21st September, 2000

MINUTES OF CONVOCATION

Thursday, 21st September, 2000
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Arnup, Banack, Bindman, Braithwaite, Campion, Carey, Carpenter-Gunn, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, Diamond, DiGiuseppe, E. Ducharme, T. Ducharme, Epstein, Farquharson, Finkelstein, Furlong, Gottlieb, Hunter, Jarvis, Krishna, Lalonde, Lamont, Laskin, Lawrence, MacKenzie, Manes, Marrocco, Millar, Mulligan, Murphy, Murray, O'Brien, Ortved, Pilkington, Porter, Potter, Puccini, Robins, Ross, Simpson, Swaye, Topp, Wardlaw, White, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

MOTION - ELECTION OF BENCHER

WHEREAS Nancy Backhouse, who was elected from the Province of Ontario "A" Electoral Region (the City of Toronto) on the basis of the votes cast by all electors, was appointed a judge of the Superior Court of Justice; and

WHEREAS upon being appointed a judge of the Superior Court of Justice, Nancy Backhouse ceased to be able to continue in office as a bencher, thereby creating a vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (the City of Toronto);

It was moved by Mr. Millar, seconded by Ms. Pilkington THAT under the authority contained in By-Law 5, John Adair Campion, having satisfied the requirements contained in subsections 50 (1), 50 (2) and 52 (1) of the By-Law, and having consented to the election in accordance with subsection 52 (2) of the By-Law, be elected by Convocation as bencher, to take office immediately after his election, to fill the vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (the City of Toronto) on the basis of the votes cast by all electors.

Carried

The Treasurer welcomed Mr. Campion to Convocation.

TREASURER'S REMARKS

The Treasurer presented Mr. John Cabral with a Law Society watch to mark 25 years of service as a gardener for the Society. The Treasurer thanked Mr. Cabral and Anne Law for their work in maintaining the beautiful grounds of Osgoode Hall.

The Treasurer remarked on the passing of Mr. Robert Kemp-Welch, a life Bencher and Mr. Clive Bynoe, a former Bencher.

Mr. Kemp-Welch who died on July 29th, 2000, was a life Bencher by reason of his office as Attorney General and was a distinguished lawyer in the Niagara Peninsula.

Mr. Bynoe who died on August 27th, 2000 was a Bencher from November 1975 to May 1991 and was a leading criminal lawyer.

The Treasurer extended his condolences to the families of Mr. Kemp-Welch and Mr. Bynoe.

The Treasurer reminded Benchers of the second Dubin lecture taking place on October 5th and the Symposium on November 30th. Speakers at the Symposium include Ms. Christine Lagarde from Paris, France, Mr. Robert Barnard, The Honourable Yves Fortier, Professor Richard Susskind, O.B.E., Mr. Fred Bartlit and Mr. Justice Ian Binnie.

MOTION - APPOINTMENTS

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that the list of appointments circulated to the Bench and amended by adding Ms. Ross as a member to the Equity & Aboriginal Issues Committee, be approved.

COMMITTEES & OTHER APPOINTMENTS 2000-2001

ADMISSIONS

Staff Contact: *Maria Paez Victor*

Chair	Derry Millar
Vice-Chair	Edward Ducharme
	Marion Boyd
	John Campion
	Tom Carey
	Pamela Divinsky
	Gillian Diamond
	Todd Ducharme
	Dean Alison Harvison Young
	Dean Peter Hogg
	George Hunter
	Donald Lamont
	Robert Martin
	Stephanie Willson

COURTHOUSE TASK FORCE

Staff Contact: Mary Shena

Chair	George Hunter
	Stephen Bindman
	Seymour Epstein
	Richard Gates (CDLPA)
	Charles Harnick
	George Biggar (Ontario Legal Aid Plan)
	Irwin Koziebrocki (Criminal Lawyers' Association)
	Robert Nightingale (Advocates' Society)
	Judith Potter
	William C. Ross (MTLA)
	Anthony William J. Sullivan (Family Lawyers' Association)
	Sarah Welch (Crown Attorney's Association)
	Bonnie Warkentin (CBAO)

EQUITY & ABORIGINAL ISSUES

Staff Contact:	*Charles Smith*
Chair	Paul Copeland
Vice-Chair	George Hunter
Vice-Chair	Judith Potter
	Stephen Bindman
	Nathalie Boutet
	Leonard Braithwaite
	Marshall Crowe
	Todd Ducharme
	Jeffrey Hewitt
	Barbara Laskin
	Susan Opler
	Heather Ross
	Janet Stewart
	Donald White

FEDERATION OF THE LAW SOCIETIES REPRESENTATIVE

Gerald Swaye

FINANCE & AUDIT

Staff Contact:	*Wendy Tysall*
Chair	Vern Krishna
Vice-Chair	Marshall Crowe
Vice-Chair	Gerald Swaye
	Abdul Chahbar
	Susan Elliott
	Seymour Epstein
	Abraham Feinstein
	Donald Lamont
	Daniel Murphy
	Julian Porter
	Helene Puccini
	Clayton Ruby
	Donald White
	Richmond Wilson
	Bradley Wright

GOVERNMENT & PUBLIC AFFAIRS

Staff Contact:	*Anji Husain*
Chair	Frank Marrocco
Vice-Chair	Richmond Wilson
	Robert Aaron
	Marion Boyd
	Leonard Braithwaite
	Tom Carey
	Andrew Coffey
	Paul Copeland
	Abdul Chahbar
	Malcolm Heins
	Robert Lalonde
	Allan Lawrence
	Robert Martin
	Julian Porter
	William Simpson

HERITAGE COMMITTEE

Chair:	Thomas Carey

LAWYERS FUND FOR CLIENT COMPENSATION

Staff Contact: *Heather Werry*

Chair	Clayton Ruby
Vice-Chair	Robert Aaron
Vice-Chair	Robert Topp
	Stephen Bindman
	Gordon Bobesich
	Ronald Cass
	Abdul Chahbar
	Gillian Diamond
	Gordon Farquharson
	Gary Gottlieb
	Barbara Laskin

LAW FOUNDATION

Chair	Ronald Manes
	Heather Ross
	Bradley Wright

LEGAL AID SERVICES COMMITTEE

Staff Contact: *Anji Husain*

Chair	Thomas Carey
	Paul Copeland
	Dino DiGiuseppe
	Edward Ducharme
	Todd Ducharme
	Josee Forest-Niesing
	Robert Martin
	Judith Potter

LIBRARY CO. LAW SOCIETY NOMINEE

Dino DiGiuseppe

LITIGATION COMMITTEE

Staff Contact:	*Richard Tinsley*
Co-Chair	Neil Finkelstein
Co-Chair	Niels Ortved
	Larry Banack
	Kim Carpenter-Gunn
	Patrick Furlong
	Julian Porter
	Clayton Ruby
	Gerald Swaye

LPIC BOARD BENCHER APPOINTEES

	Ross Murray
	Kim Carpenter-Gunn
	Abdul Chahbar
	Marshall Crowe
	Frank Marrocco
	Vern Krishna

PROCEEDINGS AUTHORIZATION COMMITTEE

Staff Contact:	*Richard Tinsley*
Chair	Gavin MacKenzie
Vice-Chair	Eleanore Cronk
	Neil Finkelstein
	Niels Ortved

PROFESSIONAL DEVELOPMENT & COMPETENCE

Staff Contact:	*Sophia Sperdakos*
Chair	Eleanore Cronk
Vice-Chair	Earl Cherniak
Vice-Chair	Ronald Manes
	Stephen Bindman
	Ronald Cass
	Kim Carpenter-Gunn
	Dino DiGiuseppe
	Seymour Epstein
	Gregory Mulligan
	Marilyn Pilkington
	Judith Potter
	William Simpson
	James Wardlaw

PROFESSIONAL REGULATION COMMITTEE

Staff Contact: *Jim Varro*

Chair	Gavin MacKenzie
Vice-Chair	Larry Banack
Vice-Chair	Neil Finkelstein
Vice-Chair	Niels Ortved
Vice-Chair	Heather Ross
	Gordon Bobesich
	Andrew Coffey
	Carole Curtis
	Patrick Furlong
	Gary Gottlieb
	Laura Legge
	Ross Murray
	Robert Topp

ONTARIO LAWYERS GAZETTE EDITORIAL BOARD

Staff Contact: *Anji Husain*

Dino DiGiuseppe
Gregory Mulligan
Julian Porter

MULTI DISCIPLINARY PRACTICE TASK FORCE

Staff Contact: *Jim Varro*

Chair	Earl Cherniak
	Larry Banack
	Kim Carpenter-Gunn
	Niels Ortved
	David Ward

PARALEGAL TASK FORCE

Staff Contact: *Anji Husain*

Chair	Richmond Wilson
Vice-Chair	Allan Lawrence
	Stephen Bindman
	Gillian Diamond
	Todd Ducharme
	Charles Harnick
	George Hunter
	Laura Legge

Frank Marrocco
Gregory Mulligan
William Simpson
Bradley Wright

STRATEGIC PLANNING COMMITTEE

Staff Contact: Katherine Corrick

Co-Chair	Gavin MacKenzie
Co-Chair	Ronald Manes
	Eleanore Cronk
	Dino DiGiuseppe
	Susan Elliott
	George Hunter
	Vern Krishna
	Barbara Laskin
	Marilyn Pilkington

TECHNOLOGY TASK FORCE

Staff Contact: Gord Lalonde

Chair	Larry Banack
	Domenico Crolla
	Carole Curtis
	Edward Ducharme
	Abraham Feinstein
	Stanley Kugelmass
	James Wardlaw
	Peter Wilson

Carried

MOTION - DRAFT MINUTES

It was moved by Ms. Ross, seconded by Mr. DiGiuseppe that the Draft Minutes of June 2nd, June 22nd and 23rd, 2000 be approved.

Carried

REPORT OF THE DIRECTOR OF EDUCATION

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the Report of the Director of Education which included the names of those candidates being called to the Bar on September 22nd, be adopted.

Candidates Alden Lee Birman and Anne Nicolette Pappas were deleted from the Report.

Carried

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, September 22nd, 2000:

Nathalie Lucette Rollande Bélanger	Bar Admission Course
Paul Clifford Edwin Berry	Bar Admission Course
Amrik Birdi	Bar Admission Course
Alden Lee Birman	Bar Admission Course
David Archibald Hamilton Brown	Bar Admission Course
Churyl Anne Elgart	Bar Admission Course
Harleen Grewal	Bar Admission Course
Norman John Groot	Bar Admission Course
Brigitte Chan Sui Hing	Bar Admission Course
Carolyn Jane Lloyd	Bar Admission Course
Lynn Marie Marchildon	Bar Admission Course
Jeffrey Deane Paine	Bar Admission Course
Raj Pannu	Bar Admission Course
Anne Nicolette Pappas	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, September 22nd, 2000:

Ted Alfred Chan	British Columbia
Robert David Ford	British Columbia
Stuart Ian Hicks	Quebec
Sointula Marika Louise Kirkpatrick	British Columbia
Kristina Knopp	Quebec
Calvin Wilfred Lantz	Alberta
Michael David Crawford Laplante	British Columbia
John Edwin Lowman	Alberta
Robert Scott MacGregor	Nova Scotia

Hugh Lloyd MacKinnon	Alberta
Sharron Virginia Masterson	Saskatchewan
Nghia Dinh Nguyen	British Columbia
Dwayne Michael Pommer	British Columbia
Brian Nathan Radnoff	British Columbia
John Russell Ratchford	Nova Scotia
Rebecca Karen Saturley	Nova Scotia
Kristi Natalie Sebalj	Nova Scotia
Susan Gail Tataryn	Saskatchewan
Fannie Turcot	Quebec
Giacomo Vigna	Quebec

B.1.5. (c) Full-Time Members of Faculties of Approved Ontario Law Schools

B.1.6. The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under sec. 5 of By-Law 11 made under the Law Society Act on September 22nd, 2000. The candidate has filed the necessary documents and complied with the requirements of the Society:

Michael Allan Geist	University of Ottawa, Common Law Section

B.2. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.2.1. The following applies to be certified as a foreign legal consultant in Ontario:

David Thomas Wilson	The State of New York - Shearman & Sterling

B.2.2. His application is complete and he has filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this 21st day of September, 2000

MOTIONS - COMMITTEE APPOINTMENTS

It was moved by Mr. Arnup, seconded by Ms. Ross that in accordance with section 49.29 of the Law Society Act, Marilyn L. Pilkington be appointed to the Law Society Appeal Panel for a term of two years.

Carried

It was moved by Mr. Crowe, seconded by Mr. Marrocco that Donald Lamont continue as the Law Society's representative on the Canadian National Exhibition Association.

Carried

It was moved by Mr. Hunter, seconded by Mr. T. Ducharme that Leonard Shore and Marie Henein be reappointed to the Criminal Rules Committee pursuant to subsection 69 (2)(j) of the Courts of Justice Act. These appointments are to be retroactive to June 12th, 2000.

Carried

The motions on appointments to the CBA-O were deferred.

APPEAL PANEL REPORT

Mr. Arnup reported orally on the status of the work of the Appeal Panel and thanked the Discipline department for their assistance.

REPORT OF THE PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE

Re: Requalification Program

Mr. Cherniak presented the item in the Report dealing with the Requalification Program for decision by Convocation.

Professional Development & Competence Committee
September 21, 2000

Report to Convocation

Purpose of Report: Decision Making
Information

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

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on September 7, 2000. Committee members in attendance were Eleanore Cronk (Chair), Earl Cherniak (Vice-Chair), Ron Manes (Vice-Chair), Kim Carpenter-Gunn, Dino DiGiuseppe, Greg Mulligan, Marilyn Pilkington, Judith Potter, and Bill Simpson. Staff in attendance were Trevor Branion, Janet Brooks, Scott Kerr, Janine Miller, Dayna Simon, Felecia Smith, Elliot Spears, Sophia Sperdakos, Ursula Stojanowicz, and Paul Truster.

2. The Committee is reporting on the following matters:

Policy - For Decision

- Requalification Program Issues

Information

- Summary of Quantitative Results of Survey on Implementing the Law Society's Competence Mandate
- Report on Specialist Certification Matters Finalized by the Working Group of the Committee on July 13, 2000 and Approved in Committee on July 17, 2000
- Report on Specialist Certification Matters Finalized by the Working Group of the Committee on August 21, 2000 and Approved in Committee on September 7, 2000

POLICY - FOR DECISION

REQUALIFICATION PROGRAM

1. In March 1994 Convocation approved a policy requiring lawyers to requalify if they have "not made substantial use of their legal skills on a regular basis" for five years or more and wish to engage in the private practice of law. According to the policy, the earliest point in time at which members would have to meet requalification requirements was July 1999. In April 1999, Convocation postponed the commencement to January 2000.

2. In the October 1999 Convocation approved By-law 28, which includes provisions for the test to be used to determine when a member is considered to be making "substantial use of legal skills on a regular basis" and the process to be followed in making such determination, the nature of the requalification requirements, members' rights of review from determinations that they are not making substantial use of their legal skills, and terms and conditions that may be imposed by the Secretary following the completion of requalification requirements.

3. In the course of discussing the requalification program in October 1999, Convocation was advised that the program being put forward for its approval was to be considered a transitional one until a more detailed one could be developed to apply for the long term.

4. With the benefit of experience attained by the Law Society since the passing of the By-law, including dealing with some of the members affected by it, the Committee is of the view that a number of issues should be addressed, including,

   a) the effectiveness of the current program in achieving the goals of the original policy, and
   b) the fairness of the current process, as it relates to the giving of notice for the years 1995-98.

5. The Committee has examined a number of concerns related to the requalification program. These concerns and the Committee's proposal with respect to the program are set out for Convocation's consideration in a report set out at Appendix A.

Request to Convocation

6. Convocation is requested to consider the report set out at *Appendix A* and, if appropriate, adopt the recommendations set out in that report.

FOR INFORMATION

SUMMARY OF QUANTITATIVE RESULTS OF SURVEY ON IMPLEMENTING THE LAW SOCIETY'S COMPETENCE MANDATE

1. On March 30, 2000 Convocation approved the distribution to the profession of a document entitled *Implementing the Law Society's Competence Mandate: A Consultation Document.*

2. The document was mailed to members with an enclosed survey that members were requested to complete and return by June 15, 2000. More than 2700 members completed the survey by the return date.

3. The survey contained 21 closed-ended questions (providing quantitative data) and three open-ended questions (providing qualitative data) seeking members' comments. The survey results are currently being analyzed. A summary of the results of the closed-ended questions is contained at Appendix B. Further results will follow in the coming months.

4. The consultation process is ongoing. In September and October, 2000 nine regional meetings will be held at which members of the Professional Development and Competence Committee will provide information, seek comments from members, and answer questions. These meetings will also be attended by other benchers from the regions in which the meetings are taking place. In addition 11 focus groups will be conducted with members to further discuss the issues raised in the consultation document.

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON JULY 13, 2000 AND APPROVED IN COMMITTEE ON JULY 17, 2000

1. The Professional Development and Competence 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.

Civil Litigation:	Mervyn Abramowitz (of Toronto) Riichiro L. Akazaki (of Toronto) Brian A. Banfield (of St. Catharines) Cameron C. R. Godden (of Toronto)
Environmental Law:	Gray E. Taylor (of Toronto)
Family Law:	Joyce S. Elder (of Thunder Bay)

2. The Professional Development and Competence Committee is pleased to report final approval of the following lawyers' applications for recertification for an additional five years, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation	Stephen S. Appotive (of Ottawa) Lloyd D. Cadsby (of Toronto) John A. Campion (of Toronto) J. Douglas Crane (of Toronto) Murray N. Ellies (of Kirkland Lake) Carl E. Fleck (of Point Edward) Nigel G. Gilby (of London) Joyce Harris (of Toronto) Michael F. Head (of Pickering) Richard D. Howell (of Toronto) Kristopher H. Knutsen (of Thunder Bay) H. James Marin (of Toronto) Jerome R. Morse (of Toronto) Michael James O'Grady (of Ottawa) Marek Z. Tufman (of Toronto) Guy A. Wainwright (of Kapuskasing)
Criminal Law:	Norman D. Boxall (of Ottawa) Thomas J. P. Carey (of Mississauga) Gary Chayko (of Ottawa) Janet Leiper (of Toronto) Howard C. Rubel (of Toronto)
Family Law:	Jennifer A. Treloar (of Mississauga)
Labour Law:	Stewart D. Saxe (of Toronto)

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON AUGUST 21, 2000 AND APPROVED IN COMMITTEE ON SEPTEMBER 7, 2000

1. The Professional Development and Competence 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.

Civil Litigation:	Stewart C. E. Gillis (of Brampton) Loreta Zubas (of Toronto)

2. The Professional Development and Competence Committee is pleased to report final approval of the following lawyers' applications for recertification for an additional five years, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation	Eric M. Appotive (of Ottawa) Larry Banack (of Toronto) John D. Brownlee (of Toronto) William D. Dunlop (of Burlington) John H. Hornak (of Thunder Bay) Robert M. Nelson (of Ottawa) John R. Read (of Ottawa) Nancy J. Spies (of Toronto) Waldemar Zimmerman (of Hamilton)

3. The Professional Development and Competence Committee is pleased to report approval of the membership of Bonnie Tough (of Toronto) on the Civil Litigation Specialty Committee to replace Barbara Grossman (of Toronto), as part of a regular turnover of Committee members. The membership on the Civil Litigation Specialty Committee is as follows:

Nancy Spies (of Toronto) -- Chair
David Williams (of London) -- Vice-Chair
Donald Jack (of Toronto)
Jim Lewis (of Mississauga)
Jim O'Grady (of Ottawa)
Ed Orzel (of Hamilton)
Owen Smith (of New Liskeard)
Bonnie Tough (of Toronto)

The Civil Litigation Specialty Committee is considering adding a ninth member to ensure additional representation on the Committee of members of the profession practising outside of Toronto.

The committee expresses its thanks to Ms. Grossman for her efforts on the Civil Litigation Specialty Committee.

APPENDIX A

REPORT ON REQUALIFICATION
REVIEW OF REQUALIFICATION PROGRAM IMPLEMENTATION PROCESS

I. THE ISSUES FOR CONVOCATION'S CONSIDERATION

1. Convocation is requested to consider,

a) whether subject to the exceptions set out in (b) and (c) below, the requalification program should be placed in abeyance pending further study of the issues and in light of the competence initiative;

b) whether those members who answer "no" with respect to their qualification status for a continuous period of five years or more, thereby acknowledging that they have not made substantial use of their legal skills should continue to be subject to the current requalification requirements should they wish to engage in private practice; and

c) whether those members who fall within the section 5(2) of By-law 28, namely legal secretaries, paralegals, and law clerks should continue to be subject to the current requalification requirements should they wish to engage in private practice.

The provisions in (b) and (c) would apply both to the period 1995-99 and on a going-forward basis.

2. If Convocation determines that changes should be made to the program, it is requested to consider whether it agrees with proposed amendments to By-law 28.

II. THE NATURE OF THE ISSUES

3. In March 1994 Convocation approved a policy requiring lawyers to requalify if they have "not made substantial use of their legal skills on a regular basis" for five years or more and wish to engage in the private practice of law. According to the policy, the earliest point in time at which members would have to meet requalification requirements was July 1999. In April 1999, Convocation postponed the commencement to January 2000. The 1994 report is attached as Tab 1.

4. In October 1999 Convocation approved By-law 28, which dealt with the test to be used to determine when a member is considered to be making "substantial use of legal skills on a regular basis" and the process to be followed in making such determination, the nature of the requalification requirements, members' rights of review following a determination that they are not making substantial use of their legal skills, and terms and conditions that may be imposed by the Secretary following the completion of requalification requirements.

5. In the course of discussing the requalification program in October 1999, Convocation was advised that the program being put forward for its approval was to be considered transitional until a more detailed one could be developed to apply for the long term.

6. With the benefit of the experience the Law Society has attained since the passing of the By-law, including dealing with some of the members affected by it, the Committee is of the view that a number of issues should be addressed, including,

a) the effectiveness of the current program in achieving the goals of the original policy, and
b) the fairness of the current process as it relates to the giving of notice for the years 1995-98.

III. BACKGROUND - THE 1994 CONVOCATION POLICY

7. Pursuant to the 1994 Convocation policy on requalification, each member is required to provide the Law Society with information concerning "qualification status". Currently the Members' Annual Report (MAR) (incorporating the former Membership Information Form [MIF]) asks members whether they made substantial use of legal skills on a regular basis during the previous calendar year. If the answer is "yes" members are asked to indicate in what capacity(ies) in the profile sections of the filing.

8. The annual filings contain detailed profile sections including the "deemed categories"[1] that members can check off if their work corresponds to the profile. Members coming within these categories are *deemed* to be making substantial use of their legal skills. This simply means that, without further explanation, these members meet the Law Society's test and are not subject to requalification if they are in a deemed category for a minimum of 4 months or 600 hours in a year.

9. Members whose activities do not fit within any of the deemed categories enumerated in the profile sections either,

   a) answer "no", indicating that they are not making substantial use of their legal skills on a regular basis; or

   b) answer "yes - other" and provide an explanation of how they make substantial use of their legal skills on a regular basis in the work in which they are engaged. Law Society staff must then read each explanation to assess whether the member's work is similar to work in the deemed categories or if the work is such that the member is making substantial use of legal skills while engaging in it, based on factors set out in the By-law and the definition of the competent lawyer. [2]

10. Through the qualification status section of the annual filing, the Law Society obtains information as to which members of the profession are making substantial use of their legal skills on a regular basis. The report of the 1994 sub-committee studying requalification indicated that the requalification policy is one means by which to monitor whether lawyers can provide competent legal services.

11. The original policy contemplated the following processes, which were communicated to members on an annual basis:

   a) Members would complete the qualification section of the annual report each year;
   b) The Professional Standards Committee (now the Professional Development &Competence Committee) would review all responses as described in paragraph 9(b) above to determine if members' activities qualified;
   c) Members would be notified "immediately", rather than at the end of 5 years, if their activities did not qualify as making substantial use of their legal skills;
   d) A pre-emptive regime would be established so that members not making substantial use of their legal skills could undertake steps to avoid having to requalify; and
   e) Members would be entitled to a review from a determination of the Professional Standards Committee.

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1 The current "deemed" categories are set out in paragraphs 1 through 8 of subsection 5(1) of By-law 28.

2 Subsection 5(3) of By-law 28.

The qualification status section of the annual report, from 1994 forward, notified members of these provisions in the policy.

IV. IMPLEMENTING THE POLICY 1995 -1998

12. When Convocation approved the 1994 requalification policy it did so on a prospective basis. Convocation also indicated that it would seek amendments to the *Law Society Act* to specify the Society's authority to require members to requalify under specified circumstances. These amendments did not come into force until February 1999.

13. A number of steps were taken to ready the policy for implementation, as follows:

a) The deemed categories were refined. The 1994 policy included only 11 deemed categories. The policy did not explain why certain work was included in the deemed categories. The categories were,

private practice
private practice in another jurisdiction
in-house counsel
clinic lawyer
M.P. or M.P.P.
government lawyer
policy analysis or legislative drafting
member of administrative tribunal
arbitrator, mediator, conciliator
legal teaching and/or legal writing
legal research staff

As a result, in the first year, staff received many thousands of forms in which members had completed the "other" category and provided an explanation of their work, all of which had to be read. The annual filing was amended to include a significantly larger number of "deemed" categories, reducing the number of "other" explanations. Further amendments to the deemed categories were made when the By-law was passed in 1999. However, it continues to be the case that staff must read thousands of forms to determine whether a member's work is similar to the deemed categories and demonstrates that the member is making substantial use of legal skills.

b) A working group of the Professional Development and Competence Committee developed a proposal for the provisions to be included in the By-law governing the requalification program.

14. A number of the steps contemplated by the original policy were, however, not implemented between 1994 and 1998. In particular,

a) The pre-emptive regime was not created. This was in part because the actual requalification requirements that were being contemplated were not as onerous as may have been contemplated by the original policy and as such it was difficult to determine a pre-emptive regime that could meaningfully replace the actual course.

b) A formal process for determining whether members completing the "other" category were making substantial use of their legal skills was not implemented. The Professional Standards Committee did not undertake the evaluation. Staff resources to do so were extremely limited, although there was some correspondence and telephone communication over the years with some members. In some instances members who expressed an interest in a pre-emptive program were advised to submit a proposal for consideration.

c) Notices were not sent to members who had answered "yes-other", with a determination of whether they were considered to be making substantial use of their legal skills in the years 1994 to 1998.

V. IMPLEMENTING THE POLICY - 1999 - January 2000

15. The amendments to the *Law Society Act* came into force in February 1999. In April 1999, Convocation decided to delay the first date upon which requalification orders could be sought from July 1999 to January 2000. The requalification provisions, contained in section 49.1 of the Act are set out in Tab 2.

16. In the period leading up to the January date, Convocation approved,

a) The test for determining when a member, who is not in a deemed category, is making substantial use of legal skills;
b) The meaning of "regular basis";
c) The requalification requirements that members would be required to complete; and
d) The requalification By-law, which included the notice requirements, the review provisions, the test described in (a) above and the course requirements listed in (c) above (set out at Tab 3).

17. In September 1999, a letter was sent to members who reported in their annual filings for 1995, 1996, 1997, and 1998 that they had not been making substantial use of their legal skills on a regular basis. The letter informed these members that if they also reported on their 1999 filing that they had not made substantial use of their legal skills they would be subject to requalification.

18. In December 1999 and January 2000, notices were served on members who the Secretary determined had not made substantial use of legal skills on a regular basis during some or all of the years 1995 to 1998. In the case of members who, in the Secretary's opinion, had not maintained qualification status in all of those years, the notice informed these members that if they had not made substantial use of legal skills on a regular basis in the year 1999, they may be subject to a prohibition order in the year 2000.

19. If members reported "yes-other" in one or more of the years 1995-1998 but also did not file the annual report or did not complete the qualification question in the report in one or more of the years, they did not receive notice regarding their qualification status in respect of any of those years since the Society's requalification notice obligation is deferred until filings for 1995 to 1998 are complete.[3]

20. The implementation of the program to date has demonstrated a number of problems. The most significant areas of concern relate to,

a) the giving of notices to those who answered "yes-other"; and
b) the nature of the test used for determining whether a member is subject to requalification.

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[3] Subsection 7(6) of By-law 28 provided for the deferral of the notice requirement. Approximately 2,500 members are in this category.

VI. ISSUES RELATED TO THE NOTICES

(a) Members who have answered "Yes - Other" with respect to Qualification Status

21. Issues of fairness have been raised by some members who answered "yes-other" because, contrary to Convocation's 1994 policy, they were not notified of their qualification status in the years 1995 to 1998. They were first formally notified of the Law Society's position on their qualification status when Notices were served, in accordance with subsections 7(3) and 7(4) of By-law 28, in December 1999 and January 2000.

22. In December 1999 and January 2000, a total of 205 members were served with Notices informing them that they had not maintained qualification status in all or some of the four years. The requalification By-law provides that the Notice is to be served:

- by January 1, 2000, in the case of disagreement with a member's self-assessment for all four years [subsection 7(3)]; and
- by January 31, 2000, in the case of disagreement with a member's self-assessment with some of those years [subsection 7(4)].

23. Of the 205 members, approximately 30% did not maintain qualification status in all four years. If these members did not maintain qualification status in 1999, that is, for five consecutive years, the Society is in a position to seek summary prohibition orders against these members this year.

24. Given the timing of service of Notices under subsections 7(3) and 7(4), these members did not have the opportunity to make changes in their activities in their fifth year, 1999, in order to avoid requalification requirements.

25. A number of members have responded to the Notices. Some take the position that the Society failed to provide them with timely notice of its position regarding their qualification status. They challenge subsections 7(3) and 7(4), arguing that the By-law conflicts with Convocation's 1994 policy that stated members would be notified immediately rather than at the end of the five year period.

26. Members frame their argument as a denial of procedural fairness, natural justice, detrimental reliance, and/or rights guaranteed by section 7 of the *Charter*. They also argue that the Society is estopped from issuing or relying on Notices since they conflict with Convocation's 1994 policy.

27. Whether or not the duty of fairness applies in the requalification process at the stage of the Secretary's determination of qualification status it is important to note that representations as to procedure were made to members in the 1994 policy that differed from those actually followed.

28. The "fairness" issue raised by the Notices has been exacerbated by the fact that computer problems and human error have resulted in incomplete retrieval of data on members who should have received Notices. Notification problems exist for the entire period 1995 to 1998.

(b) Members who answered "No" with Respect to Qualification Status or who are Legal Secretaries, Law Clerks or Paralegals

29. Where members have answered "no" with respect to their qualification status, on a continuous basis, the By-law does not require the Law Society to provide formal notice to these members that they are subject to requalification requirements should they seek to engage in private practice. This is because such members understand that this is the consequence of answering "no".

30. The purpose of the notice provisions for those answering "yes-other" is to inform members of the Law Society's determination that they are not making substantial use of their legal skills on a regular basis, thereby giving them an opportunity to disagree with the determination. No such determination is required in the case of those who answer "no".

31. As such, the issues related to the possible lack of fairness of the notice procedure of the By-law, do not apply to those who have answered "no" to the qualification question.

32. Similarly, with respect to those members who are legal secretaries, paralegals or law clerks no Law Society determination is required. Subsection 5(2) of By-law 28 specifies that members who work in these capacities are not making substantial use of their legal skills. Such members know that they are subject to requalification if they seek to engage in private practice.

VII. ISSUES RELATED TO THE "SUBSTANTIAL USE" TEST AND THE OBJECTIVES OF THE REQUALIFICATION PROGRAM

33. Given the breadth of the deemed categories in subsection 5(1) of the By-law, there is increasing concern that the way in which the "substantial use" test has been defined does not properly address the competence-related goals of the program. Implementation of the program has shown that some members in the deemed categories engage in activities that would not otherwise meet the goal of the "substantial use" test in that their activities do not require either legal research, analysis, etc. (as set out in paragraph 2 of subsection 5(3) of the By-law) or the skills set out in the definition of the competent lawyer [as set out in paragraph 3 of subsection 5(3)].

34. Paragraph 1 of subsection 5(3) requires the Secretary to compare the activities in the deemed categories to the activities of other members who claim to be making substantial use of legal skills ("yes-other"). As a result, the deemed categories serve to enlarge the group of members who are exempt from the requalification requirement in a way that is contrary to the intent of the program.

35. The requalification program was instituted on the theory that practice skills erode over time and on the basis that lawyers who have been out of private practice for a long period of time become the subject of complaints and errors and omissions claims.[4] For this reason, the self-study course focuses on ethical issues, practice management, and trust accounting, as well as updating knowledge of substantive law in practice areas.[5] Given this focus, it is not clear why lawyers in the deemed categories (with the exception of those in private practice) are not required to complete the course, given that their activities generally would not include these areas of concern. It is also not clear why working for one full year as corporate counsel or in government (but not as an employee in private practice) would sufficiently refresh those skills required for private practice.

36. Moreover, the very nature of the test includes a subjective component that may be difficult to apply in a uniform and consistent fashion, particularly in view of the deemed categories.

VIII. THE LAW SOCIETY'S COMPETENCE INITIATIVE

37. In the years since Convocation approved the requalification policy in 1994 the Society has begun moving toward the need to adopt a comprehensive approach to its competence mandate.

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[4] See Convocation's 1994 policy, Tab 1, page 5.

[5] Tab 4 contains the indices to the requalification course materials and practice workshop materials.

38. The amendments to the *Law Society Act* introduced a number of important changes and additions to the Law Society's authority to regulate competence. In recent years the Law Society has also determined to adopt an active, preventive approach to member competence designed to support members in their efforts to provide quality service and legal work.

39. It has become clear that an integrated approach to competence is essential so that there are systematic competence measures spanning members' careers and situations.

40. The Law Society is currently engaged in an in-depth analysis of the most appropriate means for implementing its competence mandate and has undertaken a broad consultation process to consider a wide range of views and possible approaches. A requalification requirement is relevant to an integrated approach to competence, but is only one possible piece to be developed with a number of other components.

41. This does not mean that a requalification program cannot properly exist before a broadly based competence model is chosen or implemented. Rather it suggests that whatever is in place can be improved and informed by the information, views, and ideas that flow from the consideration of such a model and may be adjusted to fit more appropriately within any new framework adopted.

IX. PROPOSED INTERIM APPROACH TO REQUALIFICATION PROGRAM

42. The Committee has considered the issues of fairness relating to the notice provisions of the By-law, as well as the concerns raised that the way in which the substantial use test has been defined may not best address competence-related goals.

43. The Committee is of the view that, in light of the experience with the requalification program as currently structured, there are aspects of it that may have resulted in unfairness and unequal treatment of some members. For these reasons, and in light of the competence initiative, the Committee is of the view that the requalification requirement requires further study. As a result of this conclusion the Committee is also of the view that implementation of certain aspects of the program should not continue.

44. As an interim approach to the requalification program the Committee proposes the following:

a) Subject to the exceptions set out in (b) and (c) below, the requalification program should be placed in abeyance pending further study of the issues and in light of the competence initiative;

b) Those members who answer "no" with respect to their qualification status for a continuous period of five years or more, thereby acknowledging that they have not made substantial use of their legal skills should continue to be subject to the current requalification requirements should they wish to engage in private practice;[6] and

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[6] The course is a self-study course consisting of a number of written materials addressing regulatory issues, practice management and file management, and law office accounting. Participants can complete the self-study course at their own pace. There is a written assessment on the examinable portions of the material. Participants must also complete 10 hours of CLE in the substantive practice area in which the participant proposes to spend 25% or more of their practice time. Only half of the 10 hours is required to be live programming or video-taped replay. Additional requirements may have to be met by members who come within certain categories (eg. being in practice review in the 5 year period before ceasing to make substantial use of legal skills on a regular basis). These additional requirements consist of 10 additional hours of CLE and attendance at a practice start-up workshop. See Tab 5.

c) Those members who fall within the section 5(2) of By-law 28, namely legal secretaries, paralegals, and law clerks should continue to be subject to the current requalification requirements should they wish to engage in private practice.

The provisions in (b) and (c) would apply both to the period 1995-1999 and on a going- forward basis.

45. The immediate practical implication of Convocation's approval of the proposal set out above is that,

a) where applicable, the Law Society would withdraw requalification notices sent to members; and

b) an amendment to By-law 28 would be necessary to relieve the Secretary from the obligation to annually review all responses with respect to qualification status from members who are not in a deemed category and make an annual determination of whether the member is making substantial use of legal skills on a regular basis. Notices would not be issued during the period portions of the By-law are held in abeyance. The proposed By-law amendment is set out at Tab 6 for Convocation's consideration.

46. The Committee is mindful of the fact that this is an interim measure. This proposal is not designed to solve all the issues raised about the requalification program, but rather to provide the opportunity to address the immediate issues of fairness raised by the notices and study the issue further. The Committee will continue to study the issues.

47. The Committee is also aware that there might be concern about leaving the requalification issue unaddressed for those members coming within the "Yes - other" category, pending further study. The concern could be addressed by advertising the course materials that have been developed under the requalification program, encouraging members to voluntarily undertake the program, using the *Gazette* or other means to remind members of their responsibility to stay current and letting them know about tools such as the course, the start-up practice workshops, etc. for doing so. The Committee proposes that, if the proposal set out above is accepted, the steps outlined in this paragraph be adopted.

48. It is also important to note that currently the Law Society has a number of approaches for addressing competence concerns regarding members who have been out of practice for a time, or who are currently in practice. These include the practice advisory service, CLE and practice articles in the *Ontario Lawyers Gazette*. The Law Society also monitors members' work though the spot and focussed audits, practice review, and investigations.

X. REQUEST TO CONVOCATION

49. Convocation is requested to consider the proposal set out at paragraph 44 of this report and, if appropriate to approve it.

50. If Convocation approves the proposal set out in paragraph 44 it is requested to consider the proposed amendment to By-law 28, set out at Tab 6, and, if appropriate, approve it.

TAB 5

REQUALIFICATION

SUMMARY OF REQUALIFICATION COURSE REQUIREMENTS - 2000
(See section 8(1)(b) of By-law 28 for specifics)

Self-study Course (all participants)	Assessment
Part 1: Regulatory Issues Materials: • *Law Society Act, Barristers Act, Solicitors Act* • *By-Laws and Regulations* • Rules of Professional Conduct • LPIC video - introduction to LPIC Malcolm Heins gives BAC students • Reference Material on Professional Responsibility provided to BAC students	Formal written assessment - a number of ethical problems for analysis (short essay questions)
Part II. Practice Management/File Management Materials: • Risk Management Video (LPIC) • ILA checklist from Phil Epstein (used by LPIC on *practicePro* website) • *PracticePro* materials on client relations and conflict of interest • Selection of practice and file management articles from LSUC advisory services • article from the Great Library on research techniques and methodology	Formal written assessment - short answer or multiple choice - to be prepared by the Department of Education (Both assessments will be contained in one test. "Successful completion" of the assessment will mean demonstrating sufficient knowledge of the subject matter of the assessment. See the By-law.)
Part III: Law Office Accounting Materials: • LSUC Accounting materials (on-line or in print)	Computerized Accounting Exam (available on-line or in print) Passing Grade is 50%.
CLE (all participants)	**Assessment**
10 hours of continuing legal education in the substantive practice area or related to the practice area in which the participant proposes to spend 25% or more of practice time, at least one-half of which is in the form of live programming or video replay. The member will also be required to choose 2 substantive law areas from a list of possible choices and will be required to read the contents of binders provided to them.	No formal assessment - the member will verify completion of the hours.

Additional requirements will be met by members who fit into any of the following categories:

1) 0-3 years in practice before ceasing to make substantial use of legal skills on a regular basis
2) >3 years but < than 10 where the member was an employee for 3/4 or more of the time period before ceasing to make substantial use of legal skills on a regular basis
3) not making substantial use of legal skills for > 10 years before seeking to engage in private practice
4) in practice review in the 5 year period before ceasing to make substantial use of legal skills on a regular basis.

Additional Requirements	Assessment
Part IV: Start- up Workshop Materials: those provided to all start-up workshop registrants	Attendance at the workshop. (It is anticipated that these will be offered at locations around the province.) If live attendance is impossible the member will be required to read the materials and complete a self-administered test to be submitted to the Law Society.
Additional CLE Requirement	**Assessment**
10 hours of continuing legal education practice management/file management related topics, at least one-half of which is in the form of live programming or video replay.	No formal assessment - the member will verify completion of the hours.

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

(1) The Report of the Joint Sub-Committee on Requalification dated November 4, 1993. (Tab 1)

(2) Excerpts from the Law Society Act - section 49.1 and subsection 49.32(3). (Tab 2)

(3) Copy of By-law 28. (Tab 3)

(4) Requalification - Self-study course, 2000 and Practice Workshop - Indices to Materials. (Tab 4)

(5) The Law Society of Upper Canada - Competence Consultation Document Membership Survey 2000 - Summary of Results. (Appendix B)

A debate followed.

Messrs. Campion and MacKenzie declared a conflict and did not participate in the debate or vote.

It was moved by Mr. Cherniak, seconded by Mr. Manes that the Professional Development & Competence Committee Report on Requalification be accepted including the following recommendations as set out in paragraphs 44 (a), (b) and (c) on pages 12 and 13 of the Report together with the amendments to By-Law 28 on Requalification which were circulated

"44. a) subject to the exceptions set out in (b) and (c) below, the requalification program should be placed in abeyance pending further study of the issues and in light of the competence initiative;

b) Those members who answer "no" with respect to their qualification status for a continuous period of five years or more, thereby acknowledging that they have not made substantial use of their legal skills should continue to be subject to the current requalification requirements should they wish to engage in private practice; and

c) Those members who fall within the section 5(2) of By-law 28, namely legal secretaries, paralegals, and law clerks should continue to be subject to the current requalification requirements should they wish to engage in private practice.

The provisions in (b) and (c) would apply both to the period 1995-1999 and on a going-forward basis.

Carried

Convocation took its morning recess at 11:10 a.m. and resumed at 11:35 a.m.

LPIC REPORT - SEPTEMBER 2000

Mr. Murray presented the LPIC Report for approval by Convocation.

TABLE OF CONTENTS

LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LPIC)
REPORT TO CONVOCATION – SEPTEMBER, 2000

INTRODUCTION

1. Since 1995, LPIC's Board of Directors has reported to Convocation each September its recommendations for the Law Society's professional liability insurance program for the following calendar year. The timing of this report is necessitated by the need to place and negotiate reinsurance treaties and the logistics of renewing 18,000 policies effective January 1.

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

3. Convocation established LPIC's mandate in 1994 with the adoption of the Insurance Committee Task Force Report. The mandate and principles of operation were to be as follows:

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

4. In the view of LPIC's Board, these recommendations have been achieved in LPIC's operations, and the proposed program for the year 2001 continues to operate on these principles.

SUMMARY OF RECOMMENDATIONS

5. The following are the recommendations made by LPIC's Board of Directors for the 2001 professional liability insurance program.

(i) That the base premium be reduced by $350 to $2,800 per lawyer for the 2001 insurance program (paragraph 37).

(ii) That the investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund be made available to the Law Society during 2001 (paragraph 9).

(iii) That the real estate and civil litigation transaction levies be continued for real estate and civil litigation transactions for which files are opened on or after January 1, 2001, and that these levy revenues be held and applied solely to the professional liability insurance program (paragraph 23[a]).

(iv) That the claims history levy be continued in the year 2001 for claims paid (meaning a claim with payment made by the insurer pursuant to a judgment, or by way of repair or settlement of a claim) within the last five years, and that these levy revenues be held and applied solely to the professional liability insurance program (paragraph 23[b]).

(v) That revenues from the real estate and civil litigation transaction levies, and claims history levies under the 2001 program, be budgeted at $30 million for the purposes of establishing the base premium and other budgetary purposes (paragraph 28[a]).

(vi) That, as per the policy established in 1999, any revenues from the transaction and claims history levies that are in excess of those budgeted in the year should be held in trust for future insurance purposes. These excess revenues should be managed on a revolving account basis and applied to the insurance program in future years (paragraph 28[b]).

(vii) That the reasons for exemption as well as policy coverage under the program be maintained in their current form, and that the existing policy options continue to be made available for the 2001 program (paragraph 41).

(viii) That the premium discounts and surcharges remain unchanged for the purposes of the 2001 program, with those expressed as a percentage of the base premium remaining unchanged as a percentage of the base premium, and those expressed as a stated dollar amount remaining unchanged in amount (paragraph 45).

(ix) That lawyers who complete and submit their 2001 professional liability insurance application form electronically to LPIC prior to November 1, 2000, be provided with a premium discount equal to $50 per lawyer (paragraph 47).

(x) That the application form be amended to include information with respect to gross billings (paragraph 54).

(xi) That free access be provided to Law Society members for the whole of the Online Coaching Centre in 2001, with a $50 premium credit to be applied to members of the practising bar in 2002 who use the Coaching Centre before September 30, 2001, and confirm their use of such by declaration on the 2002 application form (paragraph 94).

PART 1 – THE ERRORS & OMISSIONS FUND

6. The Insurance Committee Task Force reported in October 1994 that $203.6 million would have to be collected to retire the Errors and Omissions Fund's (the Fund) deficit and to capitalize LPIC. The professional liability insurance operations were then moved to LPIC, which assumed contractual responsibility to manage the collection of insurance levies and the runoff of the claims portfolio under the Fund.

7. By February 28, 1999, LPIC was fully capitalized, with $53 million in capital, and the deficit retired – with all outstanding liabilities fully funded, four months ahead of the original forecasts.

8. As of June 30, 2000, the Fund had outstanding liabilities of $50.4 million. The number of open files for 1994 and prior years stands at 449. Since there are sufficient assets in the Fund to fully meet the outstanding liabilities, the LPIC Board is again satisfied that the investment income of the Fund can be used by the Law Society for its general purposes. This revenue is estimated to be $2.0 million and would be available during the year 2001.

9. LPIC's Board recommends to Convocation that the investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund be made available to the Law Society during 2001.

PART 2 – LPIC & THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

Introduction

10. The program appears to be on track for 2000, and LPIC ahead of budget. Reported losses and premiums are as anticipated for the first half of 2000, and LPIC is currently forecasting profits in excess of the $4.5 million originally budgeted, primarily as a result of the favourable investment climate.

11. Given apparent satisfaction with the existing insurance program, the LPIC Board proposes that the insurance program be continued in its current form for 2001. However, the availability of additional transaction levy revenues and the modest growth anticipated in the number of practising lawyers will allow for some reduction in the amount of the base premium for 2001.

12. LPIC's forecast of revenues and losses for 2001 indicate that the base premium can be reduced by $350 to $2,800 per lawyer. This proposed reduction does not, however, reflect any decrease in the anticipated loss costs in 2001. Rather, the reduction in base rate would be as a result of an increase in both transaction levy revenues, and the number of practising lawyers. As for the anticipated cost of claims, although the cost of real estate-related claims has been coming down, civil litigation and other claims have been increasing, keeping the projected total cost of claims static at $65 million for the coming year.

Premium – Costs, Revenues and Pricing

a) The Anticipated Total Loss Costs

13. LPIC's revenue requirements for the 2001 insurance program are based on the anticipated cost of claims for the year. The loss cost projections are determined actuarially, in accordance with the historical loss experience of the program. This analysis examines the cost of claims in the most recent years, applying the appropriate underwriting judgment to reflect emerging trends and changes in coverage.

14. Based on the historical loss experience of the program and the consistency in policy coverage proposed, LPIC anticipates the total loss costs of the insurance program to be $65 million for the 2001 policy year. This estimate is based on approximately 2,000 new claims for the coming year, a number which has been remarkably consistent over the last six years. As indicated below, this projection is consistent with the anticipated total loss costs for the program in each of 2000, 1999, 1998 and 1997.

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

(see Report in Convocation file)

b) Sources of Premium Revenues

15. As discussed under the heading "Risk Rating" at page 20 of this report, real estate conveyancing and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. Similarly, lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

16. The September 1998 LPIC Report to Convocation recommended a rating structure which achieved risk rating. This was accomplished in large part by applying the transaction levies and the claims history surcharges to the insurance premium to supplement the base levy. The application of these levies to the insurance premium enabled real estate and civil litigation practitioners to pay the base insurance premium levy and avoid being surcharged for the higher cost of insurance associated with these areas of practice.

17. This approach avoided the substantial dislocation which would likely have occurred by simply increasing the base insurance premium levy to reflect the risk, and was agreed to by the affected sectors of the bar as the most equitable way to achieve risk rating.

(i) The Real Estate Transaction, Civil Litigation Transaction, and Claims History Levies

18. The LPIC Board proposes that the real estate and civil litigation transaction levy of $50 for each file opened by or on behalf of the lawyer, be continued in the year 2001.

19. The vagaries in the economy, and in the real estate market particularly, continue to make it difficult to predict with certainty the amount of revenues that will be generated by the transaction levies. Receipts from the real estate transaction levy surcharge may also be affected by the increased use of title insurance, since the lawyer is not obliged to pay the levy for many title-insured residential real estate transactions.

20. On the basis of levy receipts received to date in 2000 and in recent years, LPIC conservatively expects to generate approximately $30 million from the transaction and claims history levy surcharges in the year 2001, up from the $25 million budgeted in 2000 and the $17.5 million in 1999. (Note: The $17.5 million amount budgeted in 1999 was based on transactions in the last three quarters of the year only, as receipts for the first quarter were applied to retiring the deficit.)

21. The Board also proposes that all receipts from the claims history levy surcharge again be applied to the program to the extent invoiced in connection with the year 2001 policy. The claims history levy surcharge would continue as follows:

- One claim paid in the last five years $2,500
- Two claims paid in the last five years $5,000
- Three claims paid in the last five years $10,000
- Four claims paid in the last five years $15,000
- Five claims paid in the last five years $25,000
- Plus $10,000 per claim in excess of five.

22. The financial impact of the deductible and claims levy surcharge on a member with a $5,000 deductible would be $17,500, as it has been since the adoption of the Task Force report recommendations for the 1995 insurance program.

23. The LPIC Board of Directors recommends that:

(a) The real estate and civil litigation transaction levies be continued for real estate and civil litigation transactions for which files are opened on or after January 1, 2001, and that these levy revenues be held and applied solely to the professional liability insurance program.

(b) The claims history levy be continued in 2001 for claims paid (meaning a claim with payment made by the insurer pursuant to a judgment, or by way of repair or settlement of a claim) within the last five years, and that these levy revenues be held and applied solely to the professional liability insurance program.

24. Since the introduction of the 1999 program, any excess receipts from the transaction levies and claims history surcharges collected in the year have been held and managed on a revolving account basis and applied to the insurance program. The revolving account effectively operates as a contingency fund, held in trust, guarding against any future shortfall in levy receipts, and acting as a buffer against the need for sudden increases in base premium revenues.

25. For the 1999 year, actual receipts from the transaction levies and claims history surcharges exceeded the $17.5 million budget amount by $5.1 million. These revenues have been applied to the 2000 year program.

26. For the 2000 year, the surplus at June 30, 2000, stands at $5.2 million, and that fund balance is expected to increase to $9 million on receipt of the last of the 2000 year transaction levies at the end of the year. This fund balance will in turn be carried forward and applied towards the 2001 program as part of the transaction levy and claims history surcharge receipts for that year's program. This amount is included in the 2001 program budget at $30 million for transaction and claims history levy surcharges (discussed at paragraph 20). Depending on revenues for 2001, any surplus will again be carried forward into 2002.

27. In reviewing the forecasts for revenue and claims in 2001, LPIC's Board is mindful of vagaries in budgeting based on a variable revenue stream which now makes up 39 per cent of the projected costs of the program. Accordingly, the Board is conservative in its forecasting so as to avoid the problem of a revenue shortfall in the event that the transaction levies do not meet projections.

28. Accordingly, the LPIC Board of Directors recommends that:

(a) Revenues from the real estate and civil litigation transaction levies, as well as claims history levies under the 2001 program, be budgeted at $30 million for the purposes of establishing the base premium and other budgetary purposes.

(b) As per the policy established in 1999, any revenues from the transaction and claims history levies that are in excess of those budgeted in the year should be held in trust for future insurance purposes. These excess revenues should be managed on a revolving account basis and applied to the insurance program in future years.

(ii) The Base Premium

29. As a practical matter, the premiums and levies must fund the cost of claims in the underwriting year, as well as the cost of applicable taxes and program administration. The total funds required in 2001 are presently estimated at $77 million, which approximates the forecasted and actual premiums for 2000 and 1999.

30. Although the total cost of losses for the insurance program in 2001 is expected to parallel that of 2000, the base premium amount can be reduced in 2001 because of increased revenue from three sources: higher investment income; additional revenues from transaction and claims history levies (as discussed in paragraph 20); and increased base premium revenues related to growth in the number of practising lawyers.

31. Although the number of practising lawyers in Ontario has tended to fluctuate throughout the year as new lawyers are called to the bar and others leave practice, the number of lawyers in practice year over year has grown steadily by about two per cent. The following chart outlines the growth in the number of practising lawyers in Ontario, with an average of 18,000 practising lawyers expected for 2001.

(Graph re: Number of Lawyers in Practice by Fund Year)

(see Report in Convocation file)

32. Interestingly, despite the increase in the number of practising lawyers to date, there has not been a corresponding increase in claims costs under the program. Consider, for example, the fact that the program's claims costs approximated $65 million per year from 1995 to 2000, despite the exposure increase of an additional one thousand practising lawyers during that time.

33. For 2001, the LPIC Board proposes that the base premium be reduced by $350 to $2,800 per lawyer. This compares to a base premium of $3,150 in 2000, $3,650 in 1999, $4,650 in 1998 and $5,150 in 1997. The proposed base premium is based on the following assumptions:

- 18,000 practising insured lawyers (full-time equivalents);
- $65 million in anticipated total loss costs;
- $30 million in budgeted transaction and claims history levy revenues; and
- 6 per cent investment income.

34. Adjustments for investment income, applicable taxes, the various premium surcharges and discounts under the program, as well as administration costs are also taken into account. These assumptions and forecasts are reviewed with LPIC's audit committee and full Board prior to presentation to Convocation. In reviewing and approving the recommended premiums and levies, LPIC's Board must take into account the solvency requirements for insurance companies as required by the Financial Services Commission of Ontario, LPIC's regulator.

35. The change in base premium will mean that lawyers in Ontario will pay insurance premiums from as low as $1,270 for restricted area of practice, new calls and part-time practitioners up to $2,800 for the mandatory insurance program (depending on the options chosen).

36. The base premium in recent years is summarized as follows:

(Graph re: Base4 Premium, by Fund Year)

(see Report in Convocation file)

37. The LPIC Board of Directors recommends that the base premium be reduced by $350 to $2,800 per lawyer for the 2001 insurance program.

Program Exemptions, Policy Coverage and Options

38. With the exception of the change in the base premium, no significant program changes are proposed for 2001. Subject to the recommended changes, it is intended that the insurance program for 2001 remain unchanged from the program now in place.

39. In particular, the criteria under which lawyers can exempt themselves from paying insurance premiums and levies will not change. The standard practice coverage (including Mandatory Innocent Party Coverage) and Run-Off Coverage will remain as they now are. Existing policy options, including the Innocent Party Buy-Up, Part-Time Practice and Restricted Area of Practice options, as well as premium payment options will be maintained. (See Appendix A.)

40. No changes to the policy coverage are contemplated. It is, however, the intention that a right of audit on the part of the insurer be included in the policy, and that a question concerning billing volumes be reintroduced to the application form. These are discussed in further detail at paragraphs 59 and 51, respectively. No other changes in policy wording are proposed, apart from minor refinements in the policy wording to better reflect underwriting intentions.

41. The LPIC Board of Directors recommends that the reasons for exemption as well as policy coverage under the program be maintained in their current form, and that the existing policy options continue to be made available for the 2001 program.

Premium Discounts and Surcharges

42. The Board proposes that the premium discounts and surcharges remain unchanged for the 2001 program. In particular, those discounts and surcharges expressed as a percentage of the base premium would remain unchanged as a percentage of the base premium, with any adjustment in the base premium proportionately affecting the amount of the premium discount or surcharge applied. Those premium discounts or surcharges expressed as a stated dollar amount would remain unchanged in amount.

43. Those discounts and surcharges expressed as a percentage of the base premium include the new practitioner discount, Part-Time Practice option discount, Restricted Area of Practice option discount, as well as adjustments for deductibles and minimum premiums, and the 'no application form' surcharge. (See Appendix A.)

44. Those discounts and surcharges expressed as a stated dollar amount include the Mandatory Innocent Party and Optional Innocent Party Buy-Up premium charges, as well as the premium discounts for early lump sum payment and optional online electronic application form filing. (See Appendix A.)

45. The LPIC Board recommends that the premium discounts and surcharges remain unchanged for the purposes of the 2001 program, with those expressed as a percentage of the base premium remaining unchanged as a percentage of the base premium, and those expressed as a stated dollar amount remaining unchanged in amount.

Electronic Filing

46. As in 1999 and 2000, the premium discount for optional online electronic application form filing would again be $50 per lawyer. The discount would be applied to those lawyers who completed and submitted their 2001 policy application form electronically to LPIC prior to November 1, 2000. Approximately 60% of the practising membership (10,000 lawyers) submitted their application forms online last year. This discount encourages the use of technology among the profession and the LPIC website as a means of communication with the membership, minimizes administration and encourages the timely filing of application forms.

47. The LPIC Board recommends that lawyers who complete and submit their 2001 professional liability insurance application form electronically to LPIC prior to November 1, 2000, be provided with a premium discount equal to $50 per lawyer.

Changes to the Application Form

48. The policy application form was first introduced under the 1996 program. This was in response to recommendations in the Task Force Report, which considered the gathering of statistics and underwriting information a priority and constituent part of transforming the program to a program in which the cost of insurance generally reflects the risks.[1]

49. Since 1996, the policy application form has been transformed from a detailed 12-page application form with corollary option selection form, to a streamlined, pre-populated two-page application form suitable for electronic filing.

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[1] 1994 Task Force Report, at page 17.

50. One factor thought to influence risk is the size or volume of practice. This factor was specifically identified in the Task Force Report as an aspect which should be considered in determining the costs of insurance[2], and has been considered in past program application forms. In particular, questions on the total gross billings in private practice of members were included in the 1996 and 1997 application forms, but were removed subsequently, appreciating that a similar inquiry was included in the required Volume Levy Surcharge Form filing.

51. With the Volume Levy Surcharge now discontinued, the application form will again inquire as to the total gross billings of members. Lawyers will be asked to provide information on their gross billings by dollar ranges, and can choose to provide either the individual lawyer's actual gross billings or the average gross billings per lawyer for the firm. This approach minimizes any administrative burden on members, and ensures LPIC obtains meaningful information. The application question would read as follows:

Volume Billings Information

> Provide information concerning either the Actual Gross Billings of the APPLICANT LAWYER or the Average Gross Billings per lawyer in the firm during the fiscal year ended 1999:
>
> Actual/Average Gross Billings (select one)
>
> Does the range selected below represent:
> [ ] Actual Gross Billings for the APPLICANT LAWYER OR
> [ ] Average Gross billings per lawyer in law firm
>
> Gross Billings (select one)
>
> [ ] Under $60,000 [ ] $60,000-$125,000 [ ] $125,001-$200,000
> [ ] $200,001-$300,000 [ ] $300,001-$400,000 [ ] $400,001-$500,000
> [ ] Over $500,000

52. This type of billing information is valuable in monitoring the financial health of the profession as a whole and assessing the relationship between risk and billings. Using this information, the Part-Time Practice option was considered and implemented, and limitations on the selection of the largest deductible amount have been placed. This information is used on an on-going basis to review and re-evaluate these and other aspects of the program. Without this data, LPIC's current information will stale and not be useful for rating and risk evaluation purposes.

53. Members who do not file an application form or do not disclose the required information are surcharged 30 per cent of the base rate. No change to the surcharge is recommended.

54. LPIC's Board recommends that the application form be amended to include information with respect to gross billings.

Risk Rating

a) Background

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

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[2] 1994 Task Force Report, at page 17 as well as pp. 75-78.

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

57. In keeping with this, detailed analyses of the risks associated with the program were undertaken by LPIC, as the program was moved towards risk rating. The results of these analyses are summarized in the September, 1996, and September, 1998, LPIC reports to Convocation. Notably, these analyses concluded that the practice of real estate law and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

58. The objective of risk-rating was finally achieved in 1999 by building on the application of various discounts and by applying the real estate and civil litigation transaction levies and claims history levy revenues to the insurance program.

59. Risk rating is not static. The relationship between the cost of claims from different areas of practice is dynamic. It is important that LPIC continue to monitor the program to ensure that risk rating continues to be achieved.

b) Emerging Practice Issues

60. LPIC's present risk analysis reaffirms the results of its last report indicating that the practice of real estate law and civil litigation represent a disproportionate risk when compared to other areas of practice, with civil litigation leading the practice of real estate law as the area of practice with the greatest relative exposure for losses. In particular, the analysis indicates that:

(1) the practice of real estate law and civil litigation continue to represent a disproportionate risk when compared to other areas of practice, with these two areas of practice representing 66.8% of the claims reported and 65.2% of the claims costs under the program in 2000 (this compares to 67% of claims reported and 62.1% of claims costs applicable to these two areas in 1998, and 67% and 63.8% respectively in 1997);

(2) the decline in the relative exposure relating to the practice of real estate law was reaffirmed, with this practice area accounting for 32.2% of the claims reported and 34.3% of the claims costs under the program in 1999 (which was consistent with the 33.6% and the 34.9% seen in 1998, and well below the traditional levels of 48.1% and 58% seen in the 1989-94 period);

(3) the growth in the relative exposure relating to the practice of civil litigation was reaffirmed, with civil litigation accounting for 34.6% of the claims reported and 30.9% of the claims costs under the program in 1999 (which was consistent with the 33.4% and 27.2% seen in 1998, and well above the traditional levels of 27.4% and 17.7% seen in the 1989-94 period);

(4) the changed nature of claims against civil litigators was also reaffirmed, with claims involving the general conduct or handling of the matter at 63% compared to purely missed limitation period claims at 37% in 1999, which was consistent with the 66.4% and 33.6% seen in 1998; and

(5) lawyers with a prior claims history continued to have a considerably greater propensity for claims than other practising lawyers, with 14.3% of lawyers with claims in the prior eight years, and 4.2% of lawyers with no claims in the prior eight years reporting one or more claims during the last 12-month period (compared to 14.7% and 4.6% last year).

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

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

62. The decline in real estate claims is attributed to both changes in the lawyers' practice environment and the insurance program. The buoyant real estate market, in which parties are inclined to want to complete the transaction rather than bringing a claim; the exclusion of mortgage brokering from coverage under the program and the apparent reluctance by many lawyers to involve themselves in this activity, are all considered to be factors in this change. This aspect of the program is vulnerable to any deterioration in the real estate market, and is carefully monitored by LPIC.

63. It remains doubtful that title insurance has had any significant impact on real estate claims statistics at this point, other than ensuring that certain more difficult transactions can be completed, thus avoiding potential litigation. Even where market penetration is substantial, it takes on average three to five years for a real estate claim to manifest itself from the date the legal work was done, so the impact of title insurance on LPIC's claims statistics likely will not be known for some time.

64. The growth in number and change in the nature of civil litigation claims has been an important topic of communication with the profession this year. Although lawyers engaged in litigation practice continue to make many of the same types of errors made in the past, it is clear that the general breakdown in the lawyer/client relationship is now a leading cause of claims. Although poor calendaring, procrastination, and failure to know and/or apply the law or meet a deadline are traditional causes of litigation claims, failure to follow instructions, poor communication with the client, and overall dissatisfaction on the part of the client with the relationship are now a leading cause of litigation-related claims.

(Graph re: Types of Errors that Result in Litigation Claims)

(see Report in Convocation file)

65. In addition to seminar presentations and meetings with representative law associations, LPIC has issued a special report to all litigation lawyers alerting them to this development. In that special report, LPIC encouraged counsel to provide greater attention to the client relationship, ensuring effective communication, managing client expectations – in terms of the prospects of success, anticipated costs and timelines, limiting exposure to libel and slander claims, and guarding against personal awards of costs against lawyers under Rule 57.07.

66. It is anticipated that this will be an on-going matter of communication between LPIC and the areas of the bar most closely affected.

c) Revalidating Risk Rating

67. Appreciating the differing and evolving exposures associated with different practice areas, it is important to periodically re-evaluate the program by area of practice to ensure that the program continues to be effective in its risk rating.

68. The following chart provides a sense of the distribution of claims costs and expenses by detailed area of practice over the last decade. A similar chart is enclosed as part of Appendix B, providing a distribution by the number of claims, as opposed to claims costs.

(Graph re: Distribution of Claims Costs and Program Expenses, by Area of Practice)

(see Report in Convocation file)

69. Apparent from this chart are the significant but declining claims costs associated with real estate claims; the significant and growing claims costs associated with civil litigation and family law; and the variability associated with most other areas of practice. This variability, to large measure, is a reflection of the unpredictability associated with fewer losses and smaller group sizes – reflecting the diminishing assistance of the law of large numbers.

70. This, and the fact that few lawyers practise exclusively in one area, provides a compelling reason to group together common or related areas of practice. Grouping the areas of practice, we get the following chart which complements the first.

(Graph re: Distribution of Claims Costs and Program Expenses, by Grouped Area of Practice)

(see Report in Convocation file)

71. To ensure that risk-rating is being achieved, however, the program's anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program in 1999 and the first six months of 2000), the following chart compares the anticipated losses distributed by area of law, to the proposed base levy premiums by the lawyers' primary area of practice. The premiums in this chart include only the proposed base levy premiums (together with discounts), and no amounts applied as transaction levies and claims history surcharges.

(Graph re: Comparison of Projected 2001 Premium by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law)

(see Report in Convocation file)

72. The shortfall between the anticipated claims costs and expenses to base levy premiums, both for both real estate and the litigation grouping, is clearly significant. As already noted, it is proposed that $30 million be provided through the transaction levies and claims history levy surcharges.

73. Appreciating this, the latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, base premium levies of about $8,100 and $4,400 would be required of members whose primary area of practice is real estate or civil litigation, respectively.

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

75. As indicated in the following chart, by including the transaction and claims history surcharge levies as proposed, the shortfall between anticipated claims costs and expenses to total insurance levies is almost entirely overcome in these higher risk areas of practice.

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[4] 1999 LPIC Report to Convocation, pp. 18-22; 1998 LPIC Report to Convocation, pp. 35-37; and 1996 LPIC Report to Convocation, pp. 32-36.

76. Although this chart offers an imperfect comparison, in the sense that the chart compares premiums sorted by the lawyers' primary area of practice and compares this to claims costs and expenses sorted by the area of law of the claim itself, the chart does show a strong correlation between insurance levies and losses in each area of practice – a good indication that risk rating is being achieved.

(Graph re: Comparison of Projected 2001 Premi8um + Levies by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law)

(see Report in Convocation file)

77. To compare the actual claims experience of lawyers to revenues received from those lawyers, the chart below compares the anticipated premiums (with the transaction and claims history levies) sorted by the members' primary area of practice, and compares this to the anticipated claims costs and expenses of these members.

(Graph re: Comparison of Projected 2001 Premium + Levies by Lawyer's Primary Area of Practice to Claims and Expenses by Lawyer's Primary Area of Practice)

(see Report in Convocation file)

78. This comparison still indicates that with the benefit of the transaction and claims history surcharge levies, there is a reasonably close correlation between revenues and claims.

79. However, the chart does indicate some subsidy by area of practice. Those lawyers whose primary area of practice is classified as "All Other" are expected to have their premiums somewhat exceed losses. This affects less than 14 per cent of the practising bar.

80. Finally, it is also possible to compare rating based on the time spent by each lawyer in a particular area of practice, to claims sorted by the area of law of the claim. Appreciating the practical limitations in determining and verifying time spent by area of practice, this approach is not seen as offering sufficiently reliable data for the purposes of a practical rating methodology. It is, however, of interest in reassessing other means of risk assessment. This approach results in the following chart.

(Graph re: Comparison of Projected 2001 Premium + Levies by Lawyer's Percentage of Time in Area of Practice to Claims + Expenses by Claim's Area of Law)

(see Report in Convocation file)

81. Although generally consistent with the previous chart, this one indicates that the amount of subsidy expected for corporate, bankruptcy, securities, tax or intellectual property is essentially negated, and that the "All Other" practice category is instead expected to be in need of some amount of subsidy. Beyond this, the anticipated premiums and losses for real estate and litigation have become less balanced, with real estate expected to offer some amount of subsidy and litigation law expected to require some offsetting amount.

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

83. Other aspects reviewed in the analysis included the exposure based on the size of firm, year of call, geographic location and prior claims history. The results of this analysis reaffirm the premium discounts already in place, including the discounts for new and for part-time practitioners and the surcharge applied to those practitioners with a prior claims history. The results of this analysis support the conclusions of previous reports, and are summarized in the graphs in Appendix B.

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

85. Accordingly, the LPIC Board is satisfied with the continued use of the transaction and claims history levy revenues as premium. As a result, the cost of insurance under the program continues to generally reflect the risk, without incurring the substantial dislocation amongst the bar which would otherwise occur.

86. Various examples of premiums which would be charged to members depending upon the nature of their practice are summarized in Appendix C of this Report.

practicePRO and the Online Coaching Centre

87. As discussed in the Fall 1998 LPIC Report to Convocation, LPIC launched its comprehensive risk management program, called practicePRO, in June of 1998.[6] This program is designed to assist lawyers in reducing their claims exposure, to help them practise more effectively and profitably, and to empower them to excel in a rapidly changing practice climate. practicePRO is made up of five components:

- Information – to provide a context for change
- Practice Aids – to offer tools for today and tomorrow
- Education – to promote the need to keep learning
- Wellness and balance – to recognize the human dimension
- online COACHING CENTRE – to enhance the soft skills

88. As part of the practicePRO initiative, in June of 1999 LPIC launched the Online Coaching Centre (OCC): an internet-based, self-coaching tool designed to help lawyers enhance their business and people skills.

89. The OCC resides in the LPIC website, and is made up of more than 150 modules on such topics as Getting Stress Hardy; Powerful Communications; Overcoming Procrastination; Practice Management; Business Development; and Emotional Intelligence. To allow the lawyer to focus on which modules will be most helpful, the OCC also includes a series of self-assessments that correspond to each of the topics. Each module is designed to take an average of 10-15 minutes, to readily fit into a lawyer's busy day.

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

[6] 1998 LPIC Report to Convocation, pp. 38-42.

90. Currently, lawyers have free access to 23 modules in the Getting Stress Hardy workshop, and one free sample module in each of the other five workshops. Unlimited access to all other modules is available for a one-time fee of $49.95 (plus taxes). There are currently about 200 OCC subscribers.

91. In the view of the LPIC Board, the OCC has the potential to offer real and substantial benefits to the insurance program, as well as to the members and profession at large, if more fully used by the profession.

92. To better facilitate the use of the OCC by Law Society members, it is instead proposed that free access to the OCC be provided to all members following an OCC announcement to this effect early in 2001. As well, in the following year's program for 2002, a $50 premium credit would be given to those who have used the OCC in 2001 prior to September 30 – this being the date on which the 2002 renewal season commences.

93. Accordingly, an OCC program announcement would be made early in 2001, with free access being made available to all of the OCC for the duration of the year. As part of the 2002 application form process, members would then be required to confirm their use of the OCC earlier in the year by declaration.

94. The LPIC Board recommends that free access be provided to Law Society members for the whole of the Online Coaching Centre in 2001, with a $50 premium credit to be applied to members of the practising bar in 2002 who use the Coaching Centre before September 30, 2001, and confirm their use of such by declaration on the 2002 application form.

CONCLUSION

95. The LPIC Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LPIC Board invites Convocation's consideration of this report and recommendations for approval by Convocation in September so that the year 2001 insurance program can be implemented by January 1, 2001.

ALL OF WHICH LPIC'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION

September, 2000

ROSS W. MURRAY, Q.C.
Chair, LPIC's Board of Directors

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

(1)	Standard Program Summary & Options.	(Appendix A, pages 37 - 39)
(2)	Distribution of Claim Count, by Area of Practice (graph)	(Appendix B, page 43)
	Distribution of Civil Litigation Claim Count, by Description of Loss (graph)	(Appendix B, page 44)
	Distribution of Claims by Geographic Region (graph)	(Appendix B, page 45)
	Distribution of Claims by Firm Size (graph)	(Appendix B, page 46)
	Distribution of Claims by Years Since Date of Call (graph)	(Appendix B, page 47)
	The 80-20 Rule (graph)	(Appendix B, page 48)
	Claims Facts	(Appendix B, page 49)
(3)	Premium Rating Example	(Appendix C, page 53)

It was moved by Mr. Murray, seconded by Mr. Crowe that the Report and Recommendations be approved.

Carried

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that the Law Society ask LPIC to issue certificates of recognition to those lawyers who have practised for 25 years without an errors and omissions claim or had claims paid out on their behalf.

The Treasurer ruled the motion out of order

The Treasurer congratulated Mr. Heins, CEO of LPIC and Ms. Strom, CFO of LPIC on the work they had done.

REPORT OF THE ADMISSIONS COMMITTEE

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

Report to Convocation
September 20, 2000

Admissions Committee

Purpose of Report: Decision Making and Information

Prepared by the Policy Secretariat

Table of Contents

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee met on September 7, 2000. The following members were in attendance:

Derry Millar (Chair)
Edward Ducharme (Vice-Chair)
Dean Alison Harvison Young
Dean Peter Hogg
Marion Boyd
Tom Carey
Stephanie Willson

Staff: Bob Bernhardt, Ian Lebane, Susan Lieberman, Maria Paez Victor, Charles Smith, Roman Woloszczuk, Margaret Froh

2. This report contains the Committee's policy reports on:

a. Queen's University Cooperative Program
b. Length of Articles
c. Barristers/Solicitors Oath

3. This report also contains the following information items:

a. New Rules of Professional Conduct at the BAC
b. New Head of Family Law
c. Pending Issues

POLICY - FOR DECISION

Queen's University Cooperative Program

Issue

4. The Committee has considered a proposal for a coordinated LL.B./Master of Public Administration Cooperative Program submitted by the Faculty of Law at Queen's University. The Committee recommends its approval to Convocation.

The Committee's Mandate

5. Standing alone, neither the Master of Public Administration program at Queen's nor the LL.B. program requires Convocation's approval. Indeed, both degree programs are widely recognized as being of the highest order. However, the newly proposed coordinated LL.B./MPA. program contains an articling component which Convocation must consider because it because it represents an exception to two existing policies:

a. that students not receive articling credit for time in a law firm prior to completion of the LL.B., and

b. that articling before completing Phase One (now called the Skills Phase) of the Bar Admission Course should only be allowed in exceptional cases.

Background

6. Heretofore, the Faculty of Law at Queen's University has sought and received approval from Convocation for two cooperative degree programs very similar in structure to the one presently proposed. In 1996, Convocation approved the joint LL.B. and Master of Industrial Relations Program; in 1997, Convocation approved the LL.B. and Master of Planning Program.

7. In 1997, a report to the Admissions and Equity Committee, Mr. Alan Treleaven, then the Director of Education, (see entire report at APPENDIX A), wrote that in approving the Queen's proposal for a joint LLB/Industrial Relations, a program which contained an articling component very much like the one in this new proposal, the Committee did not wish to be seen as opening the door to blanket approval of other work experience during law school, such as criminal or civil intensive programs, or summer law firm placements.

8. Despite these concerns, Mr. Treleaven went on to say that the Committee recognized the very positive effect of introducing a system of cooperative legal education in Ontario, and considered that well planned programs, such as the one proposed by Queen's University, ought to be encouraged. He then laid down several criteria that such proposals should address in future if they are to be approved.

9. These approved criteria are as follows:

a. The particular Law Faculty's interest and expertise in the field, and the fit with academic activities already underway or planned;
b. Rationale and overall purpose/goal;
c. Goals and objectives of each main component of the program;
d. Sequence of the program;
e. Structure of each term;
f. Content of each term, and how the academic and placement terms are linked;
g. Experience to be attained;
h. Instruction methods unique to the cooperative program;
i. Assessment methods unique to the cooperative program;
j. Coordination and supervision of the program and students;
k. Evaluation of the experience of each student in placement, and of the placement sites, at the conclusion of each placement term;
l. Evaluation of the program as a whole;
m. Feedback to the supervising lawyers;
n. Feedback to the students;
o. Rotations (from private to public sector, for example); and
p. Documentation.

10. The record indicates that the approval, in 1996, of the Queen's proposal for a joint LL.B. and Industrial Relations was on the basis of the program being a "pilot project." It had been expected:

a. that the bar admission course reform, then due to be carried out shortly, would address fully the issue of articling and include consideration of placements at cooperative programs;
b. that all cooperative programs would be reviewed and evaluated.

11. Mr. Treleaven dealt squarely with the issue of the articling component and recommended the approval of the Queen's joint LL.B/ MPP proposal subject to the following conditions (see Mr. Treleaven's report at APPENDIX A):

a. Documentation approved by and in compliance with the Law Society's educational and documentation requirements was to be filed with the Law Society in order for the student to receive credit for a placement term. (The documents would be the equivalent to those required for articling, but would not employ the word "articling.")

b. Because cooperative placements students would not have the formal status of articling students, Queen's University was to ensure that supervising lawyers in the cooperative placement comply with Professional Conduct Handbook Rule 16, and that each student was effectively supervised in the same manner as the Law Society prescribed for articling students.

c. Students were to agree in writing that they were subject, during the placement terms, to the Law Society's jurisdiction to the same extent as if they were articling students. Further, students in the cooperative placement had to agree, in writing, to cooperate fully with Queen's University and the Law Society in the investigation or resolution of any problems arising during a placement, and acknowledge that the Law Society had jurisdiction to deny credit for a whole or part of the cooperative placement based on all the relevant circumstances of any student misconduct. If an issue of alleged misconduct by a student or supervising lawyer arose during a placement that would be of concern to the Law Society had it occurred during an articling placement, a specifically designated member of the faculty or staff at Queen's University would be responsible for intervening and advising the Law Society promptly of the problem and the actual or proposed resolution.

d. For each placement, matters of remuneration, benefits, work conditions, and work scheduling was subject to the supervision of the university. Where any student was unable to complete a phase of a placement on schedule due to exceptional or compassionate circumstances, such as personal or family illness, accident or parental leave, the lost time was to be made up in full in a subsequent placement term, before the awarding either of the joint degrees.

Recent Events

12. Contrary to what the Committee expected in 1997, the Bar Admission Course reform process did not include a study of the articling process or of cooperative programs.

13. At the Committee's meeting cf June 8, 2000, Dean Harvison Young brought forward as a last minute item Queen's proposal for a joint LL.B. and Master of Public Administration, requesting that it be recommended for Convocation's approval. (See Queen's original proposal at APPENDIX B).

14. On June 23, 2000, Convocation considered the Queen's proposal but directed the Committee to examine it again with particular attention to the conditions under which students in the cooperative program are to be given articling credit.

15. Accordingly, the Committee asked Dean Harvison Young to re-submit the original proposal having special regard to the list of components required for approval of cooperative programs (See paragraph 9). The revised Queen's LL.B/MPA cooperative program proposal can be found at APPENDIX C.

Broader Implications

16. The Queen's cooperative program proposal, and specifically the process of review that it has recently gone through, raised broader policy concerns which this Committee will continue to address in the coming months:

a. There is a need to establish a cooperative program approval policy that will allow greater clarity and support to Law Schools proposing future cooperative programs.

b. There is a need to determine with greater clarity and precision the educational value of the articling experience by developing an evaluation method for the articling experience in general, including articles attained by way of cooperative educational programs.

17. The Committee will assure itself that any evaluation method for future cooperative programs will not be more onerous than any methods used to evaluate the Bar Admission Course programs. The Committee considers that its evaluation role consists in setting standards that allow the universities to evaluate the program accordingly.

18. This Committee will be bringing to Convocation in the coming months the results of its deliberations on these broader policy issues and corresponding recommendations for approval.

Request to the Convocation

19. The Committee unanimously recommends that Convocation approve the Queen's University proposal for a joint LL.B. and Master of Public Administration Program (at APPENDIX C). This proposal meets the criteria for approval of cooperative programs established by its predecessor, the Legal Education Committee, in 1996 (See paragraph 9) and the placement conditions for approval as stated in the January 9, 1997 report by Mr. Alan Treleaven (See paragraph 11).

Options for Convocation

20. Convocation has the following options:

a. Accept the Committee's recommendation to approve the Queen's University proposal as expressed in paragraph 19.

b. Reject the Queen's University proposal.

c. Require further information and/or commitment from Queen's University in order to obtain Convocation's approval.

Length of Articles

Issue

21. The Committee is seeking Convocation's approval to reduce the articling term at the Bar Admission Course from 12 months of articles with a vacation period of up to 4 weeks to 10 months of articles with a vacation period of two weeks included.

Background

22. On the request of the recent Articling Working Group, opinions on the length of articling were surveyed among articling coordinators and principal which indicated overall support for the current 12 months articling period. On the basis of that survey, the Head of Articling and Placement recommended that the length of the articling term in the new model of the bar admission course remain at twelve months with up to 4 weeks vacation period. (See APPENDIX E)

23. On June 23, 2000, Convocation received a letter on behalf of twelve Toronto large firms raising concerns over the recommendation to retain a 12 months articling period. (See APPENDIX D) In view of this information, Convocation decided that this issue should go back to the Committee for further consideration and be resubmitted to Convocation in September.

24. A revised document on the length of articles was prepared by the Head of Articling and Placement which includes the issue of vacation time and does not include any recommendation to the Committee. It can be found at APPENDIX F.

Recent Events

25. At its meeting of June 8, 2000, the Committee agreed with the recommendation of the Head of Articling to retain the present length of the articling term in the new model of the Bar Admission Course at 12 months with up to 4 weeks vacation.

26. In view of the concerns expressed by the twelve large law firms to the recommendation, on June 23, 2000, Convocation directed the Committee to review the matter and to report to Convocation in September.

27. At the Committee meeting of September 7,2000, the issue of the length of articles raised policy concerns which this Committee will continue to study during the coming months. The policy considerations are twofold:

    a. How does the length of articles affect/enhance/ impede the educational mandate and function of the Law Society?

    b. How does the length of articles affect the educational value and objectives of articling?

28. This Committee will report to Convocation in the near future the results of its deliberations on these policy issues and corresponding recommendations for approval.

29. At its meeting on September 7, 2000, the Committee deliberated at length the issue of length of articles and acquisition of learning skills. And the reality is, as the academic members of the Committee in particular have emphasized, that no reliable evidence exists to suggest that a period of 12 months, as opposed to 10, is necessary to convey successfully to law students the specific skills to be engendered during the articling period. Indeed, educators well understand that time is not a proxy for learning. So, no pedagogical data exist to demonstrate that 12 months are necessary to guarantee the success of the articling experience.

30. We know, in fact, if only from our own anecdotal experiences that the quality of articles varies widely from firm to firm, sometimes even within the same firm, depending upon the principals involved and other relevant factors. In all the circumstances, the Committee now believes, strongly, that a host of practical considerations dictate that the articling term be shortened from 12 months, with 1 month's vacation, to 10 months, with 2 weeks' vacation. The Committee reasonable believes that the new time frame affords adequate opportunity for principals to impart the thirteen specific skills the articling term is meant to address. Moreover, the shorter time frame will mean that students will now be eligible for their call to the bar a full 5 months sooner than at present, thereby, enhancing their career opportunities and income-earning capacities. All of this is in keeping with the spirit of the views expressed by Madame Justice Abella when she addressed benchers last fall and called upon us to give serious consideration to a shortening of the students pre-call legal education.

The Committee's Recommendation

31. The Committee unanimously recommends to Convocation that the length of the articling term in the new model of the Bar Admission Course have a duration of 10 months with a 2 week vacation period included.

Options for Convocation

32. Convocation has the following options:

a. to accept the Committee's recommendation (at paragraph 31) establishing the articling term at 10 months duration for the new Bar Admission Course;

b. to send this issue back to Committee for further consideration; or,

c. to determine another length of articling for the new Bar Admission Course.

Barristers and Solicitors Oath

Issue

33. Convocation is asked to approve a new proposed single oath for barristers and solicitors and to direct that the appropriate changes be made to subsection 6(6) of By-Law 11.

Background

34. In Ontario, the ceremony of the call to the bar includes the administration by a judge of three oaths: the Barristers Oath, the Solicitors Oath and, if the person so wishes, the Oath of Allegiance.

35. Prompted by a member request, the Committee was asked to update the wording -but not the fundamental meaning- of the present solicitors oath so that it contain more clarity for the new generation of lawyers.

36. On May 9, 2000 the Committee agreed to review the oath. It was of the view that the professional barristers and solicitors oaths should be consolidated into one single oath.

Historical Information

37. Values change and even ethical values that are generally considered timeless and a-historical are often interpreted differently in time. Oaths, therefore, evolve in order to remain relevant and applicable to actual historical circumstances. At APPENDIX G there is an archival note on the origins and evolution of the barristers and solicitors oaths at the Society.

38. The earliest oaths on record are attorney oaths from the early nineteenth century which are lengthy, detailed, and religious in orientation. Traditionally, the call to the bar has involved three oaths: oath of allegiance, barristers and solicitors oaths. In the early 1800's, the three oaths were considered as one and later were distinguished from one another. The oaths changed significantly around 1833, especially the oath of allegiance due to changing political values.

39. The solicitors oath, on the other hand, has not had major changes as the following examples demonstrate:

> "I do sincerely promise and swear that I will truly and honestly demean myself in the practice of an Attorney at Law according to the best of my knowledge and ability. So help me God." (1833)
>
> "You also do sincerely promise and swear that you will truly and honestly conduct yourself in the practice of a solicitor of the Supreme Court of Ontario according to the best of your knowledge and ability. So help you God." (1975)

40. In 1990, the wording of the solicitors oath was changed to eliminate reference to specific courts.

Considerations

41. There are several considerations that may be helpful when reviewing a professional oath:

a. Definition: The Concise Oxford Dictionary defines an oath as a :"Solemn appeal to God or revered or dreaded person or object in witness that statement is true or promise shall be kept; to bind oneself thus."

b. Social significance: An oath is a public statement that confirms an individual's intention to the community.

c. Professional symbol: A professional oath binds the individual to abide by the values, rules and conduct of a professional body and it is an important symbolic differentiation of professions from occupations.

d. Relevance: Because the oath is symbolic, it is intended to capture in an overarching way, the heart of a profession's values.

Oaths at other Canadian Law Societies:

42. An analysis of the oaths of seven other Canadian Law Societies reveals the following:

a. Most use the word "swear" instead of "promise", with "affirm" as optional.

b. Attributes: The adverbs most used are : honestly, truly, faithfully, with integrity.

c. Main conduct promised: The conduct that most oaths include refer to the following: not to promote frivolous suits and not to pervert the law/to uphold the rule of law.

d. Other promised conduct: The following conduct is also included: not to seek to destroy any person's property, to preserve inviolate the secrets entrusted unless authorized by law, to execute all mandates entrusted, to uphold the rights and freedoms of all persons, to uphold the interest of the citizens.

e. The profession: Two law societies refer to the ethical standards and rules of the profession and one includes the promise not to compromise the honour and dignity of the profession.

f. Administration of Justice: Two law societies refer to the administration of Justice in the following terms: to uphold the rights and freedoms of all persons, to maintain a respectful attitude in word and deed toward those charged with the administration of Justice.

g. Mention of Canada and Province: Most oaths refer by name to the country and/or province.

Existing Oaths

43. LSUC Solicitors Oath:

"You also do sincerely promise and swear that you will truly and honestly conduct yourself in the practice of a solicitor according to the best of your knowledge and ability. So help you God."

44. LSUC Barristers Oath:

"You are called to the Degree of Barrister-at-law to protect and defend the rights and interest of such citizens as may employ you. You shall conduct all cases faithfully and to the best of your ability. You shall neglect no one's interest nor seek to destroy anyone's property. You shall not be guilty of champerty or maintenance. You shall not refuse causes of complaint reasonably founded, nor shall you promote suits upon frivolous pretences. You shall not pervert the law to favour or prejudice anyone, but in all things shall conduct yourself truly and with integrity. In fine, the Queen's interest and the interest of citizens you shall uphold and maintain according to the constitution and law of this Province. All this you do swear to observe and perform to the best of your knowledge and ability. So help you God."

Proposed Single Oath

45. On the basis of a careful analysis of the former historical oaths at the Society, the oaths of other Canadian law societies, after consultation with the Equity Advisor and receiving feedback from knowledgeable members, the following renewed and consolidated oath is proposed:

"I promise and swear (or affirm) that I will honestly and diligently and to the best of my ability execute the duties of Barrister and Solicitor, abiding by the ethical standards and rules of the legal profession whose honour and dignity I will not compromise; that I will not promote suits upon frivolous pretences but in all things I shall conduct myself truly and with integrity; that I will uphold and seek to improve the administration of Justice and will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of Ontario.
(Optional) So help me God."

Analysis of Proposed Oath

46. The components of the present solicitors and barristers oaths that have been changed in the new proposed oath are as follows:

a. The adverbs "truly and honestly" are changed to "honestly and diligently"

b. The promise "to defend the rights and interests of such citizens as may employ you" has been broadened to defend "the rights and freedoms of all persons".

c. The promise "not to be guilty of champerty or maintenance" is clarified by the promise of not promoting "suits upon frivolous pretences."

d. The promise not to pervert the law is expressed in the positive: "I will uphold and seek to improve the administration of Justice and the rule of law."

e. The Queen is not included in the proposed oath since there is a separate oath of allegiance which is optional.

f. The word "swear" can be substituted by the word "affirm" for those whose religious beliefs do not permit them to swear. The phrase "So help me God" is optional for this reason and as well for those to whom it is meaningless.

g. The only major new component to the proposed oath is the addition of a promise of professional fidelity which is absent in the present oaths: to abide " by the ethical standards and rules of the legal profession whose honour and dignity I will not compromise".

The Committee's Recommendation

47. Committee recommends that Convocation give its approval to the single barristers and solicitors oath (at paragraph 45) and direct corresponding changes to subsection 6 (6) of By-law 11.

Decision for Convocation

48. vocation has the following options:

a. to accept the Committee's recommendation at paragraph 47; or,

b. to reject or modify the Committee's recommended oath.

INFORMATION

New Head of Family Law at the BAC

49. Due to the judicial appointment of Ms. Susie Goodman, the Bar Admission Course required a new Head of the Family Law Section.

50. With the endorsement of Ms. Goodman and the recommendation of the Director of Education, the Committee approved the appointment of Mr. Stephen Grant as the new Head of the Family Law Section at the Bar Admission Course.

New Rules of Professional Conduct

51. The new Rules of Professional Conduct have been incorporated into the Professional Responsibility course of the Bar Admission Course. There will be a modified open book multiple-choice examination for Professional Responsibility. Students will be given a copy of the new Rules and will be allowed to consult it during the examination. The questions will centre upon knowledge of the Rules rather than on cases presenting ethical dilemmas. Students will not be allowed to consult any other written material at that time.

52. The Cumulative Adjusted Pass (formerly the Aegrotat Pass) will not apply to the Professional Responsibility examination.

Pending Issues

53. A list of pending issues can be found at APPENDIX H.

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

(1) A copy of Mr. Alan Treleaven's Report to the Admissions & Equity Committee dated January 9, 1997 re: Alternatives to Traditional Law School/Bar Admission Requirements (EG. Queen's University Law School Co-op Program). (Appendix A, pages 15 - 27)

(2) Copy of Queen's University's Proposal for a Coordinated M.P.A./LL.B. Co-operative Program. (Appendix B, pages 28 -30)

(3) Copy of the revised Queen's Proposal for a Coordinated M.P.A./LL.B. Cooperative Program. (Appendix C, pages 31 - 43)

(4) Copy of letter on behalf of twelve Toronto large firms addressed to the Benchers of the Law Society of Upper Canada re: retaining a 12 month articling period. (Appendix D, pages 45 - 47)

(5) Survey re: Length of Articling Phase in the New Model Bar Admission Course. (Appendix E, pages 48 - 78)

(6) Copy of revised document re: Length of Articling Phase in the New Model Bar Admission Course. (Appendix F, pages 79 - 95)

(7) Copy of an archival note on the origins and evolution of the barristers and solicitors oaths in the Society. (Appendix G, pages 96 - 97)

(8) Copy of a list of pending Issues. (Appendix H, page 98)

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

The Treasurer and Benchers had as their guests for luncheon, former Chief Justice Gregory Evans, Justice William Maloney and Dean Allison Harvison Young.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Aaron, Arnup, Banack, Bindman, Campion, Carey, Carpenter-Gunn, Chahbar, Cherniak, Coffey, Copeland, Crowe, Diamond, DiGiuseppe, E. Ducharme, T. Ducharme, Epstein, Finkelstein, Gottlieb, Hunter, Krishna, Lalonde, Laskin, Lawrence, MacKenzie, Manes, Marrocco, Millar, Mulligan, Murphy, Murray, Pilkington, Porter, Potter, Puccini, Ross, Simpson, Swaye, Topp, Wardlaw, Wilson and Wright.

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IN PUBLIC

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REPORT OF THE ADMISSIONS COMMITTEE

Resumption of the debate on the Queen's University Cooperative Program

It was moved by Mr. Banack, seconded by Mr. Finkelstein that the motion on the Queen's University proposal be stood down until after the Articling debate.

Lost

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the recommendation at paragraph 19 on page 6 of the Report that the Queen's University proposal for a joint LL.B. and Master of Public Administration Program be approved subject to the placement conditions stated in the January 9th, 1997 report by Mr. Alan Treleaven which are set out in paragraph 11 on pages 4 and 5 of the Admissions Committee Report.

The conditions are:

a. Documentation approved by and in compliance with the Law Society's educational and documentation requirements was to be filed with the Law Society in order for the student to receive credit for a placement term. (The documents would be the equivalent to those required for articling, but would not employ the word "articling".)

b. Because cooperative placements students would not have the formal status of articling students, Queen's University was to ensure that supervising lawyers in the cooperative placement comply with Professional Conduct Handbook Rule 16, and that each student was effectively supervised in the same manner as the Law Society prescribed for articling students.

c. Students were to agree in writing that they were subject, during the placement terms, to the Law Society's jurisdiction to the same extent as if they were articling students. Further, students in the cooperative placement had to agree, in writing, to cooperate fully with Queen's University and the Law Society in the investigation or resolution of any problems arising during a placement, and acknowledge that the Law Society had jurisdiction to deny credit for a whole or part of the cooperative placement based on all the relevant circumstances of any student misconduct. If an issue of alleged misconduct by a student or supervising lawyer arose during a placement that would be of concern to the Law Society had it occurred during an articling placement, a specifically designated member of the faculty or staff at Queen's University would be responsible for intervening and advising the Law Society promptly of the problem and the actual or proposed resolution.

d. For each placement, matters of remuneration, benefits, work conditions, and work scheduling was subject to the supervision of the university. Where any student was unable to complete a phase of a placement on schedule due to exceptional or compassionate circumstances, such as personal or family illness, accident or parental leave, the lost time was to be made up in full in a subsequent placement term, before the awarding either of the joint degrees.

Carried

ROLL-CALL VOTE

Aaron	For
Arnup	For
Bindman	For
Campion	For
Carey	For
Carpenter-Gunn	For
Chahbar	For
Cherniak	For
Coffey	For
Copeland	For
Crowe	For
Diamond	For
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	For
Epstein	For
Finkelstein	Against
Gottlieb	For
Hunter	For
Krishna	For
Lalonde	For
Laskin	For
MacKenzie	For
Manes	For
Marrocco	For
Millar	For
Mulligan	For
Murray	For
Pilkington	For
Porter	For

Potter	For
Puccini	Against
Ross	For
Simpson	For
Swaye	For
Topp	For
Wilson	Abstain
Wright	Abstain

Vote: 34 - For, 2 - Against, 2 Abstentions

It was moved by Mr. Krishna, seconded by Mr. Marrocco that the Admissions Committee be required to study the question of whether summer employment under an approved principal after the second year of an LL.B. program should count towards the total articling period to a maximum of four months and that the Admissions Committee report to the November Convocation unless the Committee comes forward with a report to Convocation explaining why further time is required.

Carried

Re: Length of Articles

It was moved by Mr. Wright, seconded by Ms. Puccini that the matter be referred back to the Committee for further study and report back at the November Convocation.

Lost

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the length of the articling term in the new model of the Bar Admission Course have a duration of 10 months with a two week vacation period included.

Carried

ROLL-CALL VOTE

Aaron	Against
Arnup	Abstain
Bindman	Abstain
Campion	For
Carey	For
Carpenter-Gunn	Against
Chahbar	For
Cherniak	For
Coffey	For
Copeland	For
Crowe	For
Diamond	Abstain
DiGiuseppe	Against
E. Ducharme	For
T. Ducharme	For
Epstein	Against
Finkelstein	For
Gottlieb	Against
Hunter	For
Lalonde	For

Laskin	For
MacKenzie	Against
Manes	Against
Marrocco	For
Millar	For
Mulligan	For
Murray	Against
Pilkington	For
Porter	For
Potter	For
Puccini	Against
Ross	Against
Simpson	For
Swaye	For
Topp	For
Wilson	Against
Wright	Against

Vote: 22 - For; 12 - Against; 3 Abstentions

Re: Barristers and Solicitors Oath

It was moved by Mr. Millar, seconded by Mr. Hunter that the single barristers and solicitors oath at paragraph 45 of the Report be approved.

An amendment was accepted by the mover and seconder that the words " that I will not promote suits upon frivolous pretences" be deleted from the proposed oath.

A further amendment was suggested that the "word" truly" be changed to "honestly".

In light of the discussion in Convocation, Mr. Millar advised that he would take the matter back to the Committee for further consideration.

Mr. Millar thanked Madam Justice Susie Goodman for her contribution as Head of the Family Law Section and congratulated her on her judicial appointment. He advised that Mr. Stephen Grant had been appointed as the new Head of the Family Law Section of the Bar Admission Course.

REPORT OF THE EQUITY & ABORIGINAL ISSUES COMMITTEE

Mr. Copeland presented the Report of the Equity & Aboriginal Issues Committee for consideration.

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
September 08, 2000

Report to Convocation

Purpose of Report: Decision Making
Information

Prepared by the Equity Initiatives Department

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Equity and Aboriginal Issues Committee met on Wednesday, September 6, 2000, 4:00 - 7:00 p.m. in Convocation Room. In attendance were:

Paul Copeland (Chair)
Judith Potter (Vice-Chair)
George Hunter (Vice-Chair)
Leonard Braithwaite
Marshall Crowe
Stephen Bindman
Barbara Laskin
Todd Ducharme
Susan Opler (non-bencher)
Andrew Pinto (co-chair Equity Advisory Group)

Staff: Charles Smith, Rachel Osborne, Josée Bouchard, Geneva Yee, Jewel Amoah, Andrea Burck, Susan Lieberman

Guest: Mary Teresa Devlin (Discrimination/Harassment Counsel)

This report provides recommendations for Convocation decision-making. A summary of the second report of the Discrimination/Harassment Counsel is also submitted for information purposes.

LAW FIRM EQUITY AND DIVERSITY MENTORSHIP PROGRAM

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones recommends to Convocation adoption of a pilot program aimed at encouraging individuals from communities currently under-represented in the legal profession to consider law as a career. This pilot program will provide mentorship/job-shadowing opportunities for high school students from Aboriginal, the racial minority and other communities. It will be implemented in cooperation with local school boards in Toronto and Ottawa, and with the YMCA's "Black Achievers Program" and the National Aboriginal Achievement Awards Foundation.

2. The current proposal will build on the efforts already undertaken by the Equity Initiatives Department. In this context, the Law Firm Equity and Diversity Mentorship Program will seek to enable interested students to pursue their interest in the legal profession by providing opportunities for these students to be placed within law firms as part of their educational program. This can be done by working with the local school board's cooperative education program office which normally places senior high school students in work settings as part of the students' core education. The project also aims to provide opportunities for Law Society staff and lawyers from participating firms to go to high school classes and speak to students involved in *Society Challenges and Change* courses as well as to school clubs representing Aboriginal peoples, racial minorities and other communities. The board of education's cooperative education program places senior high school students in work settings for eight hours each week (usually two afternoons) from October through to May of each school year. There is no financial cost to any firm participating in this program.

3. There are three steps required to facilitate development of the Law Firm Equity and Diversity Mentorship Program:

a) development of a pilot program. This will be initiated in the upcoming year with two students placed in the Equity Initiatives Department and, through this, working with lawyers in other parts of the Law Society. Additional effort will be made to place other students with benchers as part of the pilot program for this school year. Also, a pilot initiative with the YMCA "Black Achievers" Program and the National Aboriginal Achievement Awards Foundation will be established. Both of these programs provide 'career fairs', educational seminars and other activities aimed at enabling youth to develop appropriate career goals and planning strategies;

2. development of interest from law firms. Through the Treasurer and the Committee Chair, discussions will be initiated with law firms to enlist their interest in participating in the program. This will enable firms to provide placements for students as well as participate in high school classes and educational programs coordinated by the YMCA to discuss law or law-related issues;

3. development of "adopt a school" and summer employment opportunities. This will involve discussions between interested firms and the Toronto District School Board regarding law firms "adopting a school". Offering summer employment to students is something that will be entirely up to any participating firm and such a firm will be required to bear all the costs related to providing such an employment opportunity.

4. Direct costs for law firms involved in the program would relate to the allocation of staff time, preparation of classroom instructional materials and compensation of summer students. The Law Society's participation would be as project coordinator and advisor with the program jointly sponsored and supported by the Equity Initiatives Department. This will involve coordinating meetings with the local school board, connecting lawyers and schools for classroom activities as well as convening educational seminars for participating students and their mentors at the Law Society.

5. The timeframe for the activities noted above will be between October, 2000 and May, 2001, with a report to Convocation on the success of the program and further implementation plans. There are no additional costs incurred by the Law Society as this matter can be included in the Equity Initiatives Department's Public Education budget for 2000 and 2001.

It is requested that Convocation:

8. Adopt the Law Firm Equity and Diversity Mentorship Pilot Program as noted above in 3 (a), (b) and (c).

CANADIAN BAR ASSOCIATION REPORT "RACIAL EQUALITY IN THE CANADIAN LEGAL PROFESSION"

1. Convocation is asked to approve the recommendations outlined below and to forward these, as well as the information identified within, to the Canadian Bar Association for its consideration. In response to information received, the Committee is also concerned that the CBA appears not to have provided the financial support required for the proposed staff position of CBA Equity Advisor and funds essential to the implementation of the report on *Racial Equality in the Canadian Legal Profession.*

2. The CBA presented resolutions at its 1999 Annual Meeting in Edmonton, Alberta, and at its 2000 Mid-Winter Meeting in Brandon, Manitoba. These resolutions address the CBA, federal and provincial governments, the judiciary, local bar associations and lawyer associations, law schools and law societies. The CBA has established a "Racial Equality Implementation Committee" to facilitate implementation of these resolutions. The LSUC Equity Advisor has been invited to participate as a member of this Committee.

3. For Convocation's consideration, a response has been developed to address those matters relating directly to law societies. Generally, it is recommended that Convocation:

a) inform the CBA of its initiatives in these areas;
b) encourage the CBA to use LSUC initiatives as models for further development; and
c) request the CBA to maintain dialogue with the LSUC on the implementation of its report and resolutions on *Racial Equality in the Canadian Legal Profession.*

3. The CBA Working Group report on *Racial Equality in the Canadian Legal Profession* is both a timely and critical document. As more and more Aboriginal peoples and people of colour enter the profession of law, it is incumbent on governing bodies within the legal profession to ensure that these communities are welcome and that there are no artificial barriers to their entry and success within all levels of the profession. This principle was recognized by Convocation when it adopted the *Bicentennial Report on Equity Issues in the Legal Profession* and has led to the LSUC taking a series of actions aimed at both identifying barriers to the practice of law facing Aboriginal, Francophone and equity-seeking groups and eliminating them.

4. Based on the activities of the LSUC, it is recommended that Convocation forward this report, with accompanying materials, to the CBA for consideration by its recently established *Racial Equality Implementation Committee.* It is also recommended that this report be forwarded to the Federation of Law Societies and the National Committee on Accreditation requesting that they consider and respond to those recommendations which address them.

Request to Convocation:

5. In response to the CBA resolutions, Convocation is requested to provide information to the CBA on the areas identified below. (More detailed information on these recommendations is contained in Appendix "B", pages 23-26.)

1. *Model Policies for Articling Interviews.*

2. *Evaluating Competence.*

c) *Complaints Regarding Lawyers and Equality Issues.*

d) *Workplace Equity Policies.*

e) *Data on Law Firms with Equity Policies.*

f) *Education and Training for Law Firms.*

g) *Aboriginal Issues in Bar Admission Courses.*

h) *Dialogue with Racialized Communities.*

i) *Bar Admission Course Reform.*

j) *Codes of Professional Conduct and Model Employment Policies.*

k) *Dialogue with Human Rights Commissions.*

l) *Development of Clients Rights Document.*

m) Public Awareness Campaign on Equity in the Legal Profession.
n) Establishment of Law Practices by Aboriginal and Equity-Group Lawyers.

6. *Convocation is requested to recommend that the CBA formally consult with law societies on coordinating development and delivery of CLE programs on human rights and anti-discrimination legislation and policies.*

7. *Convocation is also requested to refer the CBA to the appropriate Recommendation in the Bicentennial Report on Equity Issues in the Legal Profession (Recommendation #7, p.30) which addresses participation by Aboriginal, Francophone and equity-seeking groups in Convocation decision-making as well as the Terms of Reference for the Equity Advisory Group adopted by Convocation in February, 2000.*

8. *Convocation is further requested to recommend to the CBA that it be kept informed regarding those Resolutions which do not have a direct bearing on the LSUC.*

WORKPLACE HARASSMENT COMPLAINTS PROCEDURES COVERING BENCHER / LSUC STAFF RELATIONS

1. Convocation is asked to adopt the procedures set out below regarding Bencher-staff interactions on issues of discrimination and harassment. These procedures are consistent with current human rights law, are consistent with standard institutional practice but are not addressed within the *Bencher Code of Conduct*. The procedures are to be followed when an employee feels that s/he has been subjected to harassment or discrimination covered by the *LSUC Workplace Harassment and Discrimination Prevention Policy* (the "*policy*") and where such a complaint involves a Bencher.

I. RESPONSIBILITY OF THE LAW SOCIETY

General Principle

2. The Law Society of Upper Canada has an obligation to ensure that the working environment is free from comments or conduct that constitute harassment or discrimination. The Law Society may be found liable:

> where the Law Society's personal action, either directly, or indirectly infringes a protected right, or authorizes or condones, the inappropriate behaviour; or
>
> where an employee responsible for the harassment or inappropriate behaviour, or who knew of the harassment or inappropriate behaviour, or that a poisoned environment existed, but did not attempt to remedy the situation, is part of the "directing mind" of the Law Society.

3. On being made aware of inappropriate comments or conduct, a person who is part of the "directing mind" of the Law Society is required to take *immediate action* to remedy the situation.

Definition of "Directing Mind"

4. An employee or its agents may be the directing mind of a corporation. Employees with supervisory authority may be viewed as part of the Law Society's "directing mind" if they function, or are seen to function, as representatives of the Law Society. Generally speaking, an employee who performs management duties is part of the "directing mind" of the Law Society.

Examples of Positions which are part of the "Directing Mind" of the Law Society

5. The following is a non-exhaustive list of positions which are part of the "directing mind" of the Law Society:

Treasurer
Chief Executive Officer
Directors
Equity Advisor
Chief Financial Officer
Chief Information Officer
Secretary of the Regulatory Division
Managers
Team Leaders
Senior Discipline Counsel
Head of Continuing Legal Education
Head of Articling and Placement
Registrar and Assistant Registrars, Department of Education
Regional Head of Education
Equity Initiatives Department Coordinators
Controller, Department of Finance
Facilities Supervisor
Officer in charge of Securities

II. CONFIDENTIALITY

6. The Law Society of Upper Canada understands that it is difficult to come forward with a complainant of harassment and recognizes a complainant's interest in keeping the matter confidential.

7. To protect the interests of the complainant, the person complained against, and any other person who may report incidents of harassment, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.

8. All records of complaints, including contents of meetings, interviews, results of investigations and other relevant material will be kept confidential by the Law Society of Upper Canada, except where disclosure is required by a disciplinary or other remedial process or under criminal law.

III PROCEDURES

a) INITIAL ACTION BY COMPLAINANT

Approaching the Respondent

10. An employee or employees who feel that they, or someone else, have been subjected to harassment or discrimination by a Bencher or Benchers is encouraged to bring the matter to the attention of the Bencher(s) responsible for the conduct.

Option

11. Where the complainant does not wish to bring the matter directly to the attention of the Bencher(s) responsible, or where such an approach is attempted and does not produce a satisfactory result, the complainant can address her/his concerns within the Law Society by contacting the Equity Advisor or the Chief Executive Officer.

12. Harassment Advisors appointed under the Law Society's *Workplace Harassment and Discrimination Prevention Policy*, or any individuals acting as the "directing mind" of the Law Society, will refer any complainant who has concerns with interactions involving Benchers directly to the Equity Advisor or the Chief Executive Officer.

b) INFORMAL PROCEDURE

i) Discussion of Complaint with Equity Advisor and Chief Executive Officer

13. Complaints of harassment or discrimination involving Benchers will be discussed with the Equity Advisor and the Chief Executive Officer. The Equity Advisor and the CEO can explain the *policy* and advise the complainant of:

the right to lay a formal written complaint under the policy

the availability of counselling and other support services provided by the Law Society

the right to be accompanied by a person of choice at any stage of the process when the complainant is required or entitled to be present

the right to withdraw from any further action in connection with the complaint at any stage

the fact that even if she or he withdraws the complaint, the Equity Advisor and the CEO may have a responsibility to continue to investigate the complaint

other avenues of recourse available to the complainant such as the right to file a complaint with the Ontario Human Rights Commission

ii. Outcome of the Meeting with the Equity Advisor and the CEO

No Further Action

14. Where, after discussing the matter, the complainant and the Equity Advisor and the CEO agree that the conduct in question does not constitute harassment or discrimination as defined in the *policy*, no further action will be taken.

Discussion with Respondent

15. Where the complainant brings information to the attention of the Equity Advisor and the CEO which constitutes prima facie evidence of harassment or discrimination, the Equity Advisor and the CEO may, at the request of the complainant, speak to the Bencher(s) whose conduct has caused offence, in which case the Equity Advisor and the CEO will keep a written record of what was said to the respondent.

Prima Facie Evidence of Harassment or Discrimination but Complainant Does Not Want to Proceed

16. Where the complainant brings to the attention of the Equity Advisor and the CEO facts which constitute prima facie evidence of harassment or discrimination, but, after discussion, the complainant decides not to proceed with a formal written complaint, the Equity Advisor and the CEO will meet with the Chair of the Equity and Aboriginal Issues Committee to discuss the complaint and options available to address the complaint, including informal measures or the laying of a formal written complaint.

Complainant Files a Formal Complaint

17. Where, after meeting with the Equity Advisor and the CEO, the complainant decides to lay a formal written complaint, whether or not the Equity Advisor and the CEO are of the opinion that the conduct in question constitutes harassment as defined in the *policy*, the Equity Advisor and the CEO will assist the complainant to draft a formal written complaint which must be signed by the complainant.

c) FORMAL COMPLAINT

i. When a Formal Complaint has been Issued

18. Once a formal complaint has been laid and discussed by the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee, they will undertake to:

provide a copy of the formal complaint to the respondent and to the Treasurer

provide a copy of these procedures to the respondent and advise the person that s/he has the right to be accompanied by a person of their choice at any stage of the process

when deemed appropriate, seek a meeting with the respondent with a view to obtaining an apology or such other resolution as will satisfy the complainant; and in doing so advise both parties that even if the matter is resolved to the satisfaction of the complainant, the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee are nonetheless obliged under the policy to determine if there are reasonable grounds to proceed with a formal investigation.

ii. Decision Not to Proceed with the Complaint

19. Where it appears to the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee that the facts upon which the complaint are based occurred more than six months before the complaint was filed, unless they are satisfied that the delay was incurred in good faith and that no substantial prejudice will result to any person affected by the delay, the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee may, in their discretion, decide not to proceed with the complaint.

IV. MEDIATION

If agreeable to both the complainant and the respondent, the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee will arrange to have an external mediation.

If mediation is undertaken and a mutually agreeable resolution is not achieved, a formal investigation will be undertaken by an external investigator.

V. FORMAL INVESTIGATION

General Principles

The investigation process, which will be undertaken by an external body, will follow the accepted principles of fairness, including:

an impartial investigation;
the right to know the allegation and the defence;
the right to offer evidence and witnesses; and
the right to rebut relevant evidence.

Time Limit

The investigation will be undertaken and completed within six months of the appointment of an external investigator, unless delays occur in good faith and there is no substantial prejudice to any person affected by the delay. Each case of alleged discrimination and harassment is unique. The Law Society will use the procedure and resources necessary to effectively resolve individual situations of alleged harassment and discrimination.

Disclosure of Outcome of Investigation

The complainant and the respondent will be informed of the outcome of the investigation as to whether the policy has been violated and what action will be taken as a result of the findings.

VI. DISCIPLINARY ACTION

Upon receipt of the findings of the formal investigation, the Treasurer will determine what, if any, disciplinary action will be taken.

Disciplinary actions that may be taken include, but are not limited to:

(a) a private reprimand;
(b) referral to counselling;
(c) reassignment;
(d) removal from all committees;
(e) public reprimand by the Treasurer;
(f) public reprimand by the Benchers as a whole; or
(g) with regard to lay Benchers, referral of the results of an investigation to the Lieutenant Governor in Council

VII. COMPLAINTS AGAINST THE CHAIR OF THE EQUITY AND ABORIGINAL ISSUES COMMITTEE; COMPLAINTS AGAINST THE TREASURER

If a complaint under this policy involves the Chair of the Equity and Aboriginal Issues Committee as respondent or witness, the Vice Chair will assume the role of the Chair in the complaints process.

If a complaint under this policy involves the Treasurer as respondent or witness, the Chair of the Equity and Aboriginal Issues Committee will assume the Treasurer's responsibilities under these procedures and the Vice-Chair of the Equity and Aboriginal Issues Committee will assume the role of the Chair of the Equity and Aboriginal Issues Committee.

Request to Convocation:

It is recommended that Convocation adopt the procedures identified above.

CONVOCATION INFORMATION

REPORT OF THE DISCRIMINATION/HARASSMENT COUNSEL:

The Committee received the second report from the Discrimination/Harassment Counsel (DHC). A summary of this report is provided to Convocation for information. The summary indicates the success of the program to date in receiving inquiries regarding allegations of discrimination and harassment by members of the legal profession. These allegations have been raised by members of the legal profession and the public. They have called the DHC seeking assistance on how best to address their concerns.

The Committee also received terms of reference for a Request for Proposals initiated to retain expertise for a review of the Discrimination/Harassment Counsel program. This review was mandated by Convocation to be undertaken after one year of the program's operation. It is anticipated that the review will be completed by November, 2000 and its results reported to the Committee.

A full copy of the Discrimination/Harassment Counsel report is on file in the Equity Initiatives Department and is available on request.

DISCRIMINATION & HARASSMENT COUNSEL PROGRAM
Executive Summary
JANUARY 1, 2000 - JUNE 30, 2000

Submitted to
THE LAW SOCIETY OF UPPER CANADA

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EXECUTIVE SUMMARY

The Discrimination & Harassment Counsel (DHC) Program was established by the Law Society of Upper Canada as a pilot project in June 1999. It was created in response to a report submitted to Convocation by both the Finance and Audit Committee and the Treasurer's Equity Advisory Group based on a proposal developed by the Equity Advisor to implement the recommendations from the *Bicentennial Report on Equity Issues in the Legal Profession.* The recommendations from the Bicentennial Report were based on the *Transitions* and *Barriers and Opportunities* Reports where 70% of the women lawyers who responded to the survey stated that they had been sexually harassed and/or discriminated against by a member of the profession.

The purpose of the DHC Program is to help stop discrimination and harassment by lawyers and within law firms. In this report I will address the following areas and provide a list of the specific actions required, where applicable:

Overview of the Program

Direct Services

Promotion and Publicity

Law Society of British Columbia Summit

Confidentiality

Benefits of the Program

From January 1, 2000 to June 30, 2000 I received approximately 40 calls per month for a total of approximately 246 calls. January and June were the most intense months with 48 and 66 calls respectively. Of these calls, 15% or 30 in total (5 calls per month on average) represent repeat calls on the same matter.

Of the 246 calls, 81% (199 calls) were within the mandate of the DHC Program with the caller either requesting information about the Program or wanting to discuss a complaint of discrimination or harassment. This represents a sharp contrast to my last report where only 38% of the calls were within the mandate.

Significantly more women than men continue to contact the Program. Among the profession the ratio is 2:1, female to male lawyers. Among the public, the ratio is 3:1, women to men. Interestingly, of the 34 complaints received, 89% (30) were from women; 11% (4) were from men. Half of the complaints were in the area of sexual harassment. The next most significant area for complaints was harassment. These areas combined (excluding the 3 complaints of harassment involving the Law Society itself) account for 26 of the 34 complaints. All of theses callers, except one, were women.

The calls that fall outside the Program's mandate can be broken down into 4 main groups: complaints about lawyers in general, complaints about the Law Society's internal complaints process, complaints about access to justice, complaints about Legal Aid. Complaints about lawyers include unreturned phone calls, delays with the file, and the amount of the bill.

Complaints about the Law Society's internal complaints process identified that callers lacked information about the process, delays, and a lack of communication on the status of ongoing complaints.

Complaints about access to justice and legal aid include calls from individuals who felt that they could not find a local lawyer with the requisite expertise for their case and/or calls from individuals who cannot afford a lawyer and either do not qualify for legal aid or legal aid does not provide coverage for their particular type of case.

The percentage of calls outside the mandate has dropped dramatically. In the last reporting period, these calls accounted for 62% of all calls. During the current reporting period (January 1 to June 30, 2000), calls outside the mandate accounted for only 19% of the total calls.

The average time for calls outside the mandate is still 10 minutes per call. This means that approximately 7 hours of intake time was spent on these calls in this reporting period for a total cost of less than $1,300.00.

APPENDICES

Development of Law Firm Equity and Diversity Mentorship Program for Toronto High Schools and Youth Associations

Introduction:

1. In January, 2000, both the Treasurer and the Equity and Aboriginal Issues Committee/Comitè sur l'èquitè et les affaires autochtones expressed interest in strategies aimed at increasing diversity within the legal profession. The Treasurer has indicated his interest in public and private meetings with representatives of Aboriginal and equity-seeking groups. Following its briefing session on March15, 2000, the Committee initiated activities to support this direction. As such, this item was included in the Committee's workplan as a high priority and a working group was set-up to work with staff on this matter.

2. Briefly, the preliminary research focusses on three aspects: (1) engendering interest in seeking law as a career; (2) supporting law students; and (3) supporting new calls to the bar in attaining viable employment or establishing practice. This report addresses the first matter and proposes a course of action. The other two matters will be addressed at a later date.

Background:

3. In various policy initiatives and publications (eg. *Transitions, Bicentennial Report on Equity Issues in Legal Education, Strategic Plan)* the Law Society has expressed its interest in increasing the diversity of the legal profession. Over the past year, the Equity Initiatives Department has convened several events aimed at high school students to encourage them to consider law as a course of study and a career. These events have been held during Black History Month, for International Women's Day and during Women's History Month. For these events, members of the judiciary, the legal profession and law school students (particularly women and racial minorities) have volunteered their time to meet and speak with high school students. These events have been very successful in attracting students from equity-seeking groups to become more aware about the law in general, how to prepare for law school and the benefits of a career in law. Such events form part of the Equity Initiatives Department's public education program and are planned and coordinated with members of the legal profession representing such groups as the Canadian Association of Black Lawyers, the African Canadian Legal Clinic, Women's Law Association of Ontario and the Joint Action Committee on Equity and Diversity of the CBAO. While these events have been successful in attracting the interest of high school students, it is unclear how this interest is sustained and whether or not students attending will follow-up and begin to actively consider pursuing law as a career.

4. Currently it is not clear how diverse law schools are becoming. Anecdotal information indicates an increasing diversity but, other than for gender, this diversity is a recent phenomenon which needs to be encouraged and nurtured. This is not unlike the experience of law school education across North America and it strongly suggests that, to increase diversity within the profession, effort is needed to increase diversity in law schools. To do this requires development of an interested pool of talent out of which to recruit law school students. The primary areas for such recruitment are universities and high schools.

5. It is for these reasons that the Law Firm Equity and Diversity Mentoring Program is being proposed. Such a program will involve interested law firms and Toronto high schools where there is a diverse student population. Further, such a program could involve community organizations, eg., YMCA Black Achievers Program, and could also invite law firms to "adopt" a particular school for a period of time. By adopting a school, a law firm could participate in its "law and law-related" courses as well as provide a number of students with "practical" experience by employing them over the summer months. .

Proposal:

6. The current proposal will build on the efforts already undertaken by the Equity Initiatives Department. In this context, the Law Firm Equity and Diversity Mentorship Program will seek to enable interested students to pursue their interest in the legal profession by providing opportunities for these students to be placed within law firms as part of their educational program. This can be done by working with the local school board's cooperative education program office which normally places senior high school students in work settings as part of the students' core education. The project also aims to provide opportunities for Law Society staff and lawyers from participating firms to go to high school classes and speak to students involved in *Society Challenges and Change* courses as well as to school clubs representing Aboriginal and racial minorities. The board of education's cooperative education program places senior high school students in work settings for eight hours each week (usually two afternoons) from October through to May of each school year. There is no financial cost to any firm participating in this program.

7. There are three steps required to facilitate development of the Law Firm Equity and Diversity Mentorship Program:

a) development of a pilot program. This will be initiated in the upcoming year with two students placed in the Equity Initiatives Department and, through this, working with lawyers in other parts of the Law Society. Additional effort will be made to place other students with benchers as part of the pilot program for this school year. Also, a pilot initiative with the YMCA "Black Achievers" Program will be established;

2. development of interest from law firms. Through the Treasurer and the Committee Chair, discussions will be initiated with law firms to enlist their interest in participating in the program. This will enable firms to provide placements for students as well as participate in high school classes and educational programs coordinated by the YMCA to discuss law or law-related issues;

3. development of "adopt a school" and summer employment opportunities. This will involve discussions between interested firms and the Toronto District School Board regarding law firms "adopting a school". Offering summer employment to students is something that will be entirely up to any participating firm and such a firm will be required to bear all the costs related to providing such an employment opportunity.

8. Direct costs for law firms involved in the program would relate to the allocation of staff time, preparation of classroom instructional materials and compensation of summer students. The Law Society's participation would be as project coordinator and advisor with the program jointly sponsored and supported by the Equity Initiatives Department and the Education Department, Student Success Centre. Such coordination will involve coordinating meetings with the local school board, connecting lawyers and schools for classroom activities as well as convening educational seminars for participating students and their mentors at the Law Society.

9. The timeframe for the activities noted above will be between October, 2000 and May, 2001, with a report to Convocation on the success of the program and further implementation plans. There are no additional costs incurred by the Law Society as this matter can be included in the Equity Initiatives Department's Public Education budget for 2000 and 2001.

Recommendations for Convocation on CBA Report on Racial Equality in the Canadian Legal Profession

1) Model Policies for Articling Interviews. The LSUC has already developed such guidelines and should forward them to the CBA as a model for use in the CBA's work. These guidelines are published annually in the Ontario Reports and provide commentary on human rights issues in such contexts. Further, the LSUC should inform the CBA regarding its proposed approach to address the articling requirement resulting from Convocation's adoption of the Bar Admission Course Reform and its recommendations addressing further study on articling.

2) Evaluating Competence. The LSUC's definition of Competence has already been cited as a model in the CBA's resolution on this matter. The current work of the LSUC, eg., the Competence Consultation document and process, should forward to the CBA to advise on the status of the LSUC initiative, particularly concerning the engagement of the profession in dialogue on this issue.

3) Complaints Regarding Lawyers and Equality Issues. The LSUC should forward to the CBA information on the establishment of its Discrimination/Harassment Counsel (DHC) program, including the report adopted by Convocation to establish the program, the two reports submitted to date by the DHC and the initiative to assess the program. The LSUC should also encourage the CBA to work in tandem with all law societies, particularly those that have instituted discrimination/harassment programs (eg., British Columbia, Alberta, Nova Scotia, Ontario), to further develop strategies on this sensitive matter.

4) Workplace Equity Policies. The LSUC should provide to the CBA its model policies on workplace equity and flexible workplaces adopted by Convocation. The LSUC should also forward the Bicentennial Report on Equity Issues in the Legal Profession as well as the "Law Society of Upper Canada: Equity and Diversity Action Plans". These documents will provide appropriate policy guidelines and implementation strategies to address workforce equity issues for law firms.

5) Data on Law Firms with Equity Policies. The LSUC should provide information on LPIC's contract compliance program and on the LSUC's efforts to identify equity and diversity best practices within law firms. The LSUC should encourage an ongoing exchange of information with the CBA on firms which have established equity policies. This may prove useful to both LSUC and LPIC contract compliance programs as well as provide information on model firms which can be acknowledged and emulated for their implementation of equity initiatives.

6) Education and Training for Law Firms. The LSUC should encourage collaboration between the CBA and the LSUC Equity Advisor on this matter. The Equity Advisor has already begun a process to develop an approach for such a program and such efforts can be augmented with cooperation by the CBA.

7) Aboriginal Issues in Bar Admission Courses. The LSUC should provide information to the CBA on course modifications which have taken place to ensure inclusion of Aboriginal issues in such areas as real estate, tax law and constitutional law. The CBA should also be referred to the recommendations included in the Bar Admission Reform report addressing Aboriginal students. Further, the LSUC should advise on the recent establishment of the Aboriginal Issues Coordinator position and of the work being initiated by this staff in cooperation with Roti io' ta'-kier and other Aboriginal lawyers.

8) Dialogue with Racialized Communities. The LSUC should forward information to the CBA on the specialized legal aid services established in Ontario to address concerns of Aboriginal and racialized communities (eg., the African Canadian Legal Clinic, the Metro Toronto Chinese and Southeast Asian Legal Clinic). Further, the LSUC should refer this recommendation to the Legal Aid Ontario for its comment, particularly respecting service provision to refugee claimants.

9) Bar Admission Course Reform. The LSUC should forward to the CBA the implementation plans for the recently adopted Bar Admission Reform process which includes specific consultations with Aboriginal and equity-seeking lawyers, students and communities in the implementation of the Bar Ad reforms. In addition, the *Equity in Bar Admission Course Reform: A Review of the Literature* prepared by the Equity Initiatives Department should be provided to the CBA for its reference and use. In terms of publicizing equity initiatives, this is now being coordinated by the LSUC Equity Initiatives Department and the LSUC should indicate its interest in participating in any effort by the CBA to conduct longitudinal studies of Aboriginal and equity group law students and their journey into the legal profession.

10) Codes of Professional Conduct and Model Employment Policies. The LSUC should provide to the CBA the recently adopted Rules of Professional Conduct, particularly the revised Rule on Non-Discrimination which has been redrafted to include clarification on grounds of discrimination and opportunities for positive action to address discrimination and its effects. The LSUC should also forward its model policies on workplace flexibility, and, equity policies for law firms.

11) Dialogue with Human Rights Commissions. The LSUC should inform the CBA that it has initiated a dialogue process with key staff in the Ontario Human Rights Commission. This is being facilitated by Equity Advisor and includes such topics as the establishment of the Discrimination/Harassment Counsel program, outreach programs, articling and establishment of workplace equity policies and programs.

12) Development of Clients Rights Document. The LSUC should refer the CBA to its process in developing the Discrimination/Harassment Counsel program and how such is being promoted across Ontario.

13) Public Awareness Campaign on Equity in the Legal Profession. The LSUC should provide to the CBA its report on "Public Education Activities to Promote Equity and Diversity in the Legal Profession" adopted by Convocation in January, 1999. The LSUC should also indicate its interest in working jointly with the CBA and its local affiliates in developing and implementing such initiatives in Ontario.

14) Establishment of Law Practices by Aboriginal and Equity-Group Lawyers. The LSUC Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones has initiated research on this matter. This may be enhanced by the work of the CBA and other interested parties.

In addition, it is recommended that Convocation request that the CBA consider collaborative efforts in the following areas:

Continuing Legal Education. The LSUC should request that the CBA formally consult with law societies on coordinating development and delivery of CLE programs on human rights and anti-discrimination legislation and policies. This may assist in development of common programs and, in some cases, joint delivery of such programs.

Participation of Aboriginal, Francophone and Equity-Seeking Lawyers in Decision-Making. The LSUC should refer the CBA to the appropriate Recommendation in the Bicentennial Report on Equity Issues in the Legal Profession (Recommendation #7, p.30). LSUC should also forward the Terms of Reference for the Equity Advisory Group which was adopted by Convocation in February, 2000.

CBA Racial Equality Implementation Committee. The LSUC should indicate its appreciation for the CBA naming the Equity Advisor to participate as a member of this committee. This will allow LSUC opportunities to provide and receive information on current developments in equity and diversity within the legal profession at a national level. Such an opportunity can be very useful in setting standards for the profession at a national and local level.

6. Regarding those Resolutions which do not have a direct bearing on the LSUC, its is recommended that Convocation indicate its interest in receiving information on their status. This will ensure that information on the development of equity and diversity initiatives by the other bodies named in the CBA Resolutions is available to the LSUC for its reference, enabling the LSUC to be contemporary in its approach to equity implementation and to be knowledgeable about how other organizations within the legal profession are responding to equity and diversity issues. This may also be useful to direct services provided by LSUC, eg., education and regulatory, as a number of the bodies named in the CBA recommendations may impact on LSUC policies, programs and services.

7 The CBA Working Group report on *Racial Equality in the Canadian Legal Profession* is both a timely and critical document. As more and more Aboriginal peoples and people of colour enter the profession of law, it is incumbent on governing bodies within the legal profession to ensure that these communities are welcome and that there are no artificial barriers to their entry and success within all levels of the profession. This principle was recognized by Convocation when it adopted the Bicentennial Report and has led to the LSUC taking a series of actions aimed at both identifying barriers to the practice of law facing Aboriginal and equity-seeking groups and eliminating them.

8. Based on the activities of the LSUC, it is recommended that Convocation forward this report, with accompanying materials, to the CBA for consideration by its recently established *Racial Equality Implementation Committee.* It is also recommended that this report be forwarded to the Federation of Law Societies and the National Committee on Accreditation requesting that they consider and respond to those recommendations which address them.

Canadian Bar Association Report and Recommendations on "Racial Equality in the Legal Profession"

Introduction:

1. In February, 1999, the Canadian Bar Association (CBA) released its report with recommendations on "Racial Equality in the Canadian Legal Profession". Initiated in 1995 as a direct response to recommendation 13.3 of the CBA's report on Gender Equality (Touchstones for Change: Equality, Diversity and Accountability), this report addresses issues faced by "racialized communities", i.e., Aboriginal peoples and people of colour, in their efforts to participate in the legal profession in Canada and to receive justice in the Canadian legal system. A detailing of challenges, barriers and opportunities for change, the report provides a unique look into the issues of racial discrimination in terms of entry to and activity within the practice of law, and various models promoting racial equality within the legal profession. It also makes recommendations on how the CBA can take effective action in a planned, coordinated and cohesive manner to promote racial equality in the legal profession.

2. Essentially, the report is broken into three parts:

a) the report of the CBA Working Group on Racial Equality in the Legal Profession co-chaired by Benjamin Trevino, Q.C. and Professor Joanne St. Lewis;

b) a report by Professor St. Lewis entitled "Virtual Justice: Systemic Racism and the Canadian Legal Profession; and

c) a bibliography of critical race theory articles.

The first two reports are part of the CBA's "Racial Equality in the Canadian Legal Profession"; the bibliography is available as a separate document.

3. Together, the two reports and bibliography provide an opportunity for the Law Society of Upper Canada (LSUC) to reaffirm its commitment to equity and diversity as adopted in the Bicentennial Report on Equity Issues in the Legal Profession and to encourage the CBA to adopt its report and to move ahead on its implementation.

Racial Equality in the Canadian Legal Profession:

4. The CBA report is divided into two parts which address the same issues. These are:

the history of racial discrimination in the Canadian legal profession;
law school as the first step to entry into the profession;
articling requirements and bar admission courses;
employment barriers and discrimination within the practice of law;
equity in judicial appointments and access to justice;
the unique relationship of Aboriginal peoples; and
actions incumbent on the CBA to promote racial equality in the legal profession.

5. The CBA Working Group report has stated its intention of being brief and moving through limited content on each section in order to proceed to its recommendations. Professor St. Lewis' report provides a more critical approach, underlining and calling on the presentations made to the Working Group and providing her own point of view in support of concerns received during the consultations.

The following provides a brief synopsis of each report.

The Working Group Report:

6. This report begins with the statement: "Canadian laws define discrimination and make it illegal, but we, as a society, have not been successful at obeying these laws and eliminating discrimination. Clearly, the challenge is for the individual members of our society and for institutions and organizations in which we work to put the legal principles into practice" (p.1). It then defines 'systemic discrimination and individual acts of racism' to introduce the scope of its concerns in terms of institutional policies and programs as well as individual behavior. In this context, it refers to adverse impact, discriminatory outcomes that are unintended and individual acts of prejudice, harassment and discrimination.

7. The report also points out: "When individual accounts of racist acts and racial prejudice cannot be told publicly because the risks to the individuals are too great, we begin to appreciate the depth and impact of discrimination in our profession" (p.2). The report then notes its concerns in the categories identified above.

History of racism in the legal profession. Concerns about the past are summarized in highlighting discrimination faced by: Delos Davis and Bora Laskin who faced difficulties in getting articling positions; Chinese, Japanese, South Asian and Aboriginal peoples in British Columbia who were prohibited from becoming members of the Law Society until the late 1940s; and the provisions of the Indian Act which, until 1951, forced Aboriginal peoples to choose between their Indian status and pursuing a legal education.

Law School as entry to the profession. The process of considering and entering law school is identified along with barriers faced by racialized students, including: racist jokes and stereotyping in student newspapers; racist comments by students; the small number of racialized students in law schools and role models or teachers who understand the experience of racism; the financial hardship imposed by attending law school; and the absence of faculty from racialized communities. Addressing these barriers, several positive models were identified, including: summer programs to support high school students interested in law; outreach programs inviting racialized students who write the LSAT to apply to law school; admissions' policies that look beyond LSATs and grade point averages; changes to course curricula to eliminate racist or sexist materials and so on.

Articling and Bar Admission Courses. The requirement to article is critical in being called to the bar. The report notes: "It is readily apparent that any discrimination that exists in the way students get articling positions, in the work they are given during articles, in the evaluation of their articles and in how Bar Admission Courses are structured can have a serious impact on students from racialized communities" (p. 11). Several examples of barriers are identified, including: bias in interviewing and hiring for articles; negative perceptions by articling principles about the quality of students from racialized communities leading to either refusal to hire or restricting the work of such students; students forced to work for free or for minimum wage; and fears by racialized students to complain about discrimination in the articling experience. (The report points out that in 1996 the LSUC found that of 133 students still looking for articles, 43.9% were from racialized communities even though these students comprised only 17% of the graduating class.)

In terms of the Bar Admission Courses, several barriers are identified, including: exam-based evaluations failing to consider different learning styles or different ways of demonstrating knowledge and ability; in testing for the practical application of law, students with poor articling experiences are at a disadvantage; little to no reflection of racialized communities in course materials; and inappropriate assessment of foreign-trained lawyers seeking to practice in Canada. Several models are identified addressing some of these concerns, including: providing 'career days' for firms to attract articling students; law societies and schools finding articling assignments for those who do not have one; and establishing equitable hiring practices.

Employment barriers. The Working Group starts this section of its report in stating: "The brick wall blocking people from racialized communities from senior positions in law firms, corporations and government became shockingly apparent to the Working Group" (p.17). It further notes: "...to the extent to which the decision to leave law is linked to systemic discrimination which continues to exist in the profession, the issue needs to be addressed" (p.17). Examples of barriers faced by lawyers from racialized communities are provided to underscore the aforementioned points, including: the barriers to attaining articles influences one's ability to attain employment. (The Nova Scotia Barristers' Society noted in 1995 that 70% of white males were hired back after their articles, only 28.9% of white women were hired back and no students from racialized communities were hired back); the apparent lack of advertising for employment by law firms leaving recruitment largely to word-of-mouth and networking; the influence of bias and stereotyping in terms of the type of work lawyers from racialized communities wish to undertake and the belief that such lawyers will not interact well with clients. Several models are identified addressing these concerns, including: employment equity practices; harassment and accommodation policies; advertisements for employment and internal reviews of recruitment policies to ensure they do not pose barriers to racialized communities.

The judiciary and access to justice. This section of the report discusses the influence of the judiciary, particularly judges, on how law is interpreted and applied. The importance of both having judges from racialized communities as well as ones who understand the impact of racism on society are reviewed. The procedures for appointment of judges are identified and barriers faced by racialized communities also discussed, including: lack of information on the percentage of judges from racialized communities; a number

of inquiry and commission reports (eg., "Royal Commission on the Donald Marshall, Jr., Prosecution", 1989, and "The Final Report of the Commission on Systemic Racism in the Ontario Criminal Justice System", 1995) documenting problems with racism in the justice system, including decisions about keeping an accused in custody, courtroom dynamics and sentencing decisions.

Aboriginal peoples. A separate section on Aboriginal peoples is provided to highlight the need for specific action to address the concerns of this community. While many of the issues faced by Aboriginal peoples are similar to those of other racialized groups, there are a number of issues that are particular to Aboriginal peoples that need to be viewed separately, including: the law school curriculum and Bar Admission Courses tend to perpetuate an adversarial approach and do not recognize this as a barrier to students with different values' system; the lack of progress made since the 1988 CBA report "Aboriginal Rights in Canada: An Agenda for Action" which, in regards to the legal profession, called for increased education of lawyers and the public on Aboriginal issues and increased participation by Aboriginal peoples in the justice system. A few models have been identified addressing some of these issues, including: providing courses and seminars on Aboriginal law issues in law school and Bar Admission Courses; providing credits for law courses completed by Aboriginal students in pre-law programmes; and having law societies track the success of Aboriginal graduates.

Access to the courts. In this section, the Report focuses on the importance of legal aid and court interpreters to promote and ensure access to the courts for low-income racialized groups. The Report notes the "... deterioration in legal aid funding across the country (as having) a disproportionate impact on many people from racialized communities as they represent a disproportionate number of people living below the poverty line" (p.31). Particular reference is made to immigration and refugee claimants who are also predominantly from racialized communities. Issues relating to access to counsel and court interpreters are identified as barriers these communities face. Models for action were presented to the Working Group by legal clinics specializing in service delivery to racialized communities.

The CBA's responsibilities. This section of the Report discusses the importance of the CBA taking a leadership role in addressing the concerns documented by the Working Group. The Report points out several barriers imposed by the CBA impacting on racialized lawyers, including membership fees and the structures for participation. The Report notes the model of the American Bar Association which has a Commission on Minorities managed by a director with several staff members.

Professor St. Lewis Report:

8. Entitled "Virtual Justice: Systemic Racism and the Canadian Legal Profession" Professor St. Lewis' report concurs with many of the issues raised by the Working Group. There are, however, significant differences in her approach. This is evident in her style and in her openness regarding the challenging issues brought forth in the consultations which she believes essential to raise.

9. Examples of stylistic differences and their substantive implications are immediately evident beginning with concerns about the title of the Working Group report: "One of the prominent criticisms to be leveled at the Working Group concerned our titular mandate of 'Racial Equality'. Racial equality as a term can itself mask the pernicious impact of *racism*. The Canadian Bar Association intended to temper the emotional impact and apparent negative response which is attached to the term racism by searching for more neutral terminology. In that sense, the title was intended to increase the comfort of those who would participate in our work" (p.59).

10. Shortly after this, she writes: "We conclude that the legal profession is effectively segregated. It is segregated because the absence of certain communities is not strictly the result of individual choice, inclination or community self-selection. Entire sectors of the profession, such as the vast majority of large firms, licensing bodies, associations and law school academy lack proportional representation from racialized communities or anything close to it" (p.60).

11. Professor Lewis then retraces the subject areas examined by the Working Group. The following summarizes the substantive differences revealed in her work:

Law Schools. This section of the report provides a more in-depth analysis of the areas which pose barriers and need attention. In particular, concerns regarding lack of data linking the applicant pool with the successful candidate pool is noted. "This makes the task of unmasking systemic patterns of exclusion even more difficult. This means subtle or direct discrimination in the admissions process can be hidden within current procedures. There is no public accountability for admissions results" (p.60). In terms of admissions criteria for law schools, Professor St. Lewis also notes: "There is strong resistance within the legal community to what are seen as 'special measures'. There is a presumption that the difference in criteria is actually a lowering of 'objective' standards" (p.60).

First Nations/Aboriginal Peoples. This section focuses on the constitutional and historical location of Aboriginal peoples in Canada as being unique and a critical part of Canada's 'tri-juridical nature'. It points out the particular constitutional relationship between the federal government and Aboriginal peoples which distinguishes their situation from that of other racialized groups. It further identifies the distrust Aboriginal peoples have for the justice system and Canadian law as being incapable of treating them fairly particularly since "(t)he legal system has played an active role in the destruction, denial or limitation of First Nations' cultural practices. The operations of the criminal justice system, whether intentional or not, have resulted in significant over-incarceration rates of First Nations peoples. This is coupled with their almost total invisibility at the most senior levels of policy-making and decision-making in the administration of justice. First Nations peoples also labour under a historical and contemporary myth that their legal and educational systems are less sophisticated than the Canadian systems" (p.69).

The Practice of Law. Addressing barriers to employment and education for admission to the bar, this section highlights the importance of demonstrative action to eradicate employment barriers facing peoples from racialized groups. "History shows that in the face of blatant racism, legislative action had to be taken to permit entry into the practice of law by individual lawyers from racialized communities" (p.73). In terms of bar admission courses, the concerns of students are underscored and the impact of the educational and articling environment highlighted. In terms of responsibilities for law societies, Professor St. Lewis focuses attention on the importance of having anti-discrimination rules in codes of professional conduct. However, she also notes the relatively few complaints made under these rules and points out that most rules: do not define discrimination; fail to establish a duty as opposed to a 'responsibility' to respect human rights values; have no adequate enforcement mechanism; rely on lawyer self-monitoring; fail to address lawyers as employers; and provide piecemeal adaptation of human rights code or Charter language.

The Justice System. This section raises issues regarding the application of equality analysis in decision-making and vigorous application of the Charter of Rights and Freedoms in legal arguments and jurisprudence. The absence of data to support allegations of systemic inequalities and the lack of Canadian-based critical race theory are noted. Further, the need for judges to understand the social context of litigants is underlined and the importance of using the Charter as something more than discretionary in the formulation of legal opinion and court decisions. In addition, Professor St. Lewis acknowledges that "(t)he judiciary has demonstrated the strongest commitment to education on social context of any sector of the legal profession. Social context education focuses on how neutral application of legal concepts can produce inequality. The National Judicial Institute's social context program includes staffing and an advisory committee which includes racialized judges and academics to assist in the development of its curriculum" (p.84).

Professional Associations and Defining Justice into the Millennium. The development of legal associations amongst racialized lawyers is identified as a challenge to the relevance of the CBA to these individuals and groups. A number of issues have been raised by racialized lawyers regarding barriers to participation in the CBA, including: policy issues of concern are not addressed as well as under-representation in decision-making and a sense of discomfort with the CBA. In terms of the future, Professor St. Lewis writes: "Systemic racism, like other forms of systemic discrimination, is the most pernicious problem facing racialized communities. Individuals in institutions often make decisions without ever considering the underlying values and consequences of actions which are seen as 'every day common sense' ...

"The legal decision-makers and individuals who participated in our consultations were united in their commitment to ensure that racism is eliminated from their organization. Their efforts were hampered by the lack of coordinated effort across the sectors in the legal profession to target the fundamental structures which reinforce racist practice. They were also limited by a lack of adequate financial resources."

Professor St. Lewis then concludes: "As lawyers we must become radical. Radical in the sense of going back to our roots. The root of the law is justice. It demands that we no longer tolerate or remain passive in the face of racism" (p.91).

Analysis of the Report:

12. The two reports are cogent commentaries on the issues of racial equality and racism within the Canadian legal system. As integral parts of each other, they blend well; where one report focuses on the challenges to promote equality, the other provides an indictment of the legal system and puts forward the challenge that any attempt to promote racial equality must be done within the context of both understanding the depth of racism within Canadian society and the legal system and, thereby, taking action to eliminate it.

13. Unfortunately, both reports are not presented in this way and the CBA will need to reconcile these documents at its annual meeting in Edmonton in August. In terms of the Law Society, there are a number of issues that should be considered in presenting its response to the CBA. These relate to:

Critical race theory analysis and scholarly approach. Defined as "...suggest(ing) a complex strategy to use to eliminate racial discrimination in law and in society" (p.vi), both reports discuss the importance of this matter, but neither provides a literature review which may have been helpful in placing this essential concept within an appropriate context. Active reference and use of the work of Patricia Williams, Derrick Bell, Richard Delgado, Sherene H. Raczak, Toni Williams and other others would likely have been helpful in describing the social context giving rise to racism and the struggles for racial equality within law and society. This could have served to underscore the critical commentary provided by Professor St. Lewis and strengthened the arguments of the Working Group. It also could have served to educate the reader regarding the depth of racism within the legal profession, its causes and the importance of substantive strategies to eliminate it.

Focus on demographic data and its importance. Both reports provide very little demographic data to support their arguments. While both are aware of its importance, there is no consistent approach to either its reference or use. Professor St. Lewis is clearer in her referencing and recommendations on the use of demographic data; the Working Group is rather silent about this and makes little mention of it in its recommendations. Demographic data is critical to comparing the relative status of groups involved in a common activity. In developing strategies to eliminate discrimination and promote equality, such data provides benchmarks to compare defined groups. Without it, it is difficult to know whether groups are being treated equally. Some

of this data already exists and has been compiled by the LSUC in its Bulletins on Rules 27 and 28 (Spring, 1995). Further, in addressing the paucity of such data and its implications to human rights and racism, both the Supreme Court (Law v. The Minister of Employment and Immigration - SCC File No. 25374; Corbiere v. Canada - 20 May, 1999 - File No. 25708) and the Ontario Court of Appeal (R. v. Siew, Koh et al - 1998 - 116 OAC 245 - Ont. C.A.) have been willing to grant judicial notice to the existence of racism and discrimination. It is unfortunate that these references are not included in the CBA report.

Coordination of recommendations and strategic actions. Neither report discusses their stylistic or substantive differences nor the importance of distilling any differences in their recommendations in order to coordinate them and develop a common plan for action. Further, while Professor St. Lewis' report provides 'strategic steps' to guide her recommendations, the Working Group report does not. This presents a challenge to the CBA to identify how it will make decisions on these two reports. Which recommendations will it adopt? How will it adopt an action plan? Unfortunately, both reports are not helpful in this regard.

Identifying sources for model activities. Several models are identified, particularly in the Working Group report; however, source information is not provided. Such information would be useful so that the history, background and implementation strategies employed by these models can be shared. This is a critical matter for those involved in developing and implementing equity initiatives, eg., the ability to connect to sources for information-sharing and ongoing dialogue. It is also integral to facilitating a network of concerned equity practitioners and a critical mass of individuals who can share with and learn from each other, thereby, advancing the state of policy and program implementation.

Compiling up-to-date information on issues under consideration. A number of the references and sources cited in each report date back a few years and neither report appears to provide current information on activities aimed at addressing racism within the legal profession. For example, while information is used on LSUC articling experiences in 1996, there is no reference to the recent LSUC Bar Admission Reform nor the literature review conducted by the LSUC Equity Initiatives Department on equity in legal education. Further, there is no information on the strategies employed by the LSUC to address the articling issues raised in both reports; nor is there any reference to the LSUC's review of the Rules of Professional Conduct and establishment of the Discrimination/Harassment Ombudsperson. While it is always difficult to incorporate new developments in reports that have been in the making for a number of years, these shortcomings, on the one hand, challenge the credibility of the report but, simultaneously, point to the need for some type of national clearing house to share up-to-date information on initiatives to promote equity and diversity in the legal profession.

Reference to human rights law, the Charter of Rights and Freedoms (Equality Sections) and Law Society Discrimination/Harassment Ombudspersons. It is interesting that both reports do not point out challenges within equality law to many of the practices discussed as problematic or discriminatory. For example, in the area of articling, both reports seem to indicate that the crux of the dilemma rests with law firms in not providing equitable opportunities; neither report discusses this as a law society requirement and the attendant issues of liability to law societies for imposing a requirement which is not accessed equally. Further, neither report discusses the potential use of human rights legislation or complaints processes to address discrimination in employment or access to law schools. There is also little reference to the mandate and functions of Discrimination/Harassment Ombudspersons established by law societies in British Columbia, Nova Scotia, Alberta and Ontario. These are critical shortcomings since some key tools are not identified which law schools, law societies and racialized individuals/communities can use to fight discrimination and promote racial equality.

14. Despite these shortcomings, both reports provide an important and timely array of arguments and recommendations essential to addressing racism and racial equality in the Canadian legal profession. As such, it is incumbent on the CBA to acknowledge their importance and to develop a strategy to reconcile, coordinate and implement the recommendations of both reports. It is also incumbent on the LSUC to identify how it can cooperate with the CBA in this activity.

Conclusion:

15. The CBA Working Group report on "Racial Equality in the Canadian Legal Profession" is both a timely and critical document. As more and more Aboriginal peoples and people of colour enter the profession of law, it is incumbent on governing bodies within the legal profession to ensure that these communities are welcome and that there are no artificial barriers to their entry and success within all levels of the profession. This principle was recognized by Convocation when it adopted the Bicentennial Report and has led to the LSUC taking a series of actions aimed at both identifying barriers to the practice of law facing Aboriginal and equity-seeking groups and eliminating them.

16. Based on the activities of the LSUC, it is recommended that Convocation endorse in principle the CBA report and forward this report, with accompanying materials, to the CBA for consideration at its annual meeting in Edmonton this August. It is also recommended that this report be forwarded to the Federation of Law Societies, the National Committee on Accreditation and to the Legal Aid Ontario requesting that they consider and respond to those recommendations which address them.

Workplace Discrimination/Harassment Procedures Covering Bencher-Staff Interactions

Introduction

1. During the April 12 meeting of EAIC, the Committee requested that staff in the Equity Initiatives Department undertake research to determine how Law Societies in other jurisdictions have dealt with Bencher/staff relations in their harassment policies.

2. The Equity Initiatives Department surveyed Law Societies across Canada as well as the New York State and Michigan State Bar Associations as to the inclusion, or lack thereof, of Bencher/staff relations in harassment and discrimination policies. The Law Society of British Columbia and the Law Society of Manitoba are the only Law Societies in Canada to address Bencher/staff interactions in their harassment and discrimination policies, and of the two American State Bar Associations contacted, only the New York State Bar has addressed this issue.

Background

3. The current LSUC *Workplace Harassment and Discrimination Prevention Policy* does not address staff/Bencher relations. The current policy also fails to identify the procedures which are to be followed when a complaint of discrimination or harassment is brought forward. As the Law Society of British Columbia and the Law Society of Manitoba are the only other Law Societies to address Bencher/staff interaction in their harassment policies, these are the only policies which can be referenced to inform the LSUC policy development. The New York State Bar Association also has a sexual harassment policy which covers interactions between members of the House of Delegates (Benchers) and staff, and this policy can also inform the LSUC policy development.

Application of the Policy

4. The Law Society of British Columbia's *Workplace Harassment Policy* states that the policy "...applies to all Benchers, committee members and all those working for the Society in any capacity, including management, professional staff, administrative staff, articling students, summer students and contract personnel". Although the Law Society of Manitoba does not specifically identify Benchers in its *Respectful Workplace Policy*, it does state in its *Benchers Code of Conduct* that ... "Benchers must behave so as to comply with the Law Society of Manitoba's *Respectful Workplace Policy* and must not engage in any of the conduct prohibited by that Policy". The New York State Bar Association's policy on sexual harassment covers members of the House of Delegates, employees, and non-member third parties.

Complaint Procedures

5. The current LSUC *Workplace Harassment and Discrimination Prevention Policy* does not identify any procedures though which a complaint of harassment or discrimination can be addressed. When revising the current policy in order to cover Bencher/staff interactions, the procedures for addressing complaints must also be considered.

6. The Equity Initiatives Department has been working with the Human Resources Department to develop a clear set of complaint procedures to accompany the existing *Workplace Harassment and Discrimination Prevention Policy.* (See TAB A) The proposed complaint procedures currently under consideration do not address Bencher/staff relations. However, since Bencher/staff relations are to be covered by the policy, a modification to the proposed procedures is required.

7. If the LSUC follows the example of the Law Society of British Columbia, then no special procedures need to be developed to process complaints involving Benchers. The LSBC policy does, however, delegate disciplinary responsibilities to specific individuals, and in the case of any disciplinary action taken against a Bencher, it is the responsibility of the Treasurer, upon receipt of the written report of the investigator, to impose disciplinary measures. The LSBC policy also specifically identifies the types of disciplinary measures that the Treasurer can impose, measures which are different from the types of disciplinary action taken in the case of employees. Under this policy, the disciplinary actions which may be taken in the case of Benchers include: " (a) a private reprimand; (b) referral to counselling; (c) reassignment; (d) removal from all committees; (e) public reprimand by the Benchers as a whole; or (f) with regard to lay Benchers, referral of the results of an investigation to the Lieutenant Governor in Council".

8. If the LSUC follows the example of the Law Society of Manitoba, any harassment or discrimination complaint against Benchers will be investigated by independent counsel rather than by internal harassment advisors. The Law Society of Manitoba's *Benchers Code of Conduct* states that complaints against Benchers "shall be supervised by experienced, independent counsel who shall ... exercise all investigatory powers of the Complaints Investigation Committee in connection with the investigation". The Law Society of Manitoba does not require the Treasurer to impose disciplinary measurers against Benchers, but rather states in its *Benchers Code of Conduct* that "... the Complaints Investigation Committee shall proceed to dispose of the matter as it deems appropriate within the scope of the Rules of the Society".

9. The New York State Bar Association's *Sexual Harassment Procedures* do not indicate that complaints against members of the House of Delegates (Benchers) be handled differently than complaints against employees. All complaints are investigated by a "Sexual Harassment Response Committee" which is composed of staff members appointed by the Executive Director, and in some cases may be investigated by outside counsel.

For Committee Consideration

10. In relation to Bencher/staff interactions, the Committee needs to consider both policy as well as procedural issues. In terms of policy, the Committee may wish to

a) adapt the current policy to explicitly cover Bencher/staff relations;

b) following the example of the Law Society of Manitoba, adapt the current LSUC Bencher Code of Conduct to make explicit reference to the LSUC *Workplace Harassment and Discrimination Prevention Policy*; or

c) request that the Equity Initiatives Department and Human Resources Department develop a separate policy to address Bencher/staff relations.

11. Option 'a' is recommended. The existing policy can be easily adapted to cover Bencher/staff relations given that the current LSUC *Workplace Harassment and Discrimination Prevention Policy* already makes reference to Benchers. Section II of the current policy states that "[t]his policy covers employment-related harassment and discrimination involving Law Society employees, Law Society management or its board of governors". However, Benchers are not directly named in the policy under the heading which identifies who is covered by the policy. Any ambiguity arising from the failure to explicitly identify Benchers under the policy description of who is covered can be clarified by including Benchers in this section which identifies to whom the policy applies.

12. In terms of procedures to address complaints of harassment or discrimination involving Benchers, the Committee may wish to recommend to Convocation either:

a) the model of the Law Society of British Columbia's *Workplace Harassment Policy* (See TAB B) and adapt the draft procedures currently under consideration to cover complaints involving Benchers; or

b) the procedures developed by the Equity Initiatives Department in consultation with the Equity Advisory Group and Committee members (See TAB C). This provides a separate set of procedures to address complaints involving Benchers.

13. Consistent with Committee's direction at its June 7, 2000 meeting, Option "b" is recommended to provide a separate set of procedures to address complaints involving Benchers. These procedures instruct that all staff complaints involving Benchers be reported directly to the CEO and/or to the Equity Advisor who will work with the Treasurer to address the complaint. All Bencher-initiated complaints should be reported directly to the Treasurer who will work with the CEO and the Equity Advisor to address the complaint. Any complaints involving the Treasurer should be directed to the Chair of the Equity and Aboriginal Issues Committee who will work with the Equity Advisor and the CEO to address the complaint.

14. The LSUC complaints procedures should also indicate the types of disciplinary measures that may be taken in cases of harassment or discrimination involving Benchers. Again, following the model of the Law Society of British Columbia's *Workplace Harassment Policy*, the disciplinary measures that may be taken in cases involving Benchers will differ from those measures taken in cases involving staff. The LSUC complaints procedure should state that the disciplinary actions that may be taken in the case of Benchers may include, but are not limited to,: (a) a private reprimand; (b) referral to counselling; (c) reassignment; (d) removal from all committees; (e) public reprimand by the Treasurer; (f) public reprimand by the Benchers as a whole; or (g) with regard to lay Benchers, referral of the results of an investigation to the Lieutenant Governor in Council. These are different from the disciplinary actions that may be taken in cases involving staff which, as stated in the existing *Workplace Harassment and Discrimination Prevention Policy*, include "education, counselling, verbal or written reprimand, transfer or termination of employment". Any investigation or mediation undertaken in cases involving Benchers should be carried out by an external party.

Re: Law Firm Equity and Diversity Mentorship Program

It was moved by Mr. Copeland, seconded by Mr. Hunter that the Law Firm Equity and Diversity Mentorship Pilot Program as set out in paragraph 3 (a), (b) and (c) on pages 3 and 4 of the Report be approved.

Carried

Re: Canadian Bar Association "Racial Equality in the Canadian Legal Profession"

It was moved by Mr. Copeland, seconded by Mr. Hunter that Convocation respond to the CBA resolutions and provide information as set out on pages 6 and 7 of the Report for consideration by the CBA's recently established "Racial Equality Implementation Committee".

An amendment by Mr. Wright was accepted by the mover and seconder to change the word "recommend" to the words "ask of" the CBA in paragraphs 6 and 8 on pages 6 and 7 and change the word "refer" to the words "forward to" the CBA, in paragraph 7 on page 6 of the Report.

Carried

The item on Workplace Harassment Prevention Policy and Procedures was referred back to Committee.

Convocation took a brief recess at 4:20 p.m. and resumed at 4.35 p.m.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. MacKenzie presented the Report of the Professional Regulation Committee for Convocation's consideration.

Professional Regulation Committee
September 7 , 2000[1]

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

TABLE OF CONTENTS

[1]Includes one matter discussed at the June 8, 2000 Professional Regulation Committee meeting

I. POLICY

II. INFORMATION

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on September 7, 2000. In attendance were:

Gavin MacKenzie	(Chair)
Larry Banack	(Vice-Chairs)
Niels Ortved	
Heather Ross	
Carole Curtis	
Todd Ducharme	
Gary Gottlieb	
Julian Porter	
Robert Topp	

Staff: Lesley Cameron, Vivian Kanargelidis, Richard Tinsley, Jim Varro and Jim Yakimovich.

2. On June 8, 2000, the following attended the Committee meeting:

Gavin MacKenzie	(Chair)
Niels Ortved	(Vice-Chair)
Andrew Coffey	
Carole Curtis	
Todd Ducharme	
Ross Murray	
Julian Porter	

Staff: Trevor Branion, Janet Brooks, Lesley Cameron, Margot Devlin, Scott Kerr, Elliot Spears, Richard Tinsley, Jim Varro and Jim Yakimovich.

3. This report contains the Committee's policy reports on:

- decision-making authority for the Law Society's appeal of decisions of hearing panels (June 8, 2000 meeting),
- a tariff for costs to be ordered under By-Law 29, Payment of Costs, relating to Law Society audits of members, and
- proposal for the establishment of an advisory committee on professionalism;

and information reports on the ongoing work of the Committee and regulatory operations.

I. POLICY

LAW SOCIETY APPEAL OF ORDERS UNDER PART II OF THE *LAW SOCIETY ACT*

A. INTRODUCTION AND BACKGROUND

4. At its June 2000 meeting, the Committee completed its review of an issue raised by a bencher on establishing a policy on who should decide on behalf of the Law Society whether to appeal an order made by members of the Hearing Panel. While the *Law Society Act* ("the Act") gives the Society the right to appeal an order, it is silent on who makes the decision to appeal.[2] This led to the question of whether bencher involvement in the decision-making process for appealing orders is necessary or appropriate.

5. The Committee reviewed research[3] completed by regulatory staff and identified various options for the decision-making authority. This report contains discussion of the conclusions reached by the Committee, including the options, and the Committee's proposal on who should decide whether the Society appeals an order.

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[2]Sections 49.29 through 49.41of the Act on appeals appear at Appendix 1 .
[3]This includes information on other Law Societies' processes for appeals, summarized in Appendix 2.

B. THE CURRENT POLICY AND PRACTICE

6. The current policy of Convocation, adopted October 1990 and later confirmed in December 1997, is one of prosecutorial independence. In October 1990, Convocation adopted the Report of the Special Committee on Discipline Procedures, chaired by Roger Yachetti ("the Yachetti report"), the recommendations of which formed the basis for the legislative reforms package adopted by Convocation in 1996 and implemented through amendments to the Act in February 1999.

7. The Yachetti report specifically contemplated that discipline counsel would have the independent responsibility to pursue appeals of panel decisions. The report stated:

> Once the complaint has been authorized, Discipline Counsel must be free to conduct the proceeding (including providing disclosure, recommending penalty, requesting withdrawal or reduction, *deciding on appeal initiatives and response*) uninhibited by the necessity of taking instructions from any of Convocation, its members or its Senior Executive Officers. (Emphasis added)

8. The report also indicated that underlying the recommendation for prosecutorial independence was the role of discipline counsel as a representative of the public interest.

> While analogies to the Rules of Civil Procedure are appropriate in some circumstances...it would be an error to regard Convocation, its members or its Senior Executive Officers as 'discipline counsel's clients' because of Convocation's adjudicative responsibilities; it would compromise both the impartiality of Convocation and the independence of Discipline Counsel if the latter were constrained to follow the former's instruction in making discretionary decisions in individual cases.
>
> For this reason, the Committee endorses the views expressed by Mr.[G. Arthur] Martin, that Discipline Counsel, like Crown Attorneys, represent the public, although their salaries are paid by the Law Society.

9. Convocation also agreed to limit bencher involvement to the authorization of applications and receipt by certain benchers of information on the status or progress of investigations.[4]

10. Although the Society's legislative reform package sent to the government included a section on prosecutorial independence, as a matter of legislative drafting, this was not included in the Act. The section read:

> *Independence of investigation and prosecution*
>
> 33.3 (1) An investigation and prosecution under this Part, and any appeal arising from it is the responsibility of the Secretary and counsel employed or retained by the Society and shall be conducted in accordance with policies adopted by Convocation consistent with the provisions of this Act and regulations, but shall be independent of involvement by any bencher except as provided by this Act.

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[4]The Treasurer can receive information on any investigation. The Chair and Vice-Chairs of the Professional Regulation Committee can receive information on conduct and capacity investigations. The Chair and Vice-Chairs of the Professional Development & Competence can receive information on competence and capacity investigations. Other benchers, not previously mentioned, can receive information on any investigation if permitted by resolution of Convocation.

The Practice of Senior Counsel - Discipline

11. The practice that has been put in place as an interim measure pending Convocation's consideration of this issue is as follows. Senior Counsel - Discipline, having received notice from a Law Society discipline counsel about the possibility of an appeal, will consider the opinions of at least two counsel before deciding if an appeal is warranted. Senior Counsel will then consult with the Secretary, and when that consultation occurs, the Secretary will routinely consult with the Chair of the Professional Regulation Committee. This is an informal process.

C. DISCUSSION OF ISSUES, POLICY CONSIDERATIONS AND OPTIONS

12. The Committee identified and discussed three options available for decision-making on appeal of orders:

- Proceedings Authorization Committee ("PAC"),
- Senior Counsel - Discipline in consultation with the Secretary, or
- Senior Counsel - Discipline with the Secretary and the Chair of Professional Regulation Committee ("PRC").

In respect of possible appeals from competence (as opposed to conduct or capacity) orders, the Chair of the Professional Development and Competence Committee ("PD&C") would be substituted for the Chair of the PRC.

Proceedings Authorization Committee ("PAC")

13. Discussion of this option began with consideration of the meaning of "the Society" in subsection 49.33(2) of the Act.

14. It was suggested by a bencher in communications to the Treasurer and chair of the Committee that "the Society" for the purposes of a decision to appeal means the benchers in Convocation and that the decision to appeal should be referred to Convocation for decision, or its delegate if such delegation is permissible.

15. The Committee considered two issues in respect of this position:

- there is currently no requirement in the Act or the by-laws for the "screening" of appeals by Convocation or any other bencher committee, nor is there an explicit requirement that the Society seek leave to appeal;
- all benchers, with the exception of members of the PAC, *ex officio* benchers and Attorneys-General, are by statute members of the Hearing Panel.[5]

[5] Subsection 49.21(2) of the *Act*.

Can PAC Make the Decision?

16. The Committee then considered whether the PAC would be a viable option, given that its members are not part of the Hearing Panel. In By-law 21, the role of PAC is specifically prescribed to deal with the initiation of a proceedings by the Law Society through an application.[6] In considering whether to appeal, PAC would be placed in the position of reviewing *in camera* other benchers' adjudicative decisions on a broad range of issues including fitness of penalty, jurisdictional issues, and the correctness of conclusions of law reached by the Hearing Panel.

17. The Committee concluded that while the absence of a "screening" requirement as discussed above is still an issue with use of the PAC, the by-law making power in section 62 of the Act could permit a new role for PAC in authorizing appeals. Paragraph 10 of subsection 62(1) of the Act states:

> Without limiting the generality of the paragraph 1 of subsection (0.1), by-laws may be made under that paragraph,
>
> 10. Providing for the establishment, composition, jurisdiction and operation of the Proceedings Authorization Committee;
>
> (Emphasis added)

Should PAC Make the Decision?

18. The Committee considered the appearance of fairness of the process, and acknowledged that this was key to Convocation adopting a policy of prosecutorial independence and limiting the role of PAC to authorization of the initiation of the proceeding.[7] In screening, PAC would appear to review the Hearing Panel's adjudicative decisions. The Act gives that review function to the Appeal Panel.

Senior Counsel - Discipline in Consultation with the Secretary

19. In accordance with Convocation's policy, authorization by PAC provides the Secretary and Senior Counsel - Discipline with the authority to take all necessary steps, including pursuing any appeals, as part of their prosecutorial discretion within the proceeding.

20. The rationale for the current policy, where the decision to appeal should be left to Senior Counsel - Discipline and the Secretary as part of the general discretion counsel have to conduct the proceeding, is that as discipline counsel represent the public interest. Prosecutorial independence in the conduct of a proceeding provides a clear separation of prosecutorial and adjudicative functions and protects against claims of influence from anyone who is seen as a decision-maker in the process. From the public point of view, the process is transparent once the proceeding commences.

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[6] Section 49.20 of the Act and By-law 21.

[7] Members of PAC are not members of the Hearing Panel and, therefore, do not perform an adjudicative function.

Senior Counsel - Discipline with the Secretary and the Chair (or vice-chair designates) of Professional Regulation Committee ("PRC") or the Professional Development and Competence Committee ("PD&C")

21. As noted above, the Committee recognized that the current practice involves informal consultation on an as needed basis with the chairs of the two committees noted above, depending on the nature of the issue (i.e. conduct/capacity or competence).

22. A consideration is whether adding the chairs of PRC and PD&C to a formal appeal "screening" process maintains a sufficient separation between the adjudicators, who have ultimate responsibility for decisions in the hearing process, and those who decide whether to engage the process. The chairs of the two standing Committees are also members of the PAC as are some (but not all) of the vice-chairs. Vice-chairs who are not members of the PAC are members of the Hearing Panel.

The Committee's View

23. The consensus among Committee members was that the third option discussed above, which incorporates the informal process currently followed, should be adopted as the policy option for decision-making on appeals, for the following reasons:

- This process will permit Senior Counsel - Discipline to obtain the views of a bencher who will be a member of PAC and therefore not eligible to sit on the Hearing Panel. Concerns about bias or fairness are thus eliminated.
- The process will allow for another dispassionate view on the matter of an appeal, together with that of the Senior Counsel - Discipline, and that will assist in making difficult decisions.
- This will avoid any sense that a process akin to leave to appeal is being instituted, which could be a characterization if the PAC were to authorize appeals. Instituting a leave process raises issues about whether members are entitled to appear and be afforded the opportunity to make submissions.

D. DECISION FOR CONVOCATION

24. Convocation is asked to approve the Committee's proposal, or if not in agreement with the proposal, to approve another option as Convocation deems appropriate.

TARIFF FOR COSTS UNDER BY-LAW 29

25. At the June 23 Convocation, By-Law 29 entitled Payment of Costs[8] was adopted, dealing with the recovery by the Law Society of the cost of audits of members. The by-law allows for a bencher appointed for the purpose by Convocation to make an order requiring a member who was the subject of an audit under 49.2 of the *Law Society Act* to pay the cost or a portion of the cost of the audit under certain circumstances. The cost is set out in an application made by the Society based on actual time expended or a portion thereof, related to the circumstances outlined in section 1 of the by-law.

26. Subsection 3(2) of the by-law authorizes Convocation to establish a tariff for determination of the amount payable by the member for costs according to the scheme in the by-law.

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[8]A copy of By-Law 29 appears at Appendix 3.

27. In its discussions that preceded the draft of the by-law adopted by Convocation, the Committee addressed the question of the appropriate amount to be charged to a member for the costs of an audit, either on a flat rate, per diem or per hour basis, in the circumstances established in section 1 of the by-law that would reflect the cost or a portion of the cost to the Society. As it was decided that the by-law should provide for a tariff, no final decision on the basis for the calculation of the costs was made during those discussions, but they have informed the current consideration of the Committee on structuring the tariff.

28. The Committee received information from Vivian Kanargelidis, team leader, spot and focussed audit, in respect of the tariff, which recalled the Committee's earlier discussions and provided suggestions for a tariff.

29. The Committee considered the following factors:

- the hourly rate paid to public accounting firms retained by the Society to conduct spot audits ranges from $80 - $105 for an auditor to $150 - $250 for a partner;
- costs for Law Society auditors is approximately $100 per hour;
- costs charged in the discipline process in respect of an auditor's time are based on $100 per hour.

30. The Committee also considered the fact that in an assessment of costs in civil litigation matters, the costs awards are routinely lower than actual costs.

31. The Committee determined that the tariff should reflect a compromise between full cost recovery, based on $100 per hour, and setting the rate at too modest an amount. If the rate were too low, it would effectively, and unfairly, cast the expense of audits on the entire membership when the matter is confined to one individual member. The Committee also acknowledged that By-Law 29 provides that the bencher making the costs order may take into account the member's ability to pay (subsection 4(3)), and that this may be a factor in determining the final amount of the order for costs based on the tariff.

32. The Committee proposes that the tariff be set at $75 per hour.

DECISION FOR CONVOCATION

33. The Committee requests that Convocation approve the tariff under subsection 3(2) of By-Law 29 at $75 per hour, or determine another amount as Convocation deems appropriate.

ADVISORY COMMITTEE ON PROFESSIONALISM

34. The Treasurer, in consultation with the chair of the Committee, requested that the Committee review a proposal for the establishment of the Chief Justice of Ontario's Advisory Committee on Professionalism, which would serve as a vehicle for discussion between members of the judiciary and the bar on enhancing and encouraging professionalism in the legal profession, and as a "clearing house" for the generation of ideas on professionalism. Its proposals would be communicated to appropriate legal organizations or individuals in the profession for consideration.

35. Attached at Appendix 4 is a letter from the Treasurer to the Chief Justice of Ontario which explains in more detail the purpose of the committee, its proposed membership and its terms of reference, summarized in the mission statement set out in the letter. In brief, and reflecting amendments to the number of appointees outlined in the letter, the committee would be composed of the Chief Justices of Ontario, the Superior Court of Justice and the Ontario Court of Justice (or their delegates within the courts), ten judges of the above courts (appointed by the Chief Justice of Ontario), the president of the Council of Ontario Law School Deans, the Treasurer, and fifteen lawyers appointed by the Law Society. Meetings would be twice or three times a year hosted by the Law Society.

36. The Committee supports the concept of the committee and agrees with the committee's overall structure as set out in the letter, but proposes that the following also be considered in establishing the committee and its membership:

- the fifteen lawyer appointees should reflect the membership of various other legal organizations and legal groups in the province, the diversity of the profession and the geographic distribution of the profession in the province, and
- as the Law Society is hosting the meetings, budgetary implications of the Law Society's should be considered, in consultation with the Finance Committee, before Convocation approves the Society's commitment in respect of the committee.

37. In discussions with Finance Department staff after the Committee's meeting, it was disclosed that the Finance Committee, after notification of this initiative by the Treasurer, included in the 2001 preliminary budget the amount of $15,000 for the committee.

DECISION FOR CONVOCATION

38. Convocation is asked to approve the establishment of the Chief Justice of Ontario's Advisory Committee on Professionalism, in the terms outlined in the Treasurer's letter of August 15, 2000, as amended, and the Committee's proposals set out above.

II. INFORMATION

ONGOING WORK OF THE COMMITTEE

39. The Committee is currently involved in a number of initiatives which will be reported to Convocation in the next ten months. They include:

- Working Group on Vacating Discipline Records
  The working group of the Committee examining a scheme whereby certain discipline or conduct records may be vacated has prepared a report, following Convocation's direction last year that a process be designed to facilitate vacating discipline or conduct records after some period of time in certain circumstances. Initial discussion on the report took place at the Committee's September meeting, with direction to the working group to provide more detailed information on options that it presented in its report.
- Working Group on Lawyer's Sexual Relations With Clients
  The working group discussing the need for a regulatory response to the issue of lawyer's sexual relationships with clients is in the process of writing a report for the Committee's review. It is anticipated that the report will be ready for the Committee's November meeting.
- Working Group on E-Mail Confidentiality Issues
  The chair of the above working group is organizing a first meeting of the group. Members include non-bencher technology lawyers Fraser Mann and Alan Gahtan.

- Working Group on the Members' "Protocol"
  The above working group, composed of members of the Committee and the Professional Development and Competence Committee, has met on two occasions. The scope of the "protocol" has been discussed and particulars of the type of document that should be drafted are being determined. It is expected that the working group will provide a report to the committees in early 2001.

SECRETARY'S REPORT ON OPERATIONAL INITIATIVES

40. Richard Tinsley provided a brief information report on the operations of the Secretariat relating to investigations and discipline, which included the following:

- Lesley Cameron, Senior Counsel - Discipline and Glenn Stuart, Counsel, Discipline, have tendered their resignations, effective the end of September. The Committee expressed its thanks to Lesley and Glenn for their impeccable work and dedication over the past few years.
- Over the summer, the senior staff in the regulatory departments have been assisting The Hon. W. David Griffiths in his review, as mandated by Convocation, of the investigation and discipline processes at the Society, in anticipation of his report by the end of September.
- Quarterly statistics for the Resolution and Compliance, Investigations and Discipline Departments' file management will be provided to the Committee in October 2000.
- A report on the investigations and discipline process as projected over the next eighteen months will be provided to the Committee this fall, taking into account staffing changes, file management issues, and the status of implementation of the Project 200 regulatory process redesign.

APPENDIX 1

LAW SOCIETY ACT

SECTIONS 49.29 THROUGH 49.41

APPENDIX 2

INFORMATION FROM OTHER LAW SOCIETIES ON AUTHORIZATION OF APPEALS

Information was requested from the other law societies on the issue of authorization of appeals. The Law Societies of Alberta, Saskatchewan, Prince Edward Island, New Brunswick and the Yukon does not have a right of appeal. Of those jurisdictions that grant the Law Society a right of appeal, several have provisions allowing for an appeal by the governing body or its committees or officers.

Benchers make the decision to appeal in Nova Scotia, British Columbia and Northwest Territories. In Manitoba, benchers and staff can each make the decision to appeal. In Newfoundland, Manitoba and Quebec, the decision to appeal is not made by benchers.

In Nova Scotia, the Discipline Committee or a sub-committee and officers of the Society (Benchers) may appeal to the Appeal Division of the Nova Scotia Supreme Court .

British Columbia's governing act provides for an internal review initiated by the Society. The Discipline Committee (similar to the Proceedings Authorization Committee) decides whether to refer a matter to the benchers for a review. The Discipline Committee is provided with counsel's recommendation. The Society does not have a right of appeal to the Courts.

In the Northwest Territories, the Law Society's Executive (Benchers) may appeal to the Court of Appeal from decisions of the Committee of Inquiry, which is a separate body that is appointed by the Executive.

The Law Society of Manitoba has a right of appeal directly to the Court of Appeal. Counsel generally makes the decision to appeal. However, they may seek advice and direction from their Chief Executive Officer, who is not a bencher. Of note, although counsel generally make the decisions to appeal, there is a provision in the governing act which allows the governing body (as opposed to the parties) to appeal.

In Newfoundland, the Law Society is allowed both internal and external appeals of discipline decisions. The appeal decision is made by the Secretary. The Secretary's role is compared to that of a DPP with the right to consult with the Law Society Executive.

In Quebec, the structure of the regulatory scheme is considerably different from other Canadian jurisdictions. Members of the bar are governed by the *Professional Code*, which outlines the process for disciplinary hearings and appeals. Decisions on whether to pursue an initial matter before a discipline tribunal and whether to appeal that finding rest with the office of the Syndic, created under the authority of the Code and independent from, although appointed by, the Barreau.

APPENDIX 3

BY-LAW 29

PAYMENT OF COSTS

AUDIT

Payment of costs

1. On application by the Society, a bencher appointed for the purpose by Convocation may make an order requiring a member who was the subject of an audit under section 49.2 of the Act to pay the cost or a portion of the cost of the audit if the bencher is satisfied that,

(a) the audit was required because the member had failed to submit to the Society the report required under section 2 of By-Law 17;

(b) at the time arranged between the Society and the member, the person conducting the audit could not gain entry to the business premises of the member;

(c) at any time during the audit, the member failed to produce to the person conducting the audit the financial records and other documents that the member prior to a specified time had been requested to make available to the person at that time;

(d) at any time during the audit, the member failed to produce to the person conducting the audit financial records that were up to date and the failure to produce financial records that were up to date increased significantly the amount of time required to complete the audit; or

(e) at any time during the audit, the member produced financial records that were not in compliance with the requirements of By-Law 18 and the production of financial records that were not in compliance with the requirements of By-Law 18 increased the amount of time required to complete the audit.

Notice of application

2. (1) An application for payment of the cost or a portion of the cost of an audit shall be commenced by the Society notifying the member in writing of the application.

Method of giving notice

(2) Notice under subsection (1) is sufficiently given if,

(a) it is delivered personally;

(b) it is sent by regular lettermail addressed to the member at the latest address for the member appearing on the records of the Society; or

(c) it is faxed to the member at the latest fax number for the member appearing on the records of the Society.

Receipt of notice

(3) Notice under subsection (1) shall be deemed to have been received by the member,

(a) if it was sent by regular lettermail, on the fifth day after it was mailed; and

(b) if it was faxed, on the first day after it was faxed.

Bill of costs

3. (1) Where the Society is applying for payment of the cost or a portion of the cost of an audit, the Society shall send to the member at least ten days before the date fixed for consideration of the application a bill of costs setting out the expenses, fees, disbursements and other charges incurred by the Society to conduct the audit.

Tariff

(2) The bill of costs prepared by the Society shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

Application of certain sections

(3) Subsections 2 (2) and (3) apply, with necessary modifications, to the delivery of the bill of costs under subsection (1).

Consideration of application: procedure

4. (1) Subject to sections 2 and 3 and subsections (2), (3), (5) and (6), the procedure applicable to the consideration of an application for the payment of the cost or a portion of the cost of an audit shall be determined by the bencher and, without limiting the generality of the foregoing, the bencher may decide who may make submissions to him or her, when and in what manner.

Submissions by member and Society

(2) The member and the Society are entitled to make submissions to the bencher when he or she is considering an application for the payment of the cost or a portion of the cost of an audit.

Ability to pay

(3) In considering an application for the payment of the cost or a portion of the cost of an audit, the bencher shall take into account, among other relevant factors, the member's ability to pay.

Authority of bencher

(4) After considering an application for payment of the cost or a portion of the cost of an audit, the bencher shall,

(a) dismiss the application and declare that the member is not required to pay the cost of any portion of the cost of the audit; or

(b) order that the member pay the cost or a portion of the cost of the audit, as requested by the Society in the application or as determined by the bencher, and set the due date for payment.

Tariff

(5) Where the bencher determines under clause (4) (b) that the member is to pay the cost or a portion of the cost of the audit other than as requested by the Society in the application, the bencher's determination as to the amount payable by the member shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

Reasons for decision

(6) If requested by the member or the Society, the bencher shall state in writing the reasons for his or her decision on the application.

Appeal

5. (1) The member or the Society if dissatisfied with the bencher's decision under subsection 4 (4) may appeal the decision to a panel of three benchers appointed for the purpose by Convocation.

Time for appeal

(2) An appeal under subsection (1) shall be commenced,

(a) if the member is appealing, by the member notifying the Secretary in writing of the appeal within thirty days after the day the bencher delivers his or her decision; or

(b) if the Society is appealing, by the Society notifying the member in writing of the appeal within thirty days after the day the bencher delivers his or her decision.

Procedure

(3) The rules of practice and procedure apply, with necessary modifications, to the consideration by the panel of three benchers of an appeal under subsection (1) as if the consideration of the appeal were the hearing of an appeal under subsection 49.32 (2) of the Act.

Same

(4) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the panel of three benchers of an appeal under subsection (1).

Payment of cost of audit

(5) Where a member or the Society appeals under subsection (1), payment of the cost or a portion of the cost of an audit, as ordered by the bencher under subsection 4 (4), is postponed until the appeal is disposed of by the panel of three benchers.

Decision on appeal

(6) After considering an appeal made under subsection (1), the panel of three benchers shall,

(a) confirm the bencher's decision; or

(b) strike out the bencher's decision and substitute its own decision.

Decision final

(7) The decision of the panel of three benchers on an appeal made under subsection (1) is final.

APPENDIX 4

TREASURER'S LETTER TO THE CHIEF JUSTICE OF ONTARIO RESPECTING THE ADVISORY COMMITTEE ON PROFESSIONALISM

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

(1) Sections 49.29 through 49.41 of the Law Society Act. (Appendix A, pages 16 - 19)

(2) Copy of a letter from the Treasurer, Robert P. Armstrong, Q.C., to The Honourable R. Roy McMurtry dated August 15, 2000. (Appendix 4, pages 27 - 28)

Re: Law Society Appeal of Orders under Part II of the Law Society Act

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the policy be that Senior Counsel - Discipline with the Secretary and the Chair (or vice-chair designates) of the Professional Regulation Committee or the Professional Development and Competence Committee be authorized to decide on behalf of the Law Society whether to appeal an order made by members of the Hearing Panel.

Carried

Re: Tariff for Costs under By-law 29

It was moved by Mr. MacKenzie, seconded by Mr. Porter that the tariff under subsection 3(2) of By-Law 29 be set at $75 per hour.

Carried

Re: Advisory Committee on Professionalism

It was moved by Mr. MacKenzie, seconded by Mr. Bindman that the establishment of the Chief Justice of Ontario's Advisory Committee on Professionalism be approved in the terms outlined in the Treasurer's letter of August 15th, 2000, as amended, and the Committee's proposals set out in paragraph 36 on page 11 of the Report.

The motion was further amended and accepted by the Chair that there be lay Bencher representation.

Carried

Mr. MacKenzie announced that Ms. Lesley Cameron, Senior Counsel - Discipline and Mr. Glenn Stuart, a Discipline Counsel were leaving the Society. He thanked them both for their work and dedication and said they would be seriously missed by the Discipline Department.

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IN PUBLIC

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REPORT FOR INFORMATION ONLY

REPORT OF THE FINANCE & AUDIT COMMITTEE

Re: Law Society Financial Statements

Finance and Audit Committee
September 7, 2000

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 September 7, 2000. Committee members in attendance were Krishna V. (c), Crowe M., (v-c), Swaye G. (v-c), Armstrong R., Cass R., Chahbar A., Lamont D., Puccini H., Wardlaw J., White D., Wilson R.,Wright B., Copeland P. also attended. Staff in attendance were: Saso J., Tysall W., Strom M., Corrick K., Grady F., White R., Cawse A.

2. The Committee is reporting on the following matters:

- Decision
- J. Shirley Denison Fund Application - Confidential.

Information

- Law Society Financial Statements for the six months ended June 30, 2000;
- Lawyer's Professional Indemnity Company Financial Statements for the six months ended June 30, 2000;
- Investment Compliance Reports at June 30, 2000;
- Contingent Liability Settlement.

FOR DECISION

J. SHIRLEY DENISON FUND - IN CAMERA

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FOR INFORMATION

LAW SOCIETY FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2000

5. The unaudited statements for the General Fund, and Lawyers Fund for Client Compensation, for the six months ending June 30, 2000 as attached from page 14 of this report, were reviewed by the Committee.

LAWYER'S PROFESSIONAL INDEMNITY COMPANY FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2000

6. The mid-year unaudited statements for LPIC and the E & O Fund with management comments are attached from page 25 of this report. Ms. Michelle Strom, Senior Vice President and CFO of LPIC presented the statements to the Committee. Ms. Strom also informed the Committee that proposed changes to LPIC's Letters Patent and Bylaws were not being pursued.

INVESTMENT COMPLIANCE REPORTS AT JUNE 30, 2000

7. The Investment Compliance Reports at June 30, 2000 for the General Fund and the Lawyers Fund for Client Compensation are attached from page 19 of this report. The Investment Reports confirm there are no breaches in compliance.

CONTINGENT LIABILITY SETTLEMENT

8. The General Fund audited financial statements at 31 December 1999 disclosed a claim against the Law Society for damages of $13,000,000 as a contingent liability. The plaintiff's appeal of an earlier dismissal has not been successful.

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

(1) Copy of the Law Society Financial Statements fro the six months ended June 30, 2000.

(2) Copy of the Lawyer's Professional Indemnity Company Financial Statements for the six months ended June 30, 2000.

(3) Copy of Investment Compliance Reports at June 30, 2000.

(4) Copy of the Contingent Liability Settlement.

TECHNOLOGY TASK FORCE - VIRTUAL LIBRARY DEMONSTRATION

A demonstration of the Virtual Library was presented by Mr. Banack and Ms. Janine Miller, Director of Libraries.

DISCIPLINE MATTER

The Discipline matter scheduled to be heard was adjourned.

ORDERS

The following Orders were filed:

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Stuart Elliot Rosenthal, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 10th day of June, 1999, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Louis Sokolov, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Stuart Elliot Rosenthal be suspended for a period commencing as of the date of this order and concluding on January 28, 2003;

CONVOCATION FURTHER ORDERS that the Solicitor shall only be allowed to resume practice on the following conditions:

1. That he provide a medical practitioner's report acceptable to the Secretary of the Law Society regarding his ability to practise law especially vis-a-vis the stages of his rehabilitation from substance addiction;
2. That he continue counselling and rehabilitation as directed by his physician(s);
3. That he be supervised by a member of the Law Society, acceptable to the Secretary of the Law Society, for a period of five years and continuing thereafter until the Secretary is satisfied that such supervision is no longer required;
4. That he attend as required for all medical treatment as directed by his attending physician(s), to continue during his period of suspension and for five years thereafter; and
5. That he submit himself to random drug testing, to continue during his period of suspension and for a five year period thereafter at the request of the Secretary of the Law Society.

DATED this 24th day of March, 2000

"R. Armstrong"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Roland William Paskar, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor").

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 20th day of May, 1999, in the presence of Counsel for the Society, the Solicitor being in attendance, and assisted by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Roland William Paskar be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor, and from holding himself out as a barrister and solicitor.

DATED this 22nd day of June, 2000

"R. Armstrong"
Treasurer

(Seal - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Edward William Hastings, of the City of Stratford, a Barrister and Solicitor (hereinafter referred to as "the Solicitor").

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 23rd day of February, 2000, in the presence of Counsel for the Society, the Solicitor not being in attendance but represented by Tory Colvin, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS THAT Edward William Hastings be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 22nd day of June, 2000

"R. Armstrong"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Angelina Marie Codina, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor").

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the materials filed on behalf of the Solicitor and of the Law Society of Upper Canada, and having heard the submissions of the Solicitor and counsel for the Law Society of Upper Canada on whether the Law Society of Upper Canada had jurisdiction to proceed with the complaints against the Solicitor;

CONVOCATION HEREBY ORDERS that in the matter of Angelina Marie Codina the Decision of the Discipline Committee dated June 22, 1999 is set aside.

DATED this 24th day of March, 2000

"R. Armstrong"
Treasurer

(SEAL - The Law Society of Upper Canada)

"K. Corrick"
Acting - Secretary

Filed

CONVOCATION ROSE AT 5:40 P.M.

Confirmed in Convocation this 29th day of November, 2000

Treasurer