC. Benchers, staff and community members will be invited to attend these more public celebrations in support of the students when they are planned.

36. The Elders Program offered by the Education and Equity Initiatives Departments to Bar Admission Course students in Toronto held its final regularly scheduled session for students in the 42nd Bar Admission Course on December 15, 2000. Feedback on the Elders Program from students, staff and community members, including Aboriginal members of the Bar, has been excellent. Much thanks goes to Elder Raymond Gould, of the Maliseet Nation, for his guidance and assistance in creating and delivering this vital support to students in the BAC.

Policy Development

37. Roti io' ta'-kier, with the support of the Aboriginal Issues Coordinator, has made written and oral submissions to the Professional Development and Competency Committee on the Law Society's Competence Mandate.
38. Aboriginal lawyer, Kirk Goodtrack, General Counsel for the Chippewas of Mnjikaning First Nation is developing a program for the firms his First Nation deals with. This innovative program will result in an increase in the number of Aboriginal law students and Aboriginal lawyers in the firms Mr. Goodtrack's office retains. Further reference to this matter can be found at Tab 5A of the February 2001 Committee Agenda materials.

Other Activities

39. The Aboriginal Issues Coordinator and the Equity Advisor participated in a meeting with Jeff Hewitt, Co-Chair of Roti io' ta'-kier, Dr. John Borrows, and Mayo Moran, Associate Dean at the University of Toronto Faculty of Law on December 5, 2000. This meeting was held to discuss the concerns raised by Roti io' ta'-kier members and Aboriginal community members surrounding the Faculty of Law's Residential School Litigation Bridge Week, planned for February 2001. The meeting was very positive and productive, building relationships between the Equity Initiatives Department, Roti io' ta'-kier, and the Faculty of Law.
40. Associate Dean Moran has advised that the Faculty no longer intends to proceed with the originally planned bridge week, but rather wants to work with the Aboriginal community, the Equity Initiatives Department and Roti io' ta'-kier in developing a bridge week which addresses the very serious concerns raised and advances the goals of the profession. The Faculty has also extended an invitation for the Equity Initiatives Department and Roti io' ta'-kier to participate in the new bridge week on "Addressing Systemic Injustice". The Treasurer commended the work of the Equity Department.

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

- (1) Copy of a letter from Mr. Jeffrey G. Hewitt, Aird & Berlis to Mr. Charles Smith dated January 18, 2001 re: Equity and Aboriginal Issues Committee Agenda.
- (2) Copy of a letter from Mr. Charles Smith to Mr. Kirk Goodtrack, General Counsel, Chippewas of Mnjikaning First Nation dated December 15, 2000.

CONVOCATION ROSE AT 4:00 P.M.

Confirmed in Convocation this 22nd day of March, 2001.


Treasurer