

22<sup>nd</sup> November, 2007

## MINUTES OF CONVOCATION

Thursday, 22<sup>nd</sup> November, 2007  
9:00 a.m.

### PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Aitken (by telephone), Anand, Backhouse, Banack, Boyd, Campion, Carpenter-Gunn, Caskey, Chahbar, Conway, Crowe, Curtis, Dickson, Dray, Epstein, Go, Gold, Gottlieb, Halajian (by telephone), Hartman, Heintzman, Henderson, Lawrence, Legge, Lewis, McGrath, Marmur, Millar, Minor, Murphy, Murray, Pawlitza, Porter, Potter (by telephone), Pustina, Rabinovitch, Robins, Ross, Ruby, St. Lewis, Schabas, Silverstein, C. Strosberg, Swaye, Symes, Tough, Wardlaw, Warkentin and Wright.

.....

Secretary: Katherine Corrick

The Reporter was sworn.

.....

IN PUBLIC

.....

The Treasurer introduced Michael Milani, Q.C., President of the Federation of Law Societies of Canada and Jonathan Herman, CEO of the Federation of Law Societies of Canada.

### TREASURER'S REMARKS

The Treasurer reported on his activities since last Convocation.

### DRAFT MINUTES OF CONVOCATION

The Minutes of Convocation of October 25, 2007 were approved.

### MOTIONS – COMMITTEE APPOINTMENTS

It was moved by Mr. Crowe, seconded by Mr. Swaye, –

THAT Alan D. Gold be re-appointed to the Judicial Appointments Advisory Committee for a term of three years commencing January 24, 2008.

THAT the following benchers be appointed to the Law Society Medal/Lincoln Alexander Award/Laura L. Legge Award Committee:

Melanie Aitken  
 Susan Elliott  
 Julian Porter  
 Jack Rabinovitch

THAT the following benchers be appointed to the LL.D. Advisory Committee:

Melanie Aitken  
 Susan Elliott  
 Doug Lewis  
 Julian Porter  
 Jack Rabinovitch

THAT Paul Schabas be appointed to the Human Rights Monitoring Group.

Carried

MOTION – AMENDMENT TO BY-LAW 3 [BENCHERS, CONVOCATION AND COMMITTEES]

It was moved by Mr. Crowe, seconded by Mr. Swaye –

THAT By-Law 3 [Benchers, Convocation and Committees], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007 and September 20, 2007, be further amended as follows:

1. Paragraphs 9, 10 and 11 of subsection 108 of By-Law 3 [Benchers, Convocation and Committees] are deleted and the following substituted:
  9. Inter-Jurisdictional Mobility Committee.
  10. Tribunals Committee.
  9. Le Comité sur la mobilité interjuridictionnelle.
  10. Le Comité des tribunaux.
2. The By-Law is amended by deleting the heading immediately preceding section 123 and section 123.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

---

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, November 22, 2007.

ALL OF WHICH is respectfully submitted

DATED this 22<sup>nd</sup> day of November, 2007

CANDIDATES FOR CALL TO THE BAR

November 22nd, 2007

Tolulope Adebis Adewumi  
David Alan D. Asper  
Alexander Dugan Cameron  
Elizabeth Agathe Duby  
John Hans Juergen Gescher  
John Douglas Gordon Hazen  
Vikram Kapur  
Jan Max Thomas Krueger  
John Ernest Mc Gee  
John Burnham Sedgwick  
Peter VanVliet Snell

It was moved by Ms. Pawlitza, seconded by Professor Backhouse, that the Report of the Director of Professional Development and Competence listing the names of the deemed Call to the Bar candidates be adopted.

Carried

.....

IN CAMERA

.....

**IN CAMERA Content Has Been Removed**

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

REPORT OF THE PRIORITY PLANNING COMMITTEE

The Treasurer presented the Report.

Report to Convocation  
November 22, 2007

---

Priority Planning Committee

Committee Members  
Gavin MacKenzie (Chair)  
Tom Heintzman (Vice-chair)  
Carole Curtis  
Derry Millar  
Heather Ross

Purpose of Report: Decision

Prepared by the Policy Secretariat  
(Katherine Corrick 416.947.5210)

COMMITTEE PROCESS

1. Following the Planning Session held in Huntsville from September 23 – 25, 2007, the Committee met on October 23, 2007. Committee members Gavin MacKenzie (chair),

Tom Heintzman (vice-chair), and Derry Millar attended. Malcolm Heins and Katherine Corrick also attended.

## FOR DECISION

### CONVOCATION'S PRIORITY PLANNING – NEXT STEPS

#### MOTION

2. That Convocation approve the following nine priorities as Convocation's priorities for the next four years:
  - Discipline
  - Access to justice
  - Regulation of paralegals
  - Small firms and sole practitioners
  - Governance structure
  - Strategic communications
  - Maintenance of high standards and ensuring effective competence
  - Diversity within the profession
  - Licensing and accreditation
  
3. That Convocation approve the following process for the Priority Planning Committee to use to move forward on the priorities Convocation sets:
  - a. the Committee will review the priorities as determined by Convocation;
  - b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers who deal with the priority areas in the committees on which they serve;
  - c. the Committee will establish goals to be achieved within each of the priority areas for Convocation's consideration; and
  - d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2008.

#### Introduction and Background

4. In March 2007, Convocation approved the following recommendations of the Governance Task Force with respect to prioritizing and planning Convocation's policy agenda:
  - a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and
  - b. Convocation shall establish a standing committee called the Priority Planning Committee to assist Convocation in planning its priorities. In particular,
    - i. The Treasurer shall recommend members of the Committee for Convocation's approval, in accordance with the By-Laws;
    - ii. Convocation shall appoint the chair and any vice-chairs of the Committee, in accordance with the By-Laws;

- iii. In addition to the benchers members of the Committee, the Chief Executive Officer shall be a non-voting member of the Committee;
  - iv. The mandate of the Committee is to
    - A. recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
    - B. periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
    - C. report annually to Convocation on the status of Convocation's priorities.
5. The Priority Planning Committee met over the summer to organize the Planning Session that was held in Huntsville on September 23 – 25, 2007. In advance of the Planning Session, a survey was sent to all (73) benchers – elected, appointed, paralegal and *ex officio*. The survey sought the views of benchers on the mandate of the Law Society, and the priorities the Law Society should focus on. Fifteen benchers responded – 13 elected benchers, one life bencher and one response was sent anonymously.
6. At the Planning Session, benchers identified nine priority areas that the Law Society should focus on for the next four years. The nine priority areas identified are as follows:
- Discipline
  - Access to justice
  - Regulation of paralegals
  - Small firms and sole practitioners
  - Governance structure
  - Strategic communications
  - Maintenance of high standards and ensuring effective competence
  - Diversity within the profession
  - Licensing and accreditation

#### Priority Setting

7. At its meeting on October 23, 2007, the Committee reviewed the nine priority areas and discussed a process for moving forward.
8. The Bencher Planning Session was an excellent opportunity for benchers to discuss the important issues facing the Law Society, and to articulate what the most important issues are that the Law Society should focus on for the next four years. Priority setting, however, is the responsibility of Convocation. For this reason, the Committee is of the view that Convocation must determine whether the priorities identified at the Planning Session are Convocation's priorities.

#### Next Steps

9. Once Convocation determines the priorities, the Committee proposes the following process to move the priorities forward within the 2007 – 2011 bencher term:
- a. the Committee will review the priorities as determined by Convocation;

- b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers who deal with the priority areas in the committees on which they serve;
  - c. the Committee will establish goals to be achieved within each of the priority areas for Convocation's consideration; and
  - d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2008.
10. The Committee does not expect that every priority will require significant study or change. Convocation already has initiatives underway with respect to some of the priorities it sets.
  11. Similarly, the Committee recognizes that benchers may identify areas or issues as priorities for a variety of reasons. The identification of a priority does not necessarily signal that the area requires improvement. It may be an acknowledgement that the area is a core function of the Law Society and must remain an important focus of the organization for the next four years.
  12. The Committee will report its findings and recommendations to Convocation during the first half of 2008.

It was moved by Mr. Heintzman, seconded by Mr. Millar,

That Convocation approve the following nine priorities as Convocation's priorities for the next four years:

- Discipline
- Access to justice
- Regulation of paralegals
- Small firms and sole practitioners
- Governance structure
- Strategic communications
- Maintenance of high standards and ensuring effective competence
- Diversity within the profession
- Licensing and accreditation

That Convocation approve the following process for the Priority Planning Committee to use to move forward on the priorities Convocation sets:

- a. the Committee will review the priorities as determined by Convocation;
- b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers who deal with the priority areas in the committees on which they serve;
- c. the Committee will establish goals to be achieved within each of the priority areas for Convocation's consideration; and
- d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2008.

CarriedREPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. Ruby presented the Report.

Report to Convocation  
November 22, 2007

Professional Regulation Committee

Committee Members  
 Clayton Ruby, Chair  
 Julian Porter, Vice-Chair  
 Heather Ross, Vice-Chair  
 Linda Rothstein, Vice-Chair  
 Melanie Aitken  
 Tom Conway  
 Brian Lawrie  
 George Finalyson  
 Patrick Furlong  
 Gary Gottlieb  
 Ross Murray  
 Sydney Robins  
 Bonnie Tough  
 Roger Yachetti

Purpose of Report: Decision and Information

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

## TABLE OF CONTENTS

## For Decision

Amendments to Rules 4.03 and 6.03 of the Rules of Professional Conduct and Housekeeping Rule Amendments .....	TAB A
Federation of Law Societies of Canada Protocol on Law Office Searches .....	TAB B
Amendments to Rule 5.01 of the Rules of Professional Conduct and By-Law 7.1 .....	TAB C
Federation of Law Societies of Canada Model Code of Conduct.....	TAB D

For Information..... TAB E

Consultation on the Federation of Law Societies' Model Rule on Client Identification and Verification Requirements (Anti-Money Laundering Initiative) and Federal Draft Regulations on Verifying the Identity of Clients

Professional Regulation Division Quarterly Report

## COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on November 8, 2007. In attendance were Clay Ruby (Chair), Julian Porter, Heather Ross and Linda Rothstein (Vice-chairs), Melanie Aitken (by telephone), Tom Conway, Gary Gottlieb and Bonnie Tough. Staff attending were Naomi Bussin, Terry Knott, Dulce Mitchell, Zeynep Onen, and Jim Varro.

### AMENDMENTS TO RULES 4.03 AND 6.03 OF THE RULES OF PROFESSIONAL CONDUCT AND HOUSEKEEPING RULE AMENDMENTS

#### Motion

2. The Convocation approve the amendments to the *Rules of Professional Conduct* as set out in Appendices 1 and 2 to this report.

#### Introduction to the Amendments to Rules 4.03 and 6.03

3. In February 2007, the Committee's chair raised the question of whether there are any circumstances in which a lawyer should be permitted to communicate with a person who is represented by a lawyer. Currently, two Rules of Professional Conduct proscribe such conduct without the consent of the person's lawyer. One is subrule 4.03(2) in the context of interviewing witnesses. It reads:

A lawyer shall not approach or deal with a person who is represented by another lawyer, save through or with the consent of that party's lawyer.

4. The Commentary to this rule includes the following statement:

A lawyer may communicate with a represented person or an employee or agent of such a person, concerning matters outside the representation.

Thus, the rule is confined to communications respecting the representative matter in question.

5. The other rule is subrule 6.03(7), under the subject of a lawyer's responsibility to other lawyers. There is no commentary to this rule. The rule reads:

A lawyer shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by a lawyer except through or with the consent of that lawyer.

6. The concern is that this rule could apply to a client who has a lawyer, is unhappy with the lawyer and wants to discuss a possible retainer with a second lawyer.

#### The Committee's Approach

7. The Committee agreed that the rule should not apply in the situations described above and that an amendment to this effect would be appropriate. This would ensure that the client's choice of counsel is not affected by what might otherwise be the prospective lawyer's communication with the existing lawyer that the client is dissatisfied with him or her.

#### Other Law Societies and Legal Organizations' Rules

8. The Committee noted that other jurisdictions have rules and/or explanatory commentary to address the situation of a second opinion or communications unrelated to the matter in question. The Rules of two other law societies and the American Bar Association (ABA) *Model Rules of Professional Conduct* were noted.

9. The Law Society of British Columbia's Rules read:

#### Chapter 4

#### Communication with clients of other lawyers

1.1 A lawyer who has an interest in a matter, or represents a client who has an interest in a matter, must not communicate with any person regarding the matter if, to the lawyer's knowledge, the person is represented by another lawyer, except through or with the consent of the person's lawyer.<sup>1</sup>

#### Footnotes:

1. *A lawyer who is not otherwise interested in a matter may provide a second opinion to a person with other legal representation, whether or not the lawyer is formally retained to do so.*

This rule is subject to a lawyer's right to contact a witness under the conditions set out in Chapter 8.

#### [Chapter 8]

12.1 If a lawyer knows that a potential witness is represented in the proceeding by another lawyer, the lawyer must:

- (a) notify the other lawyer before contacting the potential witness, and
- (b) if the potential witness is a party to the proceeding, make no contact except through or with the consent of the other lawyer.

(emphasis added)

10. The Law Society of Alberta's Rules include the following, which more directly address the issue, including the matter of communicating with existing counsel:

## Chapter 4

R.6 If a lawyer is aware that a party is represented by counsel in a particular matter, the lawyer must not communicate with that party in connection with the matter except through or with the consent of its counsel.

### Commentary

C.6 A lawyer's obligations with respect to parties known to be represented by counsel are not limited to situations in which the representation is a matter of record. The lawyer may have knowledge of the representation through other sources. However, knowledge that a person usually retains a certain lawyer or firm does not trigger Rule #6 in the absence of an awareness that the lawyer or firm has been retained in the matter at hand. If an opposing party is an organization such as a corporation, association or government department, a lawyer is prohibited from communicating about the matter with directors and officers of the organization and management-level personnel having decision-making authority.

Rule #6 is intended to apply whether a lawyer is acting as a lawyer or is a party to the matter. However, Rule #6 is subject to any contrary arrangement made with the consent of all parties and their counsel.

*R.7 A lawyer may give a second opinion to a client regarding a matter in the hands of another lawyer.*

### Commentary

C.7 A client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information (see Commentary G.3 of Chapter 2, Competence). *In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first lawyer involved.* If the client does not wish that lawyer to be contacted, additional considerations apply (see Rule #2 and accompanying commentary of Chapter 9, The Lawyer as Advisor). (see also Rule #17 and accompanying commentary of Chapter 9, The Lawyer as Advisor). *A second opinion ought not to be provided solely for the purpose of obtaining the client's business.*

(emphasis added)

11. ABA Model Rules include the following Rule and Comment:

#### RULE

##### *Transactions With Persons Other Than Clients*

##### Rule 4.2 Communication With Person Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another

lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

#### Comment

##### *Transactions With Persons Other Than Clients*

##### Rule 4.2 Communication With Person Represented By Counsel

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. *Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter.* A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyers concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

(emphasis added)

#### Proposed Rule Amendments

12. The Committee is proposing amendments that would reflect the approach of the Law Societies of Alberta and British Columbia. The amendment would provide that communicating with a represented party for the purposes of a second opinion is acceptable.

#### Nature of the Amendments

13. The Committee's proposal can be explained in three parts.

##### *Part 1*

14. The Committee noted that much of rule 4.03 deals with subject matter that appears to be more properly located in rule 6.03. As such, the first aspect of the proposal is to move everything in rule 4.03 to rule 6.03 except for subrule 4.03(1), and cross-reference rule 6.03 in rule 4.03(1). In this way, the subject of rule 4.03, interviewing witnesses, is clear and rules relating to communicating with represented parties, including witnesses, appear in one location in rule 6.03.

##### *Part 2*

15. The second aspect of the proposal is to combine the prohibition in subrules 4.03(2) and 6.03(7), which are similar, in a revised subrule 6.03(7). Existing commentary from rule 4.03 relevant to this subrule is added after new subrule 6.03(8), discussed below.

*Part 3*

16. The new rule on permitting communication with a represented party for the purposes of a second opinion is added as subrule 6.03(8), which is followed by the commentary noted in paragraph 16 and a new commentary relevant to the new subrule.
17. The “imported” rule from rule 4.03 dealing with communication with a represented party who is or may be a witness follows the commentary noted above, and is followed by its own commentary from rule 4.03.
18. The amended rules, with other minor wording changes to be consistent with the amended *Law Society Act*, appear at Appendix 1.
19. The Committee is requesting that Convocation approve these amendments, which have been reviewed by the Law Society’s Rules drafter, Don Revell.

## Housekeeping Amendments

20. In June 2007, Convocation approved amendments to the Rules necessitated by amendments to the *Law Society Act*, effective May 1, 2007. The bulk of these amendments replaced some old terminology with current language and updated some definitions and references in the Rules.
21. The Committee’s review of the Rules has disclosed a small number of changes of a similar nature that should be made. These housekeeping amendments, which are shown in the relevant rules at Appendix 2, are as follows:
  - a. In subrule 2.02(13), change “(LPIC)” to “(LawPRO)”;
  - b. In commentary following subrule 2.05(10), change the word “member” in two places to “lawyer”;
  - c. In subrule 2.09(8), change the word “lawyer” to “licensee” in the last line; and
  - d. In commentary following subrule 3.05(5), replace “26” with “27(1)” as the relevant section number in the referenced By-Law, replace “Society” with Society’s”, and replace “26” with “15” as the relevant By-Law number.
22. The Committee is requesting that Convocation approve these amendments.

## APPENDIX 1

## 4.03 INTERVIEWING WITNESSES

## Interviewing Witnesses

4.03 (1) ~~Subject to subrules (2) and (3) the rules on communication with a represented party set out in subrules 6.03(7), (8) and (9), a lawyer may seek information from any potential witness, (whether under subpoena or not), but the lawyer shall disclose the lawyer's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.~~  
*[Amended - May 2001]*

~~(2) A lawyer shall not approach or deal with a person who is represented by another lawyer, save through or with the consent of that party's lawyer.~~

~~(3) — A lawyer retained to act on a matter involving a corporation or organization that is represented by another lawyer shall not approach~~

~~(a) — directors, officers, or persons likely involved in the decision-making process for the corporation or organization, or~~

~~(b) — employees and agents of the corporation or organization whose acts or omissions in connection with the matter may expose the corporation or organization to civil or criminal liability.~~

~~unless the lawyer representing the corporation or organization consents or unless otherwise authorized or required by law.~~

*[Amended – May 2001]*

#### Commentary

~~This rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by counsel concerning the matter to which the communication relates. A lawyer may communicate with a represented person or an employee or agent of such a person, concerning matters outside the representation. Also, parties to a matter may communicate directly with each other.~~

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

~~This rule applies to corporations and “other organizations.” “Other organizations” include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies, and sole proprietorships.~~

~~In the case of a corporation or other organization (including, for example, an association or government department), this rule prohibits communications by a lawyer for another person or entity concerning the matter in question with persons likely involved in the decision-making process about the matter. If an agent or employee of the organization is represented in the matter by his or her counsel, the consent of that counsel to a communication will be sufficient for purposes of this rule.~~

~~A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the lawyer must comply with the requirements of rule 2.04 (Avoidance of Conflicts of Interest), and particularly subrules 2.04(6) through (10). A lawyer must not represent that he or she acts for an employee of a client, unless the requirements of rule 2.04 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.~~

## 6.03 REponsibility to Lawyers and Others

### Courtesy and Good Faith

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

#### Commentary

The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their function properly.

Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

A lawyer should avoid ill considered or uninformed criticism of the competence, conduct, advice, or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

(2) A lawyer shall agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities, and similar matters that do not prejudice the rights of the client.

(3) A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities, or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

(4) A lawyer shall not use a tape recorder or other device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so.

#### Communications

(5) A lawyer shall not in the course of a professional practice send correspondence or otherwise communicate to a client, another lawyer, or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

(6) A lawyer shall answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer shall be punctual in fulfilling all commitments.

~~(7) — A lawyer shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by a lawyer except through or with the consent of that lawyer.~~

#### Communications with a represented person

(7) Subject to subrule (8), if a person is represented by a licensee in respect of a matter, a lawyer shall not, except through or with the consent of the licensee,

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

#### Second Opinions

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

#### Commentary

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

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

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

#### Communications with a represented corporation or organization

(9) A lawyer retained to act on a matter involving a corporation or organization that is represented by a licensee shall not approach

- (a) directors, officers, or persons likely involved in the decision-making process for the corporation or organization, or

(b) employees and agents of the corporation or organization whose acts or omissions in connection with the matter may expose the corporation or organization to civil or criminal liability,

in respect of that matter unless the licensee representing the corporation or organization consents or unless otherwise authorized or required by law.

#### Commentary

This subrule applies to corporations and “other organizations.” “Other organizations” include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies, and sole proprietorships. In the case of a corporation or other organization (including, for example, an association or government department), this rule prohibits communications by a lawyer for another person or entity concerning the matter in question with persons likely involved in the decision-making process about the matter. If an agent or employee of the organization is represented in the matter by a licensee, the consent of that licensee to the communication will be sufficient for purposes of this rule. A lawyer may communicate with employees or agents concerning matters outside the representation.

A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the lawyer must comply with the requirements of rule 2.04 (Avoidance of Conflicts of Interest), and particularly subrules 2.04(6) through (10). A lawyer must not represent that he or she acts for an employee of a client, unless the requirements of rule 2.04 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

#### Undertakings

~~(8)~~(10) A lawyer shall not give an undertaking that cannot be fulfilled and shall fulfill every undertaking given.

#### Commentary

Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as “on behalf of my client” or “on behalf of the vendor” does not relieve the lawyer giving the undertaking of personal responsibility.

In real estate transactions using the system for the electronic registration of title documents (“e-regTM”, the lawyers acting for the parties (with their consent) will sign and be bound by a Document Registration Agreement that will contain undertakings. When entering into a Document Registration Agreement, a lawyer should have regard to and strictly comply with his or her obligations under subrule ~~(8)~~. (10)

*[Amended June 2002]*

## APPENDIX 2

## 2.02 QUALITY OF SERVICE

...

- (13) If discussing TitlePLUS insurance with the client, a lawyer shall fully disclose the relationship between the legal profession, the Society, and the Lawyers' Professional Indemnity Company (LawPRO) (~~LPIC~~).

## 2.05 CONFLICT FROM TRANSFER BETWEEN LAW FIRMS

...

...

## B. Where no conflict exists

Although subrule 2.05(6) does not require that the notice required by that subrule be in writing, it would be prudent for the new law firm to confirm these matters in writing. Written notification eliminates any later dispute about whether notice has been given and about its timeliness and content.

The new law firm might, for example, seek the former client's consent to the transferring lawyer acting for the new law firm's client in the matter because, in the absence of such consent, the transferring lawyer member may not act.

If the former client does not consent to the transferring lawyer acting, it would be prudent for the new law firm to take reasonable measures to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information. If such measures are taken, it will strengthen the new law firm's position if it is later determined that the transferring lawyer did in fact possess confidential information which, if disclosed, may prejudice the former client.

A transferring lawyer who possesses no such confidential information puts the former client on notice by executing an affidavit or solemn declaration and delivering it to the former client. A former client who disputes the allegation of no such confidential information may apply under subrule (9) for a determination of that issue.

## C. Where the new law firm is not sure whether a conflict exists

There may be some cases where the new law firm is not sure whether the transferring lawyer actually possesses confidential information respecting a former client that, if disclosed to a member of the new law firm, may prejudice the former client. In such circumstances, it would be prudent for the new law firm to seek guidance from the Society before hiring the transferring lawyer member.

...

## 2.09 WITHDRAWAL FROM REPRESENTATION

...

(8) When a lawyer withdraws, the lawyer shall try to minimize expense and avoid prejudice to the client and shall do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor licensee lawyer.

## 3.05 ADVERTISING NATURE OF PRACTICE

...

### Commentary

Where a lawyer or law firm advertises in accordance with rule 3.05, the advertisement should be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter.

An advertisement should not mislead or confuse a client about the lawyer's qualifications. Although the advertisement may include a description of the lawyer's or law firm's proficiency or experience in an area of law, in accordance with s. 27(1) ~~26~~ of the Society's By-law 15 ~~38~~ on Certified Specialists, the lawyer who is not a certified specialist is not permitted to use any designation from which a person might reasonably conclude that the lawyer is a certified specialist.

## FEDERATION OF LAW SOCIETIES OF CANADA PROTOCOL FOR LAW OFFICE SEARCHES

### Motion

23. That Convocation approve in principle the Federation of Law Societies of Canada Protocol for Law Office Searches (at Appendix 3) as a guideline for Law Society staff in such matters.

### Introduction

24. On February 22, 2007, Convocation approved the Federation of Law Societies of Canada Protocol for Law Office Searches for the purpose of consultations with relevant stakeholders on procedures in respect of such searches.

25. The Protocol was developed by the Federation following the September 2002 decision of the Supreme Court of Canada in *R. v. Lavallee*,<sup>1</sup> in which the Court struck down s. 488.1 of the *Criminal Code* as unconstitutional. This section details the procedures police officers must follow in the execution of a search warrant on a lawyer's office.

<sup>1</sup> *Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink*, [2002] 3 S.C.R. 209

26. This report provides a brief background on the development of the Protocol, an update on the consultations and a proposal to adopt the Protocol as Law Society guidance on the issue.

#### Background

27. In the absence of legislative provisions, the Protocol, which was a joint effort of all law societies in Canada through the Federation, mirrored the principles that, according to *Lavallee*, govern the legality of searches of law offices, as follows:
- a. No search warrant can be issued with regard to documents that are known to be protected by solicitor-client privilege.
  - b. Before searching a law office, the investigative authorities must satisfy the issuing justice that there exists no other reasonable alternative to the search.
  - c. When allowing a law office to be searched, the issuing justice must be rigorously demanding so to afford maximum protection of solicitor-client confidentiality.
  - d. Except when the warrant specifically authorizes the immediate examination, copying and seizure of an identified document, all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer's possession.
  - e. Every effort must be made to contact the lawyer and the client at the time of the execution of the search warrant. Where the lawyer or the client cannot be contacted, a representative of the bar should be allowed to oversee the sealing and seizure of documents.
  - f. The investigative officer executing the warrant should report to the Justice of the Peace the efforts made to contact all potential privilege holders, who should then be given a reasonable opportunity to assert a claim of privilege and, if that claim is contested, to have the issue judicially decided.
  - g. If notification of potential privilege holders is not possible, the lawyer who had custody of the documents seized, or another lawyer appointed either by the Law Society or by the court, should examine the documents to determine whether a claim of privilege should be asserted, and should be given a reasonable opportunity to do so.
  - h. The Attorney General may make submissions on the issue of privilege, but should not be permitted to inspect the documents beforehand. The prosecuting authority can only inspect the documents if and when it is determined by a judge that the documents are not privileged.
  - i. Where sealed documents are found not to be privileged, they may be used in the normal course of the investigation.
  - j. Where documents are found to be privileged, they are to be returned immediately to the holder of the privilege, or to a person designated by the court.
28. A second case also informed the Protocol. On January 21, 2003, the Ontario Superior Court of Justice issued its decision in *R. v. Rosenfeld* which involved a search of the office of an accused lawyer. The Law Society intervened in the case, addressing the issue of its involvement in the process. The court made the following order in respect of the process that follows the seizure in the first instance to notify potential clients regarding the issue of privilege:
- a. The court will appoint a referee who will review the seized documents and, in conjunction with the affidavit to be produced by the respondent [lawyer], identify

- the clients who are to receive notice of a hearing to establish the process for determining the issue of solicitor and client privilege respecting the documents;
- b. The lawyer will provide an affidavit detailing, to the best of his information, knowledge and belief, the names and last known addresses of the clients whose documents are, or may be, involved in this seizure;
  - c. The referee will recommend to the court the proper process for notifying all such clients which may include a recommendation that advertisements be placed in the relevant media if the referee is of the view that such a step is necessary;
  - d. The costs of the referee and the costs of the notification program shall be borne by the Crown;
  - e. If the Crown refuses to bear these costs, then the seized documents shall forthwith be returned to the respondent.

29. The court also said:

If the parties, with the involvement of the Law Society, cannot agree on a person to be recommended to the court to act as the referee within fifteen days of the date of these reasons, then *the Law Society shall propose the names of three appropriate individuals for the court's consideration.*

(Emphasis added)

30. The particular issue in the *Rosenfeld* case on the choice of the referee was resolved. On the assumption that the courts would follow the same or a similar procedure in cases that follow *Rosenfeld*, criteria were developed for the Law Society's selection of appropriate individuals to act as referees, for the purposes of the court's appointment. In March 2003, Convocation received an information report from the Committee that included the criteria it approved.<sup>2</sup>

#### Current Status of the Protocol

31. To date, the Department of Justice has not yet formulated an amended s. 488.1 of the *Criminal Code*. Thus, the Federation's Protocol continues to provide information for the law societies and the profession on the principles and procedures that should be followed when lawyers face a law office search.
32. The Protocol has been generally accepted by the respective ministries of the Attorney General and law enforcement officials in other Canadian provinces and territories. Judicial notice of the Protocol appears in an Alberta Court of Queen's Bench decision,

---

<sup>2</sup> The criteria are as follows:

- a. The referee should be familiar with criminal procedure.
- b. The referee should understand the essence of solicitor and client privilege.
- c. The referee should be a person respected by the courts, the profession and the public.
- d. The referee should be in a position to act impartially and independently in the subject case.
- e. The referee should have access to administrative support personnel to assist in the referee's work (e.g. mailings, advertising).
- f. The referee should have liability coverage for his or her duties as a referee.

where the judge addressed the issue relating to a search of a lawyer's office and commented on the process that included the Protocol.<sup>3</sup>

33. In Ontario, the post-seizure process outlined in the Rosenfeld decision is observed and followed by law enforcement officials.
34. However, unlike the other Canadian jurisdictions, the process outlined in the Protocol with respect to the warrant and the search and seizure in Ontario is unevenly applied by the Crown and law enforcement officials. Some law enforcement officials are willing to work within the ambit of the Protocol, and others want the Law Society to send a representative whenever a search warrant is executed. For example, some law enforcement authorities call the Law Society to have a representative attend on the execution of the warrant. On occasion, challenges to the position sought to be taken by law enforcement officials that vary from the process in the Protocol must be brought before the Court to ensure proper procedures are followed.

#### Information from on the Consultations

35. The consultations approved by Convocation in February 2007 were intended to provide a means to address with the Ministry of the Attorney General and other relevant stakeholders issues relating to application and observance of the Protocol. At that time, Convocation approved the Protocol in principle as the working document for the purposes of its consultation with the Ministry and others.
36. In June and July, 2007, Law Society staff from the Professional Regulation Division, Government Relations Department and Policy Secretariat met with representatives of several legal organizations who were invited to the meetings to offer input on the merits of the Protocol. Representatives attended from the Ontario Bar Association, Advocates Society, County and District Law Presidents Association and Toronto Lawyers' Association. The representative from the Criminal Lawyers' Association was unable to attend the meetings but provided written feedback.
37. The Director of Professional Regulation, Zeynep Onen, also received correspondence from Deputy Attorney General Murray Segal, offering comments on the Protocol and indicating a willingness to meet to discuss it.
38. Comments and suggestions made during the discussions outlined in paragraph 36 related to particular parts of the Protocol. They focused generally on making the language in the Protocol as consistent as possible with the Supreme Court of Canada

---

<sup>3</sup> *R. v. Tarrabain, O'Byrne & Company*, 2006 ABQB 14. The Court said:

In furtherance of this objective, Mr. Lepp, the Director of Special Prosecutions for the Province of Alberta, contacted the Law Society of Alberta to seek advice. He did so because this was the first time in his experience that a member of the Law Society was a potential target of the investigation being undertaken. In the past, Mr. Lepp had been involved in many searches of law offices where a client of the firm was the target of the investigation. *A protocol with the Law Society covered this situation.* Because this was a unique occurrence, he felt that the Law Society should be consulted. He wanted to ensure compliance with *Lavallee*. Any advice the Law Society could provide, because of the important role it plays in the regulation of the profession in the Province, was welcome.  
(emphasis added)

decision while recognizing the need for some flexibility in the approach to such situations on a case-by-case basis. The intention is to use these comments in dialogue with other law societies on improving the Protocol.

39. The Committee agreed that discussions between the Law Society and the Ministry should continue, and the comments received in the consultation will be of use in those meetings.

#### Next Steps

40. The Committee is requesting that Convocation approve the Protocol in principle for its use as guidance to the Law Society and the profession. This will assist the Law Society as it continues to refine the Protocol for the following purposes:
- a. The need to ensure that the Protocol can be used on a national basis as a guideline for any discussion with Department of Justice officials in implementing appropriate processes consistent with the *Lavallee* decision, and
  - b. The need to build flexibility into the Protocol so that it can be adapted to the current environment in Ontario.

### APPENDIX 3

#### Protocol on Law Office Searches

A Proposed Draft Protocol to address searches and seizures of documents from law offices

As at October 15, 2004

#### Scope

This protocol applies to all searches and seizures and statutory demands for the production of documents or materials of, at or from a law office, whether by way of search warrant or production order or letter of demand or notice of requirement to produce from the Canadian Revenue Agency, or other agency.

This protocol applies to cases where:

1. the lawyer whose office will be searched is a target of the investigation or
2. the documents are not precisely named in the Warrant to Search or
3. the lawyer is not present at the time the Warrant to Search is executed to produce the documents.

For the purpose of this Protocol,

“document” means any paper, parchment or other material on which is recorded or marked anything that is capable of being read or understood by a person, computer system or other device, and includes a credit card, but does not include trade marks or articles of commerce or inscriptions on stone or metal or other like materials;

“law office” means any place where privileged materials may reasonably be expected to be located;

“referee” means a lawyer, independent of the Crown and the lawyer whose law office is the target of the search, who has been appointed by the Court or, in Quebec, by the Barreau du Québec or the Chambre des notaires du Québec as directed by the judge authorizing the Warrant, to perform the obligations listed in this protocol.

#### Preamble

1. Since the decision in *Lavallee, Rackel & Heintz v. Canada (Attorney General)* (2002) 216 D.L.R. (4th) 257 (S.C.C.)<sup>4</sup>, there has been no section of the *Criminal Code* governing the activities of persons executing warrants to search a law office and what happens to documents that are seized under the authority of the warrant to search. The *Lavallee* decision points out that client names' may be privileged and the *Maranda v. Richer* 2003 SCC 67 decision says that lawyers' statements of account and payment details may be privileged.
2. It is desirable in the public interest for the Federation of Law Societies (“Federation”) and the Federal Department of Justice to agree on a protocol relating to searches and seizures of lawyers' files which will put in place sufficient protection for solicitor-client privilege.
3. In *R. v. Law Office of Simon Rosenfeld* [2003] O.J. No. 834 (Ont. Sup. Ct. Justice)<sup>5</sup>, Nordheimer J. stated that it was the Court's responsibility to protect solicitor-client privilege and not that of the Law Society and that the Crown should bear any costs associated with searches and seizures. He concluded that the way to protect the privilege was to appoint a referee to review the seized documents.

#### Procedure

4. Where a Warrant to Search authorizes the search of a law office, the following procedure shall be observed:
  - a. In each Province and Territory, the local law society and the Federal and Provincial or Territorial Attorneys General will jointly develop a roster of lawyers who have agreed to act as referees in that jurisdiction. If agreement on the roster in a jurisdiction cannot be reached, the law society shall, at the request of the Court, propose the names of at least three appropriate individuals for the court's consideration.
  - b. Before executing a Warrant to Search a law office, the prosecuting authority shall apply to the superior court for the appointment of an independent referee to
    - i. search for and seize the documents as required by the Warrant,
    - ii. maintain the continuity and the confidentiality of the documents,

---

<sup>4</sup> The *Lavallee* decision is available at : <http://www.canlii.org/ca/cas/scc/2002/2002scc61.html>

<sup>5</sup> The *Rosenfeld* decision is available at : <http://www.canlii.org/on/cas/onsc/2003/2003onsc10974.html>

- iii. examine the documents in accordance with the procedures established in the Protocol.
- c. Before attending at the law office named in the Warrant to Search, the Peace Officer in charge of executing the Warrant shall advise the local law society of the existence of the Warrant to Search a law office and the time and date of the search, in order that the (local law society) may designate a representative to be available to attend at the search on its behalf, if it sees fit to do so.
- d. The Peace Officer in charge of executing the Warrant to Search shall make every effort to contact the lawyer whose law office is named in the Warrant to Search at the time of the execution of the warrant, and shall advise the lawyer that he or she may immediately contact the local law society for guidance regarding the lawyer's obligations resulting from the execution of the Warrant to Search.
- e. No acts authorized by the Warrant to Search shall take place until procedures 4(a) through 4(d) are followed and until the referee has had an opportunity to attend the law office, save and except that the Peace Officer in charge of executing the warrant may, with reasonable notice to a representative of the (local law society) of the intention to do so, enter the law office only in order to permit the Peace Officer to secure the premises of the search to prevent the removal of any articles from those premises.
- f. All documents seized pursuant to the Warrant to Search shall be placed by the referee in packages, sealed, initialed, and marked for identification.
- g. Upon completion of the execution of the Warrant to Search, the Peace Officer executing the Warrant and the referee shall deliver the seized documents into the custody of the Court.
- h. Every effort must be made to contact all clients of the lawyer whose solicitor-client privilege may be affected by the Warrant to Search at the time of the execution of the Warrant. Where such notification cannot be made, the referee will recommend to the court the proper process for notifying all clients whose solicitor-client privilege may be affected by the Warrant to Search, which may include a recommendation that advertisements be placed in the relevant media if the referee is of the view that such a step is necessary.
- i. The referee shall notify all clients who can be identified of the process that will be followed respecting the documents so that those clients may participate in that process for the purpose of protecting their privilege over the documents.
- j. The referee shall report to a judge of the superior court the efforts made to contact all potential privilege holders, who will then be given a reasonable opportunity to assert a claim of privilege over the seized documents and, if that claim is contested, to have the issue decided by a judge of the court in an expeditious manner.

- k. If notification of potential privilege holders is not possible, the referee shall examine the seized documents to determine whether a claim of privilege should be asserted, and will be given a reasonable opportunity to do so.
- l. All fees and disbursements of the referee shall be borne by the Attorney General.
- m. The Attorney General may make submissions to a judge of the court on the issue of privilege, but shall not be permitted to inspect the seized documents.
- n. Where the sealed documents are determined by the Court not to be privileged, they shall be released to the peace officer(s) and used in the normal course of the investigation, subject to any direction by the court.
- o. Where the seized documents are determined by the Court to be privileged, they shall be returned to a person designated by the Court.

AMENDMENTS TO RULE 5.01 OF THE *RULES OF*  
*PROFESSIONAL CONDUCT* AND AMENDMENTS TO  
 BY-LAW 7.1

Motion

41. That Convocation:

- a. approve amendments to rule 5.01 of the *Rules of Professional Conduct* set out in Appendix 5; and
- b. amendments to By-Law 7.1 [Operational Obligations and Responsibilities], made on October 25, 2007, set out in Appendix 7.

Introduction

- 42. On October 25, 2007, Convocation made By-law 7.1 and repealed rule 5.01(1) through (6) of the *Rules of Professional Conduct*. These changes resulted from the need to address the issue of lawyers' unlicensed employees and others appearing in set date court in criminal matters. The Committee's report to October 25, 2007 Convocation, including the new By-Law, is at Appendix 4.
- 43. At October 25 Convocation, concern was expressed by some benchers about repealing the bulk of a rule of professional conduct that included useful guidance to lawyers on supervision of non-lawyers within a law practice. Other concerns were expressed about the unknown implications of the by-law.
- 44. In approving the new By-Law, Convocation agreed that
  - a. an amended rule 5.01, which would appropriately reference the new by-law, should be prepared by the Committee for Convocation's consideration, and
  - b. the By-Law should be reviewed by the Committee in light of the concerns expressed, and the appropriate report prepared on this matter.

Amended Rule 5.01

- 45. The Committee has drafted an amended rule 5.01 and commentary for Convocation's review, at Appendix 5. The rule is intended to address the issues raised at Convocation

and balance the content of the rule with the more extensive and definitive treatment of lawyers' supervisory responsibilities set out in the By-law.

46. The proposed rule tracks the language of the By-Law and includes a new paragraph of commentary that explicitly references By-Law 7.1. The rule also incorporates much of the commentary that appeared in the repealed portion of rule 5.01, including guidance on supervision in certain non-advocacy areas of law.
47. The lists of matters that appeared in repealed rule 5.01(3) and (4) are now captured in the By-Law and are not repeated in the redrafted rule. Generally, the rule is intended to bring to lawyers' attention the regulation of their supervisory responsibilities now found in the By-Law and add some commentary around expected practices when lawyers assign work to non-lawyers in their law practices.
48. For reference, Appendix 6 includes the repealed rule 5.01.

#### Amendments to By-Law 7.1

#### Issues Raised at Convocation

49. Based on the transcript of October 25, 2007 Convocation, a number of issues were raised about the new By-Law. The Committee was asked to consider these issues and report back to Convocation. The issues may be summarized as follows:
  - a. A question was raised about whether the word "business" appropriately describes the matters on which a client consults a lawyer;
  - b. A question was raised about the scope of the By-Law, what is "swept in", and its application to other than advocacy services. One bencher said Convocation must ensure that non-advocacy areas that are rife with problems, such as real estate, are adequately covered by the By-Law;
  - c. It was suggested that
    - i. the words "exercise effective control over and" should be added to the introductory words in subsection 4(1) of the By-Law after the word "shall" in the second line, and
    - ii. the words "and effective control" be added to the heading to s. 4 after "supervision";
  - f. A concern was expressed about the fact that the By-Law does not refer to set date court for criminal matters. The By-Law is drafted broadly enough to permit secretaries or agents who are not licensed to appear in hearings before courts or tribunals other than in criminal matters, where they would be permitted to do so by the relevant legislation. This was likely not the intent of the By-Law. The question became whether there a way to limit the application of the by-law to set date court.

#### The Committee's Review and Proposals

50. The Committee considered the above issues and concluded as follows:
  - a. The word "business" should be replaced with a better word to describe the matters on which a client seeks legal advice, as "business" imparts a more commercial and perhaps limited meaning. In consultation with the drafters, the word "affairs" should replace "business" where it appeared in the By-law;

- b. The By-Law, as a regulation of general application, captures all supervisory relationships, including those in non-advocacy areas of practice. This is emphasized by the amendments to rule 5.01, which, in referencing the By-law, specifically addresses appropriate assignment of functions to non-lawyers under the supervision of a lawyer in real estate and corporate commercial matters, for example, and strengthens the regulation around it. No narrowing of the scope of the regulation in respect of non-advocacy matters was intended, and, in the Committee's view, none has occurred;
  - c. In relation to the matter of set dates, the language in s. 5(1)(b), which is limiting, is appropriate in the circumstances and should not be amended. The Committee recognized that the issue of what is occurring in set date court requires a focused review, in which the Law Society may participate at the appropriate time.
51. Discussion at the Committee also focused on clarifying some descriptive words used in the By-Law. The Committee agreed to these changes.
52. Based on the above, By-Law 7.1 with amendments shown appears at Appendix 7, and is preceded by the drafter's motion indicating the nature of the amendments.

## APPENDIX 4

Report to Convocation  
October 25, 2007

---

Professional Regulation Committee

Committee Members  
Clayton Ruby, Chair  
Julian Porter, Vice-Chair  
Heather Ross, Vice-Chair  
Linda Rothstein, Vice-Chair  
Melanie Aitken  
Tom Conway  
Brian Lawrie  
George Finalyson  
Patrick Furlong  
Gary Gottlieb  
Ross Murray  
Sydney Robins  
Bonnie Tough  
Roger Yachetti

Purpose of Report: Decision

Prepared by the Policy Secretariat  
JimVarro 416-947-3434

## COMMITTEE PROCESS

1. The Professional Regulation Committee met on October 23, 2007. In attendance were Clay Ruby (Chair), Gary Gottlieb, and Bonnie Tough. Participating by telephone were Committee members Julian Porter (Vice-Chair), Tom Conway, and Brian Lawrie. Staff in attendance were Julia Bass, Katherine Corrick, Michael Elliott, Terry Knott, Dulce Mitchell, Zeynep Onen, Elliot Spears and Sheena Weir.

### FOR DECISION PROPOSED BY-LAW ON LAWYERS' SUPERVISORY RESPONSIBILITIES

## MOTION

2. That Convocation,
  - a. approve By-Law 7.1, attached at Appendix 1, on the responsibilities of a lawyer to supervise a non-lawyer whom the lawyer engages to provide services within a law practice, and
  - b. repeal sub-rules 5.01(1) to (6) of the Rules of Professional Conduct.

## Background and Introduction

3. The Law Society has received a number of enquiries from members of the criminal bar expressing concern that a person appearing in the Ontario Court of Justice to set trial dates will require a paralegal licence. Their concern is that this will disrupt long-established practices and negatively affect the functioning of the set date courts in the province.
4. This issue arose from the policy adopted by Convocation on April 26, 2007 when Convocation considered the exemptions to be added to By-Law 4, the licensing by-law. The Report approved by Convocation included the following:

### *Exemption for individuals supervised by a lawyer*

*At the meeting on April 12th, the Committee reviewed this category of exemption in light of the discussion at Convocation, and determined that it should cover only those individuals who are doing non-advocacy work under the supervision of a lawyer. Individuals exempted under this category would include law clerks in law firms and also independent contractors such as document-preparers and title searchers whose only clients are lawyers.*

*This limitation means that in-house advocates such as litigation law clerks who appear before courts or tribunals must have a licence, unless they fit under one of the specifically exempted categories. Supervised law clerks will of course be able to draft pleadings and other documents in connection with the law firm's litigation practice, and will only need a licence if they are to appear on behalf of clients.*

5. On October 16, 2007, the Paralegal Standing Committee considered the issue, as a result of the concerns that had been expressed. One of the proposals considered at the Paralegal Standing Committee meeting was an amendment to the Rule of Professional Conduct that deals with the responsibility of lawyers to supervise non-lawyers whom the

lawyer engages to provide services. The matter was referred to the Professional Regulation Committee.

6. The matter is of some urgency because of the pending October 31 deadline for grandparent applicants to apply for a class P1 licence. After that date, only individuals who have applied will be permitted to appear before courts and tribunals.
7. It has become fairly common practice in many parts of the province for clerks and secretaries (employed or independent contractors) of criminal lawyers to attend in the "set date" court of the Ontario Court of Justice on behalf of the lawyers to set trial dates for the lawyers' clients.

#### Context

8. Prior to considering this issue, it is helpful to understand the process for setting a trial date for criminal matters in the Ontario Court of Justice. Of course, the procedures vary from region to region, and in some cases, from courthouse to courthouse within a region.
9. Most criminal courts dedicate a courtroom, for at least part of the week, to setting dates for trial. It is essentially a scheduling court. In the Greater Toronto Area, these courts sit everyday. In regions outside of the GTA, the set date court may, for example, sit three days a week, once a week, or everyday for a part of the day, depending on the volume of cases in that court. Justices of the Peace preside over most set date courts.
10. A trial date is set only after the accused person has retained counsel, and the counsel has obtained disclosure from the Crown Attorney, had a pre-trial meeting with the Crown Attorney, and, in some cases, a pre-trial conference before a judge. In the Greater Toronto Area, an accused person often appears in set date court eight or nine times before a trial date is set.
11. In Toronto, and many other regions including those outside of the Greater Toronto Area, a case management system has been adopted that often makes it impossible for a lawyer to attend before the set date court. The system works alphabetically based on the accused person's surname. It is best explained by an example. In Toronto, accused people whose surnames begin with an A – D appear in set date court only on Mondays. If it takes nine appearances to set a date for trial, all of those appearances occur on a Monday. If a lawyer has more than one client with a surname that begins with an A – D, all of those clients must appear on a Monday to set a date for trial. The Ontario Court of Justice in Toronto sits in five different courthouses – Old City Hall, College Park, Scarborough, North York, and Etobicoke. A lawyer could have clients in three different courthouses on the same day at the same time to set a date for trial. It is impossible for the lawyer to appear in all three places. These set date appearances are in addition to the lawyer's trial schedule.
12. The current scheduling system in the Ontario Court of Justice imposes a heavy burden on the accused person and the accused person's counsel in terms of the number of appearances required to set a date. On any given day, hundreds of accused people appear in set date court. The people who appear on behalf of lawyers to set dates for accused people allow the system, in its present form, to continue to function. The lawyer's clerk or secretary attends before the Justice of the Peace with the lawyer's schedule to facilitate the setting of a trial date. Without these people, accused persons would have to attend in court with a letter from the lawyer setting out possible dates. If

those dates were not available to the prosecution or the court, the accused person would have to reappear at a later date with alternative dates from the lawyer.

13. Most criminal lawyers practise law as sole practitioners or in small firms. In some cases, these practitioners rely on their unlicensed employees to attend in set date court together with their clients. In many other cases, these practitioners operate their practices without support staff. In these circumstances, the practitioner will hire independent contractors, who perform this service on a regular basis, to attend in set date court.
14. The people who currently perform this service, including employees of lawyers, are unlikely to qualify under the grandparent provisions for a paralegal licence. They are unlikely to have provided legal services that a paralegal has been authorized to provide on a full-time basis for three of the last five years, as required by section 11(1) 1. of By-Law 4. This would mean that they will remain unlicensed.

#### The Proposed By-Law

15. The Committee considered a by-law on a lawyer's supervisory responsibilities over non-lawyers whom the lawyer engages to provide services in the law practice. The by-law is set out at Appendix 1. This by-law would replace most of Rule 5.01 of the *Rules of Professional Conduct*, and become the operative regulation on this subject.
16. By-law 7.1 will permit unlicensed persons to appear in set date court on behalf of lawyers as long as the lawyer has given the non-licensuree express instruction and authorization to do so, has effective control over the non-licensuree's provision of services, directly supervises the non-licensuree, and assumes complete professional responsibility for the activities of the non-licensuree. Sections 5(1)(b) and 6(b) taken together will permit the current practice in set date court to continue.
17. By-Law 7.1 addresses a lawyer's responsibility to supervise a non-lawyer whom the lawyer engages to provide services within the lawyer's practice. It is modelled on Rule 5.01 of the Rules of Professional Conduct, but is more definitive in its regulatory scope.
18. The focus of the by-law is on the responsibility of the lawyer. The following are the key features of the by-law:
  - a. the by-law would not apply to articulated students, who were expressly excluded from rule 5.01;
  - b. the by-law defines the lawyer/non-lawyer relationship in terms of an 'engagement';
  - c. within the engagement, the lawyer must have effective control of the provision of the services of the non-lawyer in the law practice ('effective control' is defined in the by-law);
  - d. as rule 5.01 provided, lawyers must assume complete professional responsibility for all business entrusted to them and must directly supervise non-lawyers to whom tasks and functions are assigned;
  - e. without limiting the generality of the above, the by-law provides a list of activities that illustrate the lawyer's supervisory responsibilities in the lawyer and client relationship in which the non-lawyer is providing services;
  - f. the by-law lists tasks and functions that cannot be assigned;

- g. within this list is the prohibition on a non-lawyer appearing before an adjudicative body, except:
    - i) to set a date or deal with a related routine administrative matter as instructed by and on behalf of the lawyer, or
    - ii) where the non-lawyer is authorized under the *Law Society Act* to do so.
19. The by-law also takes the following into consideration:
- a. There are essentially four categories of non-lawyers in this context: licensed paralegals, exempt paralegals, articulated students and others who are outside of the Law Society's regulation.
  - b. The by-law uses the term "engaged" rather than the term "retained." The term retained has traditionally been used to apply to the situation where someone is hiring a lawyer. The term "engaged" as it is used in the by-law refers to the situation where a lawyer is hiring a non-lawyer. It was felt that this distinction was important, and thus a different word has been used.
  - c. The by-law was intentionally drafted not to be limited to circumstances where the non-lawyer is an employee of the lawyer. This language would permit unlicensed independent contractors to appear in set date court under the supervision of a lawyer. The by-law is not restricted to advocacy services. Non-lawyers who are independent contractors who perform non-advocacy services for lawyers also need to be covered by the by-law.
  - d. While licensed paralegals are authorized to provide legal services and legal advice within their permitted scope of practice, in the context of this by-law the client would be retaining the lawyer for the lawyer's practice of law and in such cases, even if the non-lawyer were a licensed paralegal, the lawyer, not the paralegal, is the individual who must provide the legal advice.

#### The Committee's Deliberations

20. The Committee considered the following when considering the appropriateness of the proposed by-law:
- a. The goal is to ensure that the public is protected when a lawyer delegates a task to a non-licensuree. The by-law accomplishes this by ensuring that the lawyer is responsible for all of the activities, including tasks delegated to non-licensurees, within the lawyer's practice. This is accomplished whether the non-licensuree is an employee of the lawyer or an independent person hired by the lawyer to perform the task.
  - b. To require people who attend in set date court on behalf of lawyers to become licensed will drive up the costs of running a criminal law practice. Criminal lawyers who act on legal aid matters are not in a financial position to absorb this increased cost. Access to legal services and justice may be adversely affected.
  - c. Many of the people currently providing set-date services are unlikely to qualify under the grandparent provisions for a paralegal licence as they lack the experience required by By-Law 4.

#### Repeal of Sub-rules 5.01 (1) to (6)

21. By-Law 7.1 deals with the subject matter of sub-rules 5.01 (1) to (6) of the Rules of Professional Conduct. These sub-rules should be repealed. The by-law is a more effective regulatory instrument to deal with the supervisory obligations of lawyers than a

rule of conduct. Maintaining these sub-rules would create an inconsistency in the instruction to lawyers on their supervisory responsibilities.

## BY-LAW 7.1

### OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

#### PART I

#### GENERAL

##### Interpretation

1. (1) In this By-law,

“licensee” means a licensee who holds a Class L1 licence;

“non-licensee” means an individual who,

- (a) is not a licensee;
- (b) is engaged by a licensee to provide her or his services to the licensee; and
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee.

Interpretation: “effective control”

(2) For the purposes of subsection (1), a licensee has effective control over an individual’s provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society’s rules of professional conduct and the Society’s policies and guidelines.

#### PART II

### SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

##### Application

2. This Part does not apply to the provision of legal services by a student under the supervision of a licensee who is approved by the Society.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee's practice of law in relation to the business of the licensee's client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law in relation to the business of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law in relation to the business of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law in relation to each client's business.

- (2) Without limiting the generality of subsection (1),
- (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
  - (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
  - (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
  - (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
  - (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at sufficiently frequent intervals;
  - (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
  - (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and
  - (h) the licensee shall ensure that a non-licensee does not act finally in respect of the business of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,

- (a) to give or accept an undertaking on behalf of the licensee;
- (b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
- (c) to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the business of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Tasks, functions that may not be assigned: general

6. A licensee shall not permit a non licensee,
- (a) to give the licensee's client legal advice;
  - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;
  - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
  - (d) to sign correspondence, other than correspondence of a routine administrative nature;
  - (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee; or
  - (f) to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

### PART III

#### COLLECTION LETTERS

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
- (a) the letter is in relation to the business of the licensee's client;
  - (b) the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;

- (c) if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
- (d) the letter is on the licensee's business letterhead; and
- (e) the letter is signed by the licensee.

## APPENDIX 5

## PROPOSED AMENDED RULE 5.01

## 5.01 SUPERVISION

## Application

5.01 (1) In this rule, a non lawyer does not include an articulated student.

## Direct Supervision Required

- (2) A lawyer shall, in accordance with the By-Laws,
  - (a) assume complete professional responsibility for his or her practice of law, and
  - (b) shall directly supervise non-lawyers to whom particular tasks and functions are assigned.

## Commentary

By-Law 7.1 governs the circumstances in which a lawyer may assign certain tasks and functions to a non-lawyer within a law practice. Where a non-lawyer is competent to do work under the supervision of lawyer, a lawyer may assign work to the non-lawyer. The non-lawyer must be directly supervised by the lawyer. A lawyer is required to review the non lawyer's work at frequent intervals to ensure its proper and timely completion.

A lawyer may permit a non lawyer to perform tasks assigned and supervised by the lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work.

A lawyer who practises alone or operates a branch or part time office should ensure that all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

A lawyer should ensure that the non lawyer is identified as such when communicating orally or in writing with clients, licensees, public officials, or with the public generally whether within or outside the offices of the law practice.

The following examples, which are not exhaustive, illustrate situations where it may be appropriate to assign work to non-lawyers subject to direct supervision.

Real Estate - A lawyer may permit a non-lawyer to attend to all matters of routine administration, assist in more complex transactions, draft statements of account and routine documents and correspondence and attend to registrations. The lawyer must not assign to a non-lawyer the ultimate responsibility for review of a title search report or of documents before signing or for review and signing of a letter of requisition, review and signing of a title opinion or review and signing of a reporting letter to the client.

In real estate transactions using the system for the electronic registration of title documents ("e-reg" TM), only a lawyer may sign for completeness of any document that requires compliance with law statements.

Corporate and Commercial - A lawyer may permit a non lawyer to attend to all matters of routine administration and to assist in more complex matters and to draft routine documents and correspondence relating to corporate, commercial, and securities matters such as drafting corporate minutes and documents pursuant to corporation statutes, security instruments, security registration documents and contracts of all kinds, closing documents and statements of account, and to attend on filings.

Wills, Trusts and Estates - A lawyer may permit a non lawyer to attend to all matters of routine administration, to assist in more complex matters, to collect information, draft routine documents and correspondence, to prepare income tax returns, to calculate such taxes, to draft executors' accounts and statements of account, and to attend to filings.

#### Electronic Registration of Title Documents

(2) When a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents ("e-reg" TM), the lawyer

- (a) shall not permit others, including a non-lawyer employee, to use the lawyer's diskette, and
- (b) shall not disclose his or her personalized e-reg TM pass phrase to others.

(3) When a non-lawyer employed by a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents, the lawyer shall ensure that the non-lawyer

- (a) does not permit others to use the diskette, and
- (a) does not disclose his or her personalized e-reg TM pass phrase to others.

#### Commentary

The implementation across Ontario of a system for the electronic registration of title documents imposes special responsibilities on lawyers and others using the system. Each person in a law office who accesses the e-reg TM system must have a personalized specially encrypted diskette and personalized e-reg TM pass phrase. The integrity and security of the system is achieved, in part, by it's maintaining a record of those using the system for any transactions.

Moreover, under the system, only lawyers entitled to practise law may make certain prescribed statements. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. Only lawyers entitled to practise law may approve electronic documents containing these statements. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized specially encrypted diskette used to access the system and the personalized electronic registration pass phrase. When in a real estate practice it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has a personalized specially encrypted diskette and a personalized electronic registration pass phrase, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the personalized specially encrypted diskette and the pass phrase.

In real estate transactions using the e-reg TM system, a lawyer who approves the electronic registration of title documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

*[New June 2002]*

## APPENDIX 6

### REPEALED RULE 5.01 (EXCEPTING SUBRULES (7) AND (8))

#### 5.01 SUPERVISION

##### Application

5.01 (1) In this rule, a non lawyer does not include a student at law.

##### Direct Supervision Required

(2) A lawyer shall assume complete professional responsibility for all business entrusted to him or her and shall directly supervise staff and assistants to whom particular tasks and functions are delegated.

##### Commentary

A lawyer who practises alone or operates a branch or part time office should ensure that all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

Where a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer may permit a non lawyer to perform tasks delegated and supervised by a lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work. Generally, subject to the provisions of any statute, rule, or court practice in that regard, the question of what the

lawyer may delegate to a non lawyer turns on the distinction between any special knowledge of the non lawyer and the professional and legal judgment of the lawyer, which in the public interest, must be exercised by the lawyer whenever it is required.

A lawyer may permit a non lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non lawyer generally and with regard to the matter in question. The burden rests on the lawyer who uses a non lawyer to educate the latter concerning the duties that

*[Amended – June 2007]*

may be assigned to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.

Permissible Delegation - The following examples, which are not exhaustive, illustrate situations where it may be appropriate to delegate work to non-lawyers subject to proper supervision.

Real Estate - A lawyer may permit a non lawyer to attend to all matters of routine administration and to assist in more complex transactions relating to the sale, purchase, option, lease, or mortgaging of land, to draft statements of account and routine documents and correspondence, and to attend to registrations, provided that the lawyer not delegate to a non lawyer ultimate responsibility for review of a title search report or of documents before signing, or for the review and signing of a letter of requisition, a title opinion, or reporting letter to the client. In real estate transactions using the system for the electronic registration of title documents ("e-reg" TM), only a lawyer may sign for completeness of any document that requires compliance with law statements.

*[Amended June 2002]*

Corporate and Commercial - A lawyer may permit a non lawyer to attend to all matters of routine administration and to assist in more complex matters and to draft routine documents and correspondence relating to corporate, commercial, and securities matters such as drafting corporate minutes and documents pursuant to corporation statutes, security instruments, security registration documents and contracts of all kinds, closing documents and statements of account, and to attend on filings.

Wills, Trusts and Estates - A lawyer may permit a non lawyer to attend to all matters of routine administration, to assist in more complex matters, to collect information, draft routine documents and correspondence, to prepare income tax returns, to calculate such taxes, to draft executors' accounts and statements of account, and to attend to filings.

Litigation - A lawyer may permit a non lawyer to attend to all matters of routine administration, and to assist in more complex matters, to collect information, draft routine pleadings, correspondence and other routine documents, research legal questions, prepare memoranda, organize documents, prepare briefs, draft statements of account and attend to filings. Generally, a non lawyer shall not attend on examinations or in court except in support of a lawyer also in attendance. Permissible exceptions include non-lawyers appearing on

- (a) routine adjournments in provincial courts,
- (b) appearances before tribunals where statutes or regulations permit non lawyers to appear, e.g., Small Claims Court, Coroners' Inquests, as agent on summary conviction matters

where so authorized by the *Criminal Code*, and the *Provincial Offences Act* and administrative tribunals governed by the *Statutory Powers Procedure Act*,

- (c) routine examinations in uncontested matters such as for the purpose of obtaining routine admissions, attendance upon judgment debtor examinations and on watching briefs but not the conduct of an examination for discovery in a contested matter or a cross examination of a witness in aid of a motion,
- (d) simple without notice matters or motions for a consent order before a master, and
- (e) assessments of costs.

[Amended - May 2001]

### Delegation

- (3) A lawyer shall not permit a non lawyer to
  - (a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer is advised before any work commences,
  - (b) give legal opinions,
  - (c) give or accept undertakings, except with the express authorization of the supervising lawyer,
  - (d) act finally without reference to the lawyer in matters involving professional legal judgment,
  - (e) be held out as a lawyer,

### Commentary

A lawyer should ensure that the non lawyer is identified as such when communicating orally or in writing with clients, lawyers, public officials, or with the public generally whether within or outside the offices of the law firm of employment.

- (f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a support role to the lawyer appearing in such proceedings,
- (g) be named in association with the lawyer in any pleading, written argument, or other like document submitted to a court,
- (h) be remunerated on a sliding scale related to the earnings of the lawyer, except where the non-lawyer is an employee of the lawyer,

- (i) conduct negotiations with third parties, other than routine negotiations where the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken,
- (j) take instructions from clients, unless the supervising lawyer has directed the client to the non lawyer for that purpose,
- (k) sign correspondence containing a legal opinion, but the non lawyer who has been specifically directed to do so by a supervising lawyer may sign correspondence of a routine administrative nature, provided that the fact the person is a non lawyer is disclosed, and the capacity in which the person signs the correspondence is indicated,
- (l) forward to a client any documents, other than routine documents, unless they have previously been reviewed by the lawyer, or
- (m) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do.

#### Commentary

A lawyer may, in appropriate circumstances, render service with the assistance of non lawyers of whose competence the lawyer is satisfied. Though legal tasks may be delegated to such persons, the lawyer remains responsible for all services rendered and for all written materials prepared by non lawyers. In real estate transactions using the system for the electronic registration of title documents ("e-reg" TM), a lawyer who approves the electronic registration of title documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

[Amended June 2002]

- (4) A lawyer shall not permit a non lawyer to
  - (a) provide advice to the client concerning any insurance, including title insurance, without supervision,
  - (b) present insurance options or information regarding premiums to the client without supervision,
  - (c) recommend one insurance product over another without supervision, and
  - (d) give legal opinions regarding the insurance coverage obtained.

#### Collection Letters

- (5) No collection letter shall be sent out over the signature of a lawyer, unless the letter is on the lawyer's letterhead, prepared under the lawyer's supervision, and sent from the lawyer's office.

#### Affiliations Between Lawyers and Affiliated Entities

(6) In addition to the requirements of this rule and the commentaries thereunder, a lawyer in an affiliation shall not delegate to the affiliated entity or the affiliated entity's staff, any tasks in connection with the provision of legal services without obtaining the client's informed consent.

[New - May 2001]

#### Electronic Registration of Title Documents

(7) When a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents ("e-reg" TM), the lawyer

(a) shall not permit others, including a non-lawyer employee, to use the lawyer's diskette, and

(b) shall not disclose his or her personalized e-reg TM pass phrase to others.

(8) When a non-lawyer employed by a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents, the lawyer shall ensure that the non-lawyer

(a) does not permit others to use the diskette, and

(b) does not disclose his or her personalized e-reg TM pass phrase to others.

#### Commentary

The implementation across Ontario of a system for the electronic registration of title documents imposes special responsibilities on lawyers and others using the system. Each person in a law office who accesses the e-reg TM system must have a personalized specially encrypted diskette and personalized e-reg TM pass phrase. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Moreover, under the system, only lawyers entitled to practise law may make certain prescribed statements. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. Only lawyers entitled to practise law may approve electronic documents containing these statements. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized specially encrypted diskette used to access the system and the personalized electronic registration pass phrase. When in a real estate practice it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has a personalized specially encrypted diskette and a personalized electronic registration pass phrase, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the personalized specially encrypted diskette and the pass phrase.

[New June 2002]

APPENDIX 7

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER  
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

BY-LAW 7.1  
[OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON NOVEMBER 22, 2007

MOVED BY

SECONDED BY

THAT By-Law 7.1 [Operational Obligations and Responsibilities], made by Convocation on October 25, 2007 be amended as follows:

1. Subsections 3 (1), 3 (2) and 5 (2) and clause 7 (a) of By-Law 7.1 [Operational Obligations and Responsibilities] are amended by deleting “business” wherever it appears and substituting “affairs”.
2. Subsection 4 (1) is deleted and the following substituted:
  4. (1) A licensee shall assume complete professional responsibility for her or his practice of law in relation to the affairs of the licensee’s clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee’s practice of law in relation to the affairs of each client.
3. Clause 4 (2) (e) of the By-Law is amended by deleting “sufficiently” / “assez”.
4. Clause 4 (2) (h) of the By-Law is deleted and the following substituted:
  - (h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee’s client.

BY-LAW 7.1

Made: October 25, 2007

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

GENERAL

Interpretation

1. (1) In this By-law,

“licensee” means a licensee who holds a Class L1 licence;

“non-licensee” means an individual who,

- (a) is not a licensee;
- (b) is engaged by a licensee to provide her or his services to the licensee; and
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee.

Interpretation: “effective control”

(2) For the purposes of subsection (1), a licensee has effective control over an individual’s provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the Law Society Act, the by-laws, the Society’s rules of professional conduct and the Society’s policies and guidelines.

## PART II

### SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

#### Application

2. This Part does not apply to the provision of legal services by a student under the supervision of a licensee who is approved by the Society.

#### Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee’s practice of law in relation to the affairs ~~business~~ of the licensee’s client.

#### Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee’s practice of law in relation to the affairs ~~business~~ of the licensee’s client only if the client consents to the licensee doing so.

#### Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law in relation to the affairs of the licensee’s clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee’s practice of law in relation to the affairs of each client. ~~A licensee shall assume complete professional responsibility for her or his practice of law in relation to the business of the licensee’s clients and shall directly supervise any non-licensee to whom are assigned~~

~~particular tasks and functions in connection with the licensee's practice of law in relation to each client's business.~~

- (2) Without limiting the generality of subsection (1),
  - (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
  - (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
  - (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
  - (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
  - (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at ~~sufficiently~~ frequent intervals;
  - (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
  - (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and
  - (h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client. ~~the licensee shall ensure that a non-licensee does not act finally in respect of the business of the licensee's client.~~

Assignment of tasks, functions: prior express instruction and authorization required

- 5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,
  - (a) to give or accept an undertaking on behalf of the licensee;
  - (b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
  - (c) to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

- (2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs ~~business~~ of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Tasks, functions that may not be assigned: general

6. A licensee shall not permit a non licensee,
- (a) to give the licensee's client legal advice;
  - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;
  - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
  - (d) to sign correspondence, other than correspondence of a routine administrative nature;
  - (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee; or
  - (f) to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

### PART III

#### COLLECTION LETTERS

##### Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
- (a) the letter is in relation to the affairs ~~business~~ of the licensee's client;
  - (b) the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;
  - (c) if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
  - (d) the letter is on the licensee's business letterhead; and
  - (e) the letter is signed by the licensee.
-

## RÈGLEMENT ADMINISTRATIF NO 7.1

## OBLIGATIONS ET RESPONSABILITÉS OPÉRATIONNELLES

## PARTIE I

## GÉNÉRALITÉS

## Interprétation

1. (1) Dans le présent règlement administratif,

« titulaire de permis » S'entend d'un titulaire de permis qui détient un permis de catégorie L1; ("licensee")

« non-titulaire de permis » S'entend d'une personne qui

- a) n'est pas titulaire de permis;
- b) est embauchée par un titulaire de permis pour lui fournir des services;
- c) convient formellement avec le titulaire de permis que ce dernier doit exercer un contrôle efficace des services que la personne rend au titulaire de permis. ("non-licensee")

Interprétation : « contrôle efficace »

(2) Aux fins du paragraphe (1), un titulaire de permis contrôle efficacement les services qu'une personne lui rend lorsqu'il peut, sans l'accord de la personne, prendre toute mesure nécessaire pour assurer qu'il se conforme à la *Loi sur le Barreau*, aux règlements administratifs, au *Code de déontologie* du Barreau et aux politiques et lignes directrices du Barreau.

## PARTIE II

## SURVEILLANCE DES TÂCHES ET FONCTIONS

## Application

2. Cette partie ne s'applique pas à la fourniture de services juridiques par un étudiant ou une étudiante qui est sous la surveillance d'une ou d'un titulaire de permis approuvé par le Barreau.

Assignation des tâches et des fonctions : généralités

3. (1) Sous réserve du paragraphe (2), un titulaire de permis peut, aux fins de la présente partie, assigner à un non-titulaire de permis des tâches et des fonctions qui sont reliées à l'exercice du droit du titulaire de permis pour les affaires de son client.

Assignation des tâches et des fonctions: affiliation

(2) Un titulaire de permis qui est affilié à une entité en application du Règlement administratif no 7 peut, aux fins de la présente partie, assigner à l'entité ou au personnel de celle-ci, des tâches et des fonctions reliées à l'exercice du droit du titulaire de permis pour les affaires de son client, seulement si le client y consent.

Assignation des tâches et des fonctions: surveillance directe requise

4. (1) Un titulaire de permis assume l'entière responsabilité professionnelle de son exercice du droit dans les affaires de ses clients et surveille directement tout non-titulaire de permis à qui il a confié des tâches et des fonctions particulières reliées à l'exercice du droit du titulaire de permis pour les affaires de chaque client.

- (2) Sans restreindre la portée du paragraphe (1),
- a) le titulaire de permis ne permet pas à un non-titulaire de permis d'accepter un client en son nom;
  - b) le titulaire de permis maintient un contact direct avec chaque client durant son mandat;
  - c) le titulaire de permis n'assigne à un non-titulaire de permis que les tâches et fonctions pour lesquelles ce dernier est compétent;
  - d) le titulaire de permis s'assure qu'un non-titulaire de permis n'agit pas sans ses instructions;
  - e) le titulaire de permis vérifie assez fréquemment que le non-titulaire de permis a accompli les tâches et les fonctions qui lui ont été assignées;
  - f) le titulaire de permis s'assure que les tâches et les fonctions assignées au non-titulaire de permis sont accomplies convenablement et à temps;
  - g) le titulaire de permis assume l'entière responsabilité de toutes les tâches et les fonctions accomplies par un non-titulaire de permis, y compris tous les documents préparés par ce dernier;
  - h) le titulaire de permis s'assure qu'un non-titulaire de permis n'agit pas de façon définitive dans les affaires du client du titulaire de permis.

Assignation des tâches et des fonctions: instructions et autorisation exprès préalables requises

5. (1) Un titulaire de permis donne des instructions et des autorisations exprès à un non-titulaire de permis avant de permettre à ce dernier,

- a) de donner ou d'accepter un engagement au nom du titulaire de permis;

- b) d'agir au nom du titulaire de permis pour l'établissement du calendrier ou d'autres tâches connexes d'administration courante devant un organisme d'arbitrage;
- c) de recevoir des instructions du client du titulaire de permis.

Assignment des tâches et des fonctions: consentement et approbation préalables

(2) Un titulaire de permis obtient le consentement d'un client pour permettre à un non-titulaire de permis de mener des négociations courantes avec des tiers dans les affaires du client du titulaire de permis et approuve les résultats des négociations avant de prendre toute action subséquente.

Tâches et fonctions qui ne peuvent pas être assignées: généralités

6. Un titulaire de permis ne permet pas à un non-titulaire de permis,
- a) de donner des conseils juridiques à son client;
  - b) d'agir au nom d'une personne dans une instance devant un organisme d'arbitrage, autrement qu'au nom du titulaire de permis conformément au paragraphe 5 (1), à moins que le non-titulaire de permis n'y soit autorisé en vertu de la *Loi sur le Barreau*;
  - c) de mener des négociations avec des tiers, autrement qu'en conformité avec le paragraphe 5 (2);
  - d) de signer la correspondance, autre que la correspondance habituelle de nature administrative;
  - e) de faire suivre au client du titulaire de permis des documents, autres que des documents de routine, que le titulaire de permis n'a pas examinés auparavant;
  - f) d'utiliser la disquette personnalisée et codée du titulaire de permis pour avoir accès au système pour l'enregistrement électronique de titres de propriété.

### PARTIE III

#### LETTRES DE RECOUVREMENT

Lettres de recouvrement

7. Un titulaire de permis ne permet pas l'envoi d'une lettre de recouvrement à une personne sauf si,
- a) la lettre porte sur les affaires du client du titulaire de permis;
  - b) la lettre est préparée par le titulaire de permis ou par un non-titulaire sous la surveillance directe du titulaire de permis;

- c) la lettre est préparée par un non-titulaire de permis sous la surveillance directe du titulaire de permis, et si la lettre est examinée et approuvée par le titulaire de permis avant qu'elle soit envoyée;
- d) la lettre est imprimée sur le papier à entête du titulaire de permis;
- e) la lettre est signée par le titulaire de permis.

#### FOR INFORMATION

#### CONSULTATION ON THE FEDERATION OF LAW SOCIETIES' MODEL RULE ON CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS

#### (ANTI-MONEY LAUNDERING INITIATIVE) AND

#### FEDERAL DRAFT REGULATIONS ON VERIFYING THE IDENTITY OF CLIENTS

- 73. On October 25, 2007, the Committee provided Convocation with an information report on a consultation directed by the Federation of Law Societies on developments relating to proposed federal regulations on client identification and a Federation Model Rule on the subject.
- 74. The Federation's Model Rule is the most recent of the Federation of Law Societies of Canada's initiatives to combat the threat of money laundering and terrorist financing, while maintaining the public interest in a strong and independent legal profession. A further development that impacts on this initiative is the release of draft federal regulations in June 2007 on verifying client identity.
- 75. The Model Rule was initially reviewed by the Committee in the spring of 2006, when it directed staff to engage in a consultation with a small group of lawyers on the Model Rule. This was completed and some helpful comments were received on the substance of the Rule.
- 76. The June 2007 draft regulations purport to regulate how lawyers should identify clients and verify that identity. The Federation is continuing its dialogue with the federal government (Department of Finance) on this matter. At the same time, the Federation sought the input of the law societies on the Model Rule and the regulations for two purposes: to inform the dialogue and to complete a review of the Model Rule so that the Federation can finalize it for adoption by each law society in Canada.
- 77. A consultation document was prepared for this purpose, and was used by law societies for consultation with the profession. The document was part of a broadcast e-mail to every licensee of the Law Society of Upper Canada who provided an e-mail to the Society for such purposes. It was also published on the Law Society's website and in the *Ontario Reports*.

78. The document, in addition to posing certain questions about the Model Rule and regulations, explains the Federation's anti-money laundering initiative, the purpose of the Model Rule and the scope of the consultation. The consultation document requested comments by October 31, 2007.
79. The Law Society also wrote to certain legal organization and the largest Toronto law firms requesting input.

#### Input Received

80. The Society received over 35 responses from individual lawyers or firms, three responses from legal organizations who receive written requests for input, and two responses from the large firms. While the responses ranged from the general to specific, they provided useful feedback on the regulations and the Model Rule.

#### Next Steps

81. The input received will be relayed to the Federation, and the Model Rule will return to the Committee for review once the input has been assessed and modifications made to the Model Rule, as may be appropriate.
82. The next step will be to prepare a by-law based on the Model Rule for consideration by Convocation.

### PROFESSIONAL REGULATION DIVISION QUARTERLY REPORT

83. Professional Regulation Division's Quarterly Report (third quarter 2007), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period July to September 2007.

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

Copy of the Professional Regulation Division's Quarterly Report July – September 2007.  
(pages 185 – 229)

#### Re: Amendments to Rules 4.03 and 6.03 of the *Rules of Professional Conduct*

It was moved by Mr. Ruby, seconded by Mr. Gottlieb, that Convocation approve the amendments to the *Rules of Professional Conduct* as set out in Appendices 1 and 2 to this Report.

Carried

Re: Federation of Law Societies Protocol on Law Office Searches

It was moved by Mr. Ruby, seconded by Mr. Gottlieb, that Convocation approve in principle the Federation of Law Societies of Canada Protocol for Law Office Searches (at Appendix 3) as a guideline for Law Society staff in such matters.

Carried

Re: Amendments to Rule 5.01 of the *Rules of Professional Conduct* and By-Law 7.1

It was moved by Mr. Ruby, seconded by Mr. Porter, that Convocation:

- a. approve amendments to rule 5.01 of the *Rules of Professional Conduct* set out in Appendix 5; and
- b. amendments to By-Law 7.1 [Operational Obligations and Responsibilities], made on October 25, 2007, set out in Appendix 7.

Carried

.....

IN CAMERA

.....

**IN CAMERA Content Has Been Removed**

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

*Items for Information*

- Professional Regulation Division Quarterly Report
- Results of Consultation on the Federation of Law Societies' Model Rule on Client Identification and Verification Requirements (Anti-Money Laundering Initiative) and Federal Draft Regulations on Verifying the Identity of Clients

REPORT ON THE FEDERATION OF LAW SOCIETIES OF CANADA'S ANNUAL  
CONFERENCE

Report to Convocation  
November 22, 2007

---

Report on the Federation of Law Societies of Canada's  
Annual Conference

Purpose of Report: Information

Prepared by the Policy Secretariat  
(Katherine Corrick 416.947.5210)

Background

1. The Federation of Law Societies of Canada held their annual conference between November 8 and 10, 2007 in Regina, Saskatchewan. In attendance from the Law Society of Upper Canada were John Campion, Vice-President of the Federation, Treasurer Gavin MacKenzie, Malcolm Heins, and Katherine Corrick. Vern Krishna and Sophia Sperdakos attended on November 10 as a member of and staff to the Federation's Task Force on Accreditation of the Common Law Degree.

The Council Meeting

2. The Council met on November 8 and 9. The agenda included the following matters.

Executive Officers' Term of Office

3. The Executive Officers' terms of office will henceforth be for a fixed one year term, commencing on November 15 each year.
4. The current President of the Federation is Michael Milani, Q.C. of Saskatchewan. Council elected Michael Milani as President for the November 15, 2007 to November 15, 2008 term. Mr. Milani has just completed the unexpired presidential term of William Goodridge of Newfoundland, who resigned on March 2, 2007 upon his appointment to the Supreme Court of Newfoundland. The First Vice-President and President-Elect is Bâtonnier Stéphane Rivard of Quebec and the Second Vice-President is John Campion. The Past-President is Tracy-Anne McPhee of the Yukon. Collectively, they comprise the Executive Committee.

Strategic Plan

5. Since 2003, the Federation has undergone major reform. The affairs of the Federation are governed by Council, which is composed of law society representatives from the 13 provinces and territories and a representative from the Chambre des Notaires. The Federation acts on the basis of consensus, with a right of abstention.
6. In June 2006, Jonathan Herman was hired as Chief Executive Officer. There are three other staff members – a Director of Policy and Public Affairs, a Director of Finance and

Administration, and an Administrative Assistant. The Federation office is located in Ottawa.

7. The Council dedicated the afternoon of November 8 to the first stage of developing a strategic plan for the Federation. At the conclusion of the session, Council had identified the preservation of an independent legal profession as the top priority. The Federation Executive Committee and CEO will now organize and consolidate the input received from the Council, and will develop a draft strategic plan for consideration by the Council at the next meeting.

#### Litigation Intervention Policy

8. The intervention policy was amended to include,
  - a) in addition to interventions before courts, interventions in relation to matters before other judicial and quasi-judicial bodies, including boards and commissions of inquiry, and
  - b) a policy related to the reimbursement of Federation pro bono counsel for their disbursements. The Federation will not reimburse counsel for disbursements above \$5,000 without the prior consent of the Federation.

#### Task Force on Accreditation of the Common Law Degree

9. The Task Force, chaired by John Hunter of British Columbia, presented its first draft discussion paper to the Council, and obtained authorization to distribute the paper to law societies, law school deans, and other interested parties for input. Based on that input, the Task Force plans to prepare a second report for presentation to the Council, and then to consult further. Sophia Sperdakos is the Secretary to the Task Force.
10. Law societies have authority to approve or accredit common law degrees for the purpose of admission to provincial and territorial bar admission or licensing programs. Despite this the Federation has never articulated a national standard for the approval of either law schools or law degrees as prerequisites for admission to the bars of the common law provinces or territories. The only articulated standard has for 50 years been a document prepared by the Law Society of Upper Canada in 1957 and amended in 1969. The Federation of Law Societies of Canada has established a Task Force to develop a national standard in this area and to establish clearer standards for accrediting the law degrees of internationally trained candidates seeking admission to provincial and territorial bars.

#### Model Code of Conduct

11. The Model Code Committee hopes to obtain input from all law societies before the March 13, 2008 Council meeting, and to finalize the Model Code shortly thereafter. The Code will then be distributed to law societies for final input, and hoped-for adoption as a National Model Code of Conduct. There continues to be a general consensus that it is important to move the process forward quickly so as not to lose momentum. The Model Code has been considered by the Professional Regulation Committee, which is reporting its views to Convocation in November.

#### CanLII

12. CanLII President, Darrel Pink from Nova Scotia, provided an update and progress report, including that Janine Miller, following her retirement as Chief Librarian for the Law Society of Upper Canada, became CanLII's Executive Director for an 18-month term

beginning July 2007. Carole Curtis is the Law Society of Upper Canada's representative on CanLII's Board. Attached as Appendix 1 is a report outlining the recent activities of CanLII.

#### National Committee on Accreditation - Policy Review

13. The National Committee on Accreditation (NCA) reviews the credentials of internationally trained lawyers and those with Canadian civil law degrees who seek admission to Canadian law societies. The NCA Certificate of Qualification is required as a pre-condition of accepting internationally trained applicants into provincial bar admission programs. Professor Vern Krishna is the Executive Director of the NCA.
14. The workload of the NCA is growing significantly because of ongoing major increases in the number of Canadian students who are obtaining their law degrees abroad.
15. The NCA is reviewing its procedures and requirements in light of the passage of the *Fair Access to Regulated Professions Act* in Ontario, and the anticipated enactment of similar legislation in Manitoba, The *Fair Registration Practices in Regulated Professions Act*. The Ontario Act sets up a mechanism by which the government requires and monitors fairness and transparency in the accreditation processes of Ontario's professional governing bodies. The NCA policy review process is in conjunction with the Federation's Task Force on Accreditation of the Common Law Degree and the Law Society of Upper Canada's Licensing and Accreditation Task Force.

#### Federation CLE Programs

16. The Federation's National Criminal Law Program is held annually, and the National Family Law Program is held every second year. The Federation is reviewing its role in CLE programming as a part of the Federation's strategic planning process, and is also considering the publication of the course materials, perhaps on CanLII, for lawyers who do not attend the programs.

#### Anti-Money Laundering Committee

17. The Committee Chair, Ron MacDonald from Nova Scotia, reported that discussions on client identification with Ministry of Finance and FINTRAC representatives are ongoing. The government is likely to publish its regulations within a month, with a proposed implementation date in late 2008. There was general agreement that the law societies, with the guidance of the Federation, would provide a detailed Question and Answer guide to members. The Federation's draft model rule for client identification is out for consultation. The Committee and Federation Council anticipate making their recommendations to law societies early in 2008.

#### Competition Bureau

18. The Federation is expecting the publication, very shortly, of a Competition Bureau Report on Regulated Professions. The legal profession will be included in the Bureau's report. The Federation will develop a single strategic response for all law societies, including a communications piece.

#### Protocol on Law Office Searches

19. Tim Killeen from Manitoba, Chair of the Committee on Law Office Searches, reported that the Department of Justice is considering the Federation's Protocol on Law Office Searches. The protocol has not been formally accepted by all provincial attorneys

general, and further discussions between the federal Department of Justice and its provincial counterparts should take place.

#### Compensation Funds Task Force

20. Tim Killeen from Manitoba, the Task Force Chair, reported that the Task Force has established a working group to develop a proposal for a universal coverage model for compensation for misappropriation by mobile lawyers. The working group plans to report by the end of this year.

#### Anti-Terrorism Measures

21. Federal Bill C-3 amends the *Immigration and Refugee Protection Act* in response to the February 2007 Supreme Court of Canada decision in *Charkaoui v. Minister of Citizenship and Immigration*. The Bill creates a special advocate model. The special advocate is a lawyer who would attend in court to hear secret evidence in the absence of the person named in a security certificate and the named person's lawyer. The Bill is likely to be before Parliament for final approval in late November.
22. The Bill largely ignores the following Federation recommendations:
  - a) That the accused be permitted to choose a special advocate from a list of approved lawyers.
  - b) That the special advocate have access to all secret material, not just what has been presented to the court.
  - c) That the special advocate be permitted to discuss the case with the named person and the named person's lawyer after seeing the secret evidence.
  - d) That the special advocate be properly resourced to effectively perform the role of special advocate by retaining experts in national security investigations, translators, or other experts to assist in the review of the secret evidence.
23. The Federation Executive will seek means to provide further input and advice, and specifically will seek an invitation to address the parliamentary committee.

#### Litigation

24. Maria Henheffer of New Brunswick, Chair of the Litigation Committee, presented the Committee's Report. The Federation has been granted leave to intervene in the case of the *Privacy Commissioner of Canada v. Blood Tribe Department of Health*, in which the Privacy Commissioner of Canada asserts the power to compel production of documents over which solicitor-client privilege is claimed.

#### Canadian Payments Association

25. Ron MacDonald of Nova Scotia, Chair of the Canadian Payments Association Committee, reported. Bill C-37, an omnibus Act to amend a variety of laws governing financial institutions, enables the replacement of paper cheques with electronic images. It is anticipated that Canadian banks will cease to provide the return of actual paper cheques by 2008.
26. The Committee has been actively working on this issue, having made written submissions to the Canadian Payments Association in 2006. The Federation has raised concerns about the proposed retention periods for electronic images, image quality, access to electronic images of both the front and the back of cheques, and cost of access. Financial institutions must retain records for a minimum of five years pursuant to

the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. While the Canadian Payments Association has implemented a standard for capturing images, and appears to have adequately addressed the issue of quality and front and back images, questions still remain about what it is that banks will make available to their clients and at what cost.

27. The Federation Committee intends to gather further information from law societies about their retention periods and their rationale, and then consult directly with financial institutions to determine what images will be made available to their customers and in what form.

#### International Affairs Committee

28. The Committee Chair, Tim Killeen of Manitoba, reported on on-going discussions respecting foreign legal consultant regimes and WTO GATS commitments. The current focus is on Foreign Legal Consultants and not on lawyers generally.

#### The Conference Program

29. The following conference sessions took place on November 9 and 10, to discuss issues of strategic interest to law societies and the Federation. The following is a list of the conference topics.

#### Access to Legal Services

30. This program addressed the problem of legal services being beyond the financial reach of more and more people. A panel of guest experts assessed the problems and potential responses from the law societies. There was an informal consensus expressed by law societies' representatives that the access to legal services problem is a critical one that falls within the mandate of law societies and the Federation.

#### Access to the Legal Profession

31. The Federation Task Force on Accreditation of the Common Law Degree presented a program on issues law societies face respecting the training and accreditation of lawyers, and consulted on its first discussion paper. Law societies' representatives responded very favourably to the discussion paper, and made a number of very useful suggestions to assist the Task Force in the preparation of its report.

APPENDIX 1

## REPORT TO FEDERATION OF LAW SOCIETIES

November 2007 submitted by Janine Miller, Executive Director

CanLII continues to work to accomplish all of the work contemplated by its 5 year Strategic Plan. Many of the accomplishments are noted below such as the new website and the continuing growth of collections both in terms of scope and number. Our next major change will be in the statutes collection as our SATAL project moves towards completion. At that time the means for accessing and searching statutes will be greatly enhanced by virtue of being able to search individual sections of legislation.

The CanLII Board will soon begin work on the next iteration of CanLII's strategic plan. With rapid changes in technology some of the matters considered for year 5 of the initial plan may no longer be appropriate. As well the Board and the team at LexUM will be looking at the possibility of publishing some secondary materials on the CanLII site. This will present some significant opportunities for the Law Societies as we look at whether there is a role for CanLII in publishing Legal Education or Bar Course materials, in a fully searchable format, for the benefit of lawyers.

Many of the Board recently participated in the 8th International Conference on Law on the Internet which was held in Montreal in late October. There all of the Legal Information Institutes from around the world participated and there is no doubt that CanLII has become a model that they look to while at the same time we are able to learn from the innovation and ingenuity practiced by many of the new or well established Legal Information Institutes.

- o Executive Director
  - Janine Miller assumed the position of Executive Director of CanLII at the beginning of July 2007
- o CanLII Quick Reference Guide
  - 100,000 guides have been printed. These were shipped out for distribution to students and faculty in time for the start of the new academic year at the law schools.
  - To date another 11,000 have been sent to law societies for sending out to members. CanLII is still waiting for information from LSUC, B.C. and Alberta.
- o Law Foundations
  - Ontario project
 

All Supreme Court of Canada decisions emanating from Ontario have been scanned, OCRd, copy-typed and proofed. There were 2,113 decisions of which 408 are bilingual and this involved scanning 29,788 pages. They are now in the process of being published on the CanLII site and should be available by the end of this year.
  - Association of Law Foundations of Canada
 

The Law Foundation of Ontario requested that an application for funding the publishing of the remainder of the SCC decisions be made from CanLII to the association, who are looking to undertake a national project. A grant request was made and presented at the association's annual meeting by the LFO on behalf of CanLII. The law foundations decided that they would prefer to provide funding on an individual basis rather than nationally. The Executive Director will contact the law society CEOs prior to making any applications for funding from their jurisdiction.
- o Publication of judicial decisions
 

The following new databases have been added to CanLII:

- BCSEC: British Columbia Securities Commission 2004-2007 (2515 decisions)
- ONAGC: Alcohol and Gaming Commission of Ontario
- ONPEHT: Ontario Pay Equity Hearing Tribunal
- ONIPC: Information and Privacy Commissioner 1988 – 2006 (4471 decisions)  
Northwest Territories Labour Standard Board
- QCCDBQ: Barreau du Québec Committee on Discipline 1998-2006 (661 decisions)
- PSST: Public Staff Tribunal
- ONHRT: Human Rights Tribunal of Ontario 2000-2007 (232 decisions)
- CITT: 1989-2006 Canadian International Trade Tribunal (3689 decisions)
- IRB 2003 – 2006: Immigration and Refugee Board of Canada

The following key historical collections have been published:

- CISR 2004 - 2006 (450 decisions)
  - NSBS 1993 - 2004 (51 decisions)
  - ONCCB - (973 decisions)
  - QCCVM – 29 decisions. The collection is now complete up to 2004 when the tribunal ceased to exist.
  - CACT 2004 – 2007
  - NBOMB 2005 – 2006 (20 decisions)
  - PSSRB : 2000-2003
  - BC – family decisions 2001-2006 (1293 decisions)
  - MB – family decisions backlog (1220 decisions)
  - The total number of decisions added in the first nine months of 2007 was 83,060 which is 17,011 more than for the same period in 2006
  - 1,364 decisions have been edited to comply with publication restrictions;
- o Reflex
- The Reflex project was completed for 2006 and continued to include the 2007 reports that have already been issued. A total of 10,110 decisions have been recorded in the Reflex database
  - The number of hyperlinks on CanLII surpassed two million.
- o Publication of legislative databases
- Updates have been made to the legislative collections of all jurisdictions except for British Columbia whose legislative materials are still not being made available to CanLII for free publication on our site.
- o Website, Systems and software
- A system designed to monitor the CanLII usage and to detect abusive mass downloading of documents (ROBOCOP) has been developed and implemented.
  - The new CanLII website was launched in March.

Mr. Campion reported on the meeting of the Federation of Law Societies of Canada held in Regina, Saskatchewan.

Mr. Michael Milani, Q.C., President of the Federation of Law Societies of Canada addressed Convocation.

**MOTION – CERTIFIED SPECIALIST PROGRAM BY-LAW 15 AMENDMENTS**

It was moved by Ms. Pawlitza, seconded by Professor Backhouse, that

THE LAW SOCIETY OF UPPER CANADA  
BY-LAWS MADE UNDER  
**SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT***

BY-LAW 15

**[CERTIFIED SPECIALIST PROGRAM]**

THAT By-Law 15 [Certified Specialist Program], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, be further amended as follows:

1. **Subsection 1 of By-Law 15 [Certified Specialist Program] is amended by deleting the definition of “certification staff” / “personnel de l’agrément”.**
2. **Subsection 3 (2) of the By-Law is deleted and the following substituted:**

(2) The Board shall consist of not fewer than eight and not more than twelve persons appointed by the Committee as follows:

1. Two benchers who are certified specialists.
2. One lay bencher.
3. Not fewer than five and not more than nine persons who are certified specialists who are not benchers.

(2) Le Conseil d’agrément est composé d’au moins huit personnes et d’au plus douze personnes nommées par le Comité de la manière suivante:

1. Deux conseillers ou conseillères qui sont des spécialistes agréés.
2. Un conseiller ou une conseillère non juriste.

3. Au moins cinq personnes et au plus neuf personnes qui sont des spécialistes agréés, mais non des conseillers ou des conseillères.

**3. Section 3 of the By-Law is amended by adding the following:**

**Same**

(2.1) If the Committee is unable to comply with paragraph 1 of subsection (2), the Committee may appoint the required number of benchers who are licensed to practise law in Ontario as barristers and solicitors.

**Idem**

(2.1) Si le comité ne peut pas se conformer à l'alinéa 1 du paragraphe (2), le comité peut nommer le nombre requis de conseillers ou conseillères qui sont autorisés à exercer le droit en Ontario à titre d'avocats.

**4. Section 5 of the By-Law is deleted and the following substituted:**

5. It is the function of the Board,
  - (a) to establish standards for the certification of licensees as specialists;
  - (b) to determine the areas of law in respect of which licensees may be certified as specialists;
  - (c) to make, subject to this By-Law, rules of practice and procedure with respect to the consideration by the Board of an application under subsection 25 (3), subsection 25 (5), subsection 25 (6) or section 27 and the exercise by the Board of its discretion under subsection 25 (2) or subsection 26 (2);
  - (d) to develop for the Committee's approval policies relating to the certification of licensees as specialists;
  - (e) to recommend to the Committee the amount of the fees payable by applicants for certification and certified specialists under this By-Law; and
  - (f) to certify licensees as specialists.
  
5. Les fonctions du Conseil d'agrément sont les suivantes,
  - (a) établir les normes d'agrément des titulaires de permis à titre de spécialiste;
  - (b) déterminer les domaines du droit à l'égard desquels les titulaires de permis peuvent être agréés à titre de spécialiste;

- (c) sous réserve du présent règlement administratif, adopter les règles de pratique et de procédure relatives à l'étude, par le Conseil d'agrément, des demandes présentées en vertu du paragraphe 25 (3), (5) ou (6) ou de l'article 27, et à l'exercice par le Conseil d'agrément du pouvoir discrétionnaire que lui attribue le paragraphe 25 (2) ou 26 (2);
- (d) élaborer et soumettre à l'approbation du Comité les politiques relatives à l'agrément des titulaires de permis à titre de spécialiste;
- (e) recommander au Comité le montant des droits qui sont exigibles des auteurs d'une demande d'agrément à titre de spécialiste et des spécialistes agréés en application du présent règlement administratif;
- (f) agréer les titulaires de permis à titre de spécialistes.

- 5. **Section 6 of the By-Law is amended by deleting "Four" / "quatre" and substituting "Five" / "cinq".**
- 6. **The By-Law is amended by deleting Parts III, IV and V and substituting the following:**

### PART III

### CERTIFICATION

#### Requirements for certification

- 10. (1) A licensee may be certified as a specialist in an area of law in respect of which certification is available if the licensee meets the following conditions:
  - 1. The licensee has engaged in the practice of law for at least seven years immediately before the day on which the licensee applies for certification.
  - 2. The licensee has practised in the area of law for at least five of the seven years mentioned in paragraph 1 as follows:
    - i. Two years immediately before the day on which the licensee applies for certification.
    - ii. Any other three years.
  - 3. The licensee has the number of hours of self-study and continuing legal education programs specified by the Committee for at least three years of the five years mentioned in paragraph 2 as follows:
    - i. Two years immediately before the day on which the licensee applies for certification.
    - ii. Any other one year.

4. The licensee has demonstrated comprehensive knowledge of the substantive law and the practices and procedures in the area of law.
5. The licensee is not the subject and has no record, within the five year period immediately before the day on which the licensee applies for certification, of any order made against the licensee by a tribunal of the governing body of the legal profession in any jurisdiction.
6. The licensee has and has had, within the five year period immediately before the day on which the licensee applies for certification, no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in any jurisdiction in which the licensee is authorized to practise law.
7. The licensee is not, in any jurisdiction in which the licensee is authorized to practise law, the subject of a review of the licensee's professional business for the purpose of determining if the licensee is meeting standards of professional competence.
8. The licensee has and has had, within the five year period immediately before the day on which the licensee applies for certification, no serious claims or substantial number of claims made against the licensee in the licensee's professional capacity or in respect of the licensee's practice of law in any jurisdiction in which the licensee is authorized to practise law.

### **Same**

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

### **Interpretation: practice in area of law**

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

### **Application for certification**

11. (1) A licensee who wishes to be certified as a specialist shall apply to the Society.

### **Application form**

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

### **Accompanying documents, etc.**

- (3) An application under subsection (1) shall be accompanied by,
  - (a) a certificate of standing from the governing body of the legal profession in each

jurisdiction in which the applicant is or was authorized to practise law issued during the three month period immediately before the day on which the applicant makes the application;

- (b) written references from such persons and such number of persons as determined by the Committee from time to time, not one of whom is,
  - (i) a person whose licence is in abeyance under subsection 31 (1) of the Act,
  - (ii) a partner, an associate, a co-worker, an employer or an employee of the applicant,
  - (iii) an individual who is counsel to the applicant, to the applicant's employer or to the applicant's firm or company;
  - (iv) a relative of the applicant,
  - (v) a member of the Board,
  - (vi) a bencher, or
  - (vii) an employee of the Society; and
- (c) an application fee.

**Documents, explanations, releases, etc.**

- (4) For the purpose of assisting the Board to consider an application under subsection (1), the applicant shall provide,
  - (a) to the Society, such documents and explanations as may be required; and
  - (b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

**Application to be considered by Society**

12. Every application under section 11, to the extent that the application deals with the conditions set out in paragraphs 1 to 4 of subsection 10 (1), shall be considered by the Society and the Society shall,

- (a) if satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 10 (1), recommend to the Board that the applicant be certified as a specialist; or
- (b) if not satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 10 (1), recommend to the Board that the applicant not be certified as a specialist.

**Notice**

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

- (a) to withdraw the application; or
- (b) to submit additional information to the Society.

**Application to be considered by Board**

14. Every application under section 11 shall be considered by the Board.

**Recommendation to certify and determination by Board**

15. (1) If the Society recommends to the Board that the applicant be certified as a specialist, the Board may,

- (a) certify the applicant as a specialist if,
  - (i) the Board is satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 10 (1); and
  - (ii) the Board is satisfied that,
    - (A) the condition set out in subsection 10 (2) is not present; or
    - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
- (b) not certify the applicant as a specialist if,
  - (i) the Board is not satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 10 (1); or
  - (ii) the Board is satisfied that,
    - (A) the condition set out in subsection 10 (2) is present; and
    - (B) it would be contrary to the public interest to certify the applicant as a specialist.

**Recommendation to not certify and determination by Board**

(2) If the Society recommends to the Board that the applicant not be certified as a specialist, the Board may,

- (a) certify the applicant as a specialist if,

- (i) the Board is satisfied that the applicant meets the conditions set out in subsection 10 (1); and
- (ii) the Board is satisfied that,
  - (A) the condition set out in subsection 10 (2) is not present; or
  - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
- (b) not certify the applicant as a specialist if,
  - (i) the Board is not satisfied that the applicant meets the conditions set out in subsection 10 (1); or
  - (ii) the Board is satisfied that,
    - (A) the condition set out in subsection 10 (2) is present; and
    - (B) it would be contrary to the public interest to certify the applicant as a specialist.

### **Notice**

16. (1) If the Board does not certify the applicant as a specialist under clause 15 (2) (b), the Board shall notify the applicant in writing of its decision.

### **Decision final**

(2) The decision of the Board on an application under this part is final.

### **Issuance of certificate**

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

### **Continuation of certification**

18. A licensee certified as a specialist shall continue to be certified as a specialist so long as the licensee,

- (a) practises in the area of law in which the licensee has been certified as a specialist within the meaning of subsection 10 (3);
- (b) maintains comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the licensee has been certified as a specialist;
- (c) is not the subject and has no record of any order made against the licensee by a

tribunal of the governing body of the legal profession in any jurisdiction;

- (d) has and has had no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in any jurisdiction in which the licensee is authorized to practise law;
- (e) is not, in any jurisdiction in which the licensee is authorized to practise law the subject of a review of the licensee's professional business for the purpose of determining if the licensee is meeting standards of professional competence;
- (f) has and has had no serious claims or substantial number of claims made against the licensee in the licensee's professional capacity or in respect of the licensee's practice of law in any jurisdiction in which the licensee is authorized to practise law; and
- (g) fulfils all requirements under this By-Law.

#### **PART IV**

#### **CERTIFIED SPECIALISTS**

##### **Definition**

19. In this Part,

"certified specialist" means a licensee who is certified as a specialist by the Board under Part III.

##### **Specialist designation**

20. (1) A certified specialist may use any of the following designations:

- 1. C.S.
- 2. Certified Specialist [*area of law in which certified as specialist*]

##### **Same**

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

##### **Requirement to pay annual fee**

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

##### **Payment due**

- (2) Payment of the annual fee is due on January 31 of each year.

### **Certified specialists**

(3) Subsection (2) applies only to licensees who are certified specialists on January 31.

### **Licensees certified after January 31**

(4) A licensee who is certified as a specialist after January 31 shall pay, in respect of the year in which the licensee is certified as a specialist, an amount of the annual fee as determined by the formula,

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

where,

A is the annual fee, and

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

### **Payment due**

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

### **Requirement to submit annual report**

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

### **Report form**

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

### **Continuing legal education requirements**

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

- (a) the number of hours of self-study specified by the Committee, and
- (b) the number of hours of continuing legal education programs specified by the Committee.

### **Proof of compliance**

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

### **Deemed failure to comply**

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

### **Notice to Society**

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

### **Automatic abeyance**

25. (1) A certified specialist's certification is in abeyance while,
- (a) the certified specialist's licence is in abeyance under subsection 31 (1) of the Act;
  - (b) the certified specialist has terms, conditions, limitations or restrictions imposed on the certified specialist's authorization to practise law in any jurisdiction in which the certified specialist is authorized to practise law;
  - (c) the certified specialist is, in any jurisdiction in which the certified specialist is authorized to practise law, the subject of a review of the certified specialist's professional business for the purpose of determining if the certified specialist is meeting standards of professional competence; or
  - (d) the certified specialist has serious claims or a substantial number of claims made against the certified specialist in the certified specialist's professional capacity or in respect of the certified specialist's practice of law in any jurisdiction in which the certified specialist is authorized to practise law.

### **Abeyance by Board: discretion**

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

### **Abeyance by Board: mandatory**

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

### **Restoration**

(4) If the conditions mentioned in subsection (1) are no longer present and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), upon notice to the Society of the change in conditions, the certified specialist's certification shall be restored.

**Same**

(5) If the condition mentioned in subsection (2) is no longer present and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), on the application of the certified specialist, the Board may restore the certification if to do so would not be contrary to the public interest.

**Same**

(6) If the Board placed a certified specialist's certification in abeyance under subsection (3) and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), on the application of the certified specialist, the Board shall restore the certification if,

- (a) none of the conditions in subsection (1) are present; and
- (b) the condition in subsection (2) is not present, or if it is, the Board is satisfied that it would not be contrary to the public interest to restore the certification.

**Revocation**

26. (1) A certified specialist's certification is automatically revoked immediately,
- (a) the certified specialist ceases to practise law in Ontario;
  - (b) the certified specialist ceases to practise in the area of law in which the certified specialist has been certified as a specialist within the meaning of subsection 10 (3);
  - (c) the certified specialist is the subject of any order made against the certified specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
  - (d) the certified specialist fails to pay an annual fee or submit an annual report;
  - (e) the certified specialist fails to meet the requirement set out in section 23; or
  - (f) the certified specialist's certification has been in abeyance for more than 12 months.

**Same**

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

**Surrender of certification**

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

Board and the Board shall approve the request.

### Same

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

## PARTIE III

### AGRÉMENT

#### Exigences relatives à l'agrément

10. (1) Tout titulaire de permis peut être agréé à titre de spécialiste dans un domaine du droit dans lequel est offert l'agrément s'il réunit les conditions suivantes :

1. Il exerce le droit depuis au moins sept ans avant de présenter sa demande d'agrément.
2. Il a exercé dans le domaine du droit de la manière qui suit pendant au moins cinq des sept années visées à la disposition 1 :
  - i. Pendant les deux années qui précèdent immédiatement le jour de la présentation de sa demande d'agrément.
  - ii. Pendant n'importe quelle autre période de trois ans.
3. Pendant au moins trois des cinq années mentionnées à l'alinéa 2, il a effectué le nombre d'heures d'étude autonome et de programmes de formation juridique permanente que précise le Comité, de la façon suivante :
  - i. deux ans immédiatement avant le jour de sa demande d'agrément,
  - ii. Pendant n'importe quelle autre période d'un an.
4. Il démontre une connaissance approfondie du droit de fond ainsi que de la pratique et des procédures du domaine du droit.
5. Il n'est pas ni n'a été, selon son dossier, au cours des cinq ans qui précèdent immédiatement le jour de la présentation de sa demande d'agrément, visé par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique de n'importe quel ressort a rendue à son encontre.
6. Son autorisation d'exercer le droit dans un ressort où il est habilité à exercer le droit n'est pas ni n'a jamais été, au cours des cinq ans qui précèdent immédiatement le jour de la présentation de sa demande d'agrément, assortie d'une condition ou d'une restriction.
7. Ses activités ne font, dans aucun ressort où il est habilité à exercer le droit,

l'objet d'aucune inspection professionnelle visant à établir s'il respecte les normes de compétence de la profession.

8. Il n'a pas ni n'a eu, au cours des cinq ans qui précèdent immédiatement le jour de la présentation de sa demande d'agrément, à se défendre contre des demandes importantes ou contre un nombre important de demandes faites contre lui à titre professionnel ou à l'égard de son exercice de droit dans un ressort où il est habilité à exercer le droit.

### **Idem**

(2) Malgré le paragraphe (1), le titulaire de permis qui fait l'objet d'une instance en matière de conduite, de capacité ou de compétence dans un ressort où il est habilité à exercer le droit ne peut être agréé à titre de spécialiste dans un domaine du droit dans lequel est offert l'agrément que si cela n'est pas contraire à l'intérêt public.

### **Interprétation : exercice dans un domaine du droit**

(3) Dans le présent article, un titulaire de permis exerce dans un domaine du droit au cours d'une année s'il exerce dans ce domaine du droit pendant la période de l'année que précise le Conseil d'agrément.

### **Demande d'agrément**

11. (1) Le titulaire de permis qui souhaite être agréé à titre de spécialiste présente une demande en ce sens au Barreau.

### **Formule**

(2) La demande présentée en vertu du paragraphe (1) est rédigée selon la formule fournie par le Barreau.

### **Pièces justificatives**

(3) La demande présentée en vertu du paragraphe (1) est accompagnée de ce qui suit :

- a) un certificat de titulaire de permis en règle que chaque organisme de réglementation de la profession juridique d'un ressort dont l'auteur de la demande est ou était autorisé à exercer le droit a délivré au cours des trois mois qui précèdent immédiatement le jour de la présentation de la demande;
- b) des références écrites données par des personnes dont le nombre doit être déterminé par le Comité, et dont aucune n'est une des personnes suivantes :
  - (i) une personne dont le permis est en suspens en application du paragraphe 31 (1) de la Loi,
  - (ii) un associé, un collègue, un employeur ou un employé de l'auteur de la

demande,

- (iii) une personne qui est conseillère juridique pour l'auteur de la demande, pour son employeur ou pour son cabinet ou sa compagnie,
  - (iv) un parent de l'auteur de la demande,
  - (v) un membre du Conseil d'agrément,
  - (vi) un conseiller élu ou une conseillère élue,
  - (vii) un employé ou une employée du Barreau;
- c) les droits.

### **Documents, explications et renonciations**

(4) Pour faciliter l'examen par le Conseil d'agrément d'une demande présentée en vertu du paragraphe (1), son auteur fait ce qui suit :

- a) il fournit au ou à la responsable les documents et les explications qu'exige ce dernier ou cette dernière;
- b) il fournit, à la personne désignée nommément par le Barreau, les renonciations, directives et consentements nécessaires pour lui permettre de communiquer au Barreau les renseignements qu'exige celui-ci.

### **Étude des demandes par le Barreau**

12. Le Barreau étudie une demande présentée en application de l'article 11, dans la mesure où elle touche aux conditions énoncées aux dispositions 1 à 4 du paragraphe 10 (1), et :

- a) s'il est convaincu que l'auteur de la demande remplit les conditions énoncées aux dispositions 1 à 4 du paragraphe 10 (1), recommande au Conseil d'agrément de l'agréer à titre de spécialiste;
- b) s'il n'est pas convaincu que l'auteur de la demande remplit les conditions énoncées aux dispositions 1 à 4 du paragraphe 10 (1), recommande au Conseil d'agrément de ne pas l'agréer à titre de spécialiste.

### **Avis**

13. Si le Barreau a l'intention de recommander au Conseil d'agrément que l'auteur de la demande ne soit pas agréé à titre de spécialiste, il doit, avant de faire cette recommandation, lui donner la possibilité :

- a) soit de retirer sa demande;
- b) soit de lui présenter des renseignements supplémentaires.

### **Étude des demandes par le Conseil d'agrément**

14. Le Conseil d'agrément étudie chaque demande présentée en application de l'article 11.

### **Recommandation et décision d'agrément par le Conseil d'agrément**

15. (1) Si le Barreau recommande au Conseil d'agrément d'agrément l'auteur de la demande à titre de spécialiste, le Conseil d'agrément peut :

- a) soit l'agrément à titre de spécialiste si les conditions suivantes sont réunies :
  - (i) le Conseil d'agrément est convaincu qu'il remplit les conditions énoncées aux dispositions 5 à 8 du paragraphe 10 (1),
  - (ii) le Conseil d'agrément est convaincu :
    - (A) soit que la condition énoncée au paragraphe 10 (2) n'existe pas,
    - (B) soit qu'il ne serait pas contraire à l'intérêt public de l'agrément à titre de spécialiste;
- b) soit ne pas l'agrément à titre de spécialiste si, selon le cas :
  - (i) le Conseil d'agrément n'est pas convaincu qu'il remplit les conditions énoncées aux dispositions 5 à 8 du paragraphe 10 (1),
  - (ii) le Conseil d'agrément est convaincu :
    - (A) soit que la condition énoncée au paragraphe 10 (2) existe,
    - (B) soit qu'il serait contraire à l'intérêt public de l'agrément à titre de spécialiste.

### **Recommandation et décision de ne pas agrément par le Conseil d'agrément**

(2) Si le Barreau recommande au Conseil d'agrément de ne pas agrément l'auteur de la demande à titre de spécialiste, ce dernier peut :

- a) soit agrément l'auteur de la demande à titre de spécialiste si les conditions suivantes sont réunies :
  - (i) il est convaincu qu'il remplit les conditions énoncées au paragraphe 10 (1),
  - (ii) il est convaincu :
    - (A) soit que la condition énoncée au paragraphe 10 (2) n'existe pas,
    - (B) soit qu'il ne serait pas contraire à l'intérêt public de l'agrément à titre de spécialiste;

- b) soit ne pas agréer l'auteur de la demande à titre de spécialiste si, selon le cas :
  - (i) il n'est pas convaincu qu'il remplit les conditions énoncées au paragraphe 10 (1),
  - (ii) il est convaincu :
    - (A) soit que la condition énoncée au paragraphe 10 (2) existe,
    - (B) soit qu'il serait contraire à l'intérêt public de l'agréer à titre de spécialiste.

### **Avis**

16. (1) Si le Conseil d'agrément n'agréé par l'auteur de la demande à titre de spécialiste en application de l'alinéa 15 (2) b), le Conseil d'agrément avise l'auteur de la demande de sa décision par écrit.

### **Décision sans appel**

(2) La décision que le Conseil d'agrément rend à l'égard d'une demande présentée en vertu de cette partie est sans appel.

### **Délivrance du certificat**

17. Le Conseil d'agrément délivre à l'auteur d'une demande agréé à titre de spécialiste un certificat de spécialisation qui précise le domaine du droit dans lequel il est agréé à titre de spécialiste.

### **Maintien de l'agrément**

18. Les titulaires de permis agréés à titre de spécialistes le restent tant qu'ils réunissent les conditions suivantes :

- a) ils exercent dans le domaine du droit dans lequel ils ont été agréés à titre de spécialistes, au sens du paragraphe 10 (3);
- b) ils continuent de connaître de façon approfondie le droit de fond ainsi que la pratique et les procédures du domaine du droit dans lequel ils ont été agréés à titre de spécialistes;
- c) ils ne sont pas ni n'ont été, selon leur dossier, visés par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique de n'importe quel ressort a rendue à leur encontre;
- d) leur autorisation d'exercer le droit dans un ressort où ils sont habilités à exercer le droit n'est pas ni n'a été assortie d'aucune condition ni restriction;
- e) leurs activités ne font, dans aucun ressort où ils sont habilités à exercer le droit, l'objet d'aucune inspection professionnelle visant à établir s'ils respectent les

normes de compétence de la profession;

- f) ils n'ont pas ni n'ont eu à se défendre contre des demandes importantes ou contre un nombre important de demandes faites contre eux à titre professionnel ou à l'égard de leurs activités professionnelles dans un ressort où ils sont habilités à exercer le droit;
- g) ils satisfont à toutes les exigences du présent règlement administratif.

## **PARTIE IV**

### **SPÉCIALISTES AGRÉÉS**

#### **Définition**

19. La définition qui suit s'applique à la présente partie.

«spécialiste agréé» Titulaire de permis que le Conseil d'agrément a agréé à titre de spécialiste en application de la partie III.

#### **Titre de spécialiste**

20. (1) Les spécialistes agréés peuvent utiliser le titre suivant :
- 1. s.a.
  - 2. spécialiste agréé ou spécialiste agréée [*domaine du droit dans lequel le titulaire de permis est agréé à titre de spécialiste*]

#### **Idem**

(2) Les titulaires de permis qui ne sont pas des spécialistes agréés ne doivent pas utiliser de titre qui laisserait raisonnablement entendre qu'ils le sont.

#### **Obligation d'acquitter des droits annuels**

21. (1) Les spécialistes agréés versent tous les ans au Barreau les droits annuels ainsi que les taxes connexes que le Barreau est tenu de percevoir.

#### **Date de paiement**

(2) Les droits annuels sont exigibles le 31 janvier de chaque année.

#### **Spécialistes agréés**

(3) Le paragraphe (2) ne s'applique qu'aux titulaires de permis qui sont spécialistes agréés en date du 31 janvier.

#### **Titulaires de permis agréés après le 31 janvier**

(4) Les titulaires de permis qui sont agréés à titre de spécialistes après le 31 janvier versent, pour l'année durant laquelle ils le deviennent, des droits annuels dont le montant est calculé selon la formule suivante :

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

où :

A représente les droits annuels;

B représente le nombre de mois civils entiers qui restent dans l'année suivant le mois durant lequel ils sont agréés à titre de spécialistes.

### **Date de paiement**

(5) Les droits précisés au paragraphe (4) sont exigibles le jour où le titulaire de permis concerné est agréé à titre de spécialiste.

### **Obligation de présenter une déclaration annuelle**

22. (1) Avant le 31 janvier de chaque année, les spécialistes agréés présentent au Barreau une déclaration sur la façon dont ils se sont conformés au présent règlement administratif au cours de l'année précédente.

### **Formule de la déclaration**

(2) La déclaration exigée au paragraphe (1) est rédigée selon la formule fournie par le Barreau.

### **Formation permanente**

23. Les spécialistes agréés effectuent, dans le domaine du droit dans lequel ils sont agréés :

- a) le nombre d'heures d'étude autonome que précise le Comité,
- b) le nombre d'heures des programmes de formation juridique permanente que précise le Comité.

### **Preuve de conformité**

24. (1) À la demande du Barreau et au plus tard à la date qu'il précise, les spécialistes agréés lui fournissent une preuve qu'il trouve satisfaisante de la façon dont ils se sont conformés au présent règlement administratif.

### **Présomption**

(2) Les spécialistes agréés qui ne fournissent pas la preuve au Barreau au plus tard à la date qu'il précise sont réputés ne pas se conformer au présent règlement administratif.

**Avis**

(3) Les spécialistes agréés avisent le Barreau dès qu'ils ne se conforment pas au présent règlement administratif.

**Agrément en suspens automatiquement**

25. (1) L'agrément à titre de spécialiste des spécialistes agréés est en suspens si, selon le cas :

- a) leur qualité de titulaire de permis est en suspens en application du paragraphe 31 (1) de la Loi;
- b) leur autorisation d'exercer le droit dans n'importe quel ressort où ils sont habilités à exercer le droit est assortie de conditions ou de restrictions;
- c) leurs activités font, dans un ressort où ils sont habilités à exercer le droit, l'objet d'une inspection professionnelle visant à établir s'ils respectent les normes de compétence de la profession;
- d) ils ont à se défendre contre des demandes importantes ou contre un nombre important de demandes faites contre eux à titre professionnel ou à l'égard de leurs activités professionnelles juridiques dans un ressort où ils sont habilités à exercer le droit.

**Pouvoir discrétionnaire du Conseil d'agrément**

(2) Le Conseil d'agrément peut mettre l'agrément à titre de spécialiste des spécialistes agréés en suspens s'ils font l'objet d'une instance en matière de conduite, de capacité ou de compétence dans un ressort où ils sont habilités à exercer le droit et que s'en abstenir serait contraire à l'intérêt public.

**Obligation du Conseil d'agrément**

(3) Le Conseil d'agrément doit mettre en suspens l'agrément à titre de spécialiste des spécialistes agréés qui le lui demandent.

**Rétablissement**

(4) L'agrément à titre de spécialiste des spécialistes agréés est rétabli si les conditions énoncées au paragraphe (1) n'existent plus et qu'il n'a pas été révoqué en application du paragraphe 26 (1) ou (2), dès que le Barreau est avisé du changement de conditions.

**Idem**

(5) Le Conseil d'agrément peut rétablir l'agrément à titre de spécialiste des spécialistes agréés qui le lui demandent si la condition énoncée au paragraphe (2) n'existe plus et qu'il n'a pas été révoqué en application du paragraphe 26 (1) ou (2), si cela n'est pas

contraire à l'intérêt public.

**Idem**

(6) Le Conseil d'agrément rétablit l'agrément à titre de spécialiste des spécialistes agréés qu'il a mis en suspens en application du paragraphe (3) et qui n'a pas été révoqué en application du paragraphe 26 (1) ou (2), à leur demande, si les conditions suivantes sont réunies :

- a) aucune des conditions énoncées au paragraphe (1) n'existe;
- b) la condition énoncée au paragraphe (2) n'existe pas ou, dans le cas contraire, le Conseil d'agrément est convaincu qu'il ne serait pas contraire à l'intérêt public de rétablir l'agrément.

**Révocation**

26. (1) L'agrément à titre de spécialiste des spécialistes agréés est automatiquement révoqué dès que l'une ou l'autre des situations suivantes se produit :

- a) ils cessent d'exercer le droit en Ontario;
- b) ils cessent d'exercer le droit dans le domaine à l'égard duquel ils ont été agréés à titre de spécialistes, au sens du paragraphe 10 (3);
- c) ils sont visés par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique de n'importe quel ressort a rendue à leur rencontre;
- d) ils ne paient pas leurs droits annuels ou ne présentent pas leur déclaration annuelle;
- e) ils ne respectent pas les exigences énoncées à l'article 23;
- f) leur agrément est en suspens depuis plus de 12 mois.

**Idem**

(2) Le Conseil d'agrément peut révoquer l'agrément des spécialistes agréés s'ils ne maintiennent pas une connaissance approfondie du droit de fond ainsi que de la pratique et des procédures du domaine du droit à l'égard duquel ils ont été agréés à titre de spécialistes.

**Remise de l'agrément**

27. (1) Les spécialistes agréés qui souhaitent rendre leur agrément présente par écrit une demande en ce sens au Conseil d'agrément en y joignant le certificat de spécialisation concerné et ce dernier approuve la demande.

**Idem**

(2) Le titulaire de permis cesse d'être agréé à titre de spécialiste dès que le Conseil d'agrément approuve la demande qu'il présente en application du paragraphe (1).

Carried

.....

IN CAMERA

.....

**IN CAMERA Content Has Been Removed**

.....

IN PUBLIC

.....

Report to Convocation  
November 22, 2007

---

Audit Committee

Committee Members  
Beth Symes, Chair  
Marshall Crowe, Vice-Chair  
Abdul Chahbar  
Ross Murray  
Vern Krishna

Purpose of Report: Information

Prepared by Wendy Tysall,  
Chief Financial Officer – 416-947-3322

## TABLE OF CONTENTS

For Information:

1. General Fund - Financial Statements for the Nine Months ended September 30, 2007
2. Compensation Fund - Financial Statements for the Nine Months ended September 30, 2007

3. LawPro Financial Statements for the Six Months ended June 30, 2007
4. Investment Compliance Reports
5. Assessment of Investment Manager (Confidential)
6. Audit Planning

#### COMMITTEE PROCESS

1. The Audit Committee (“the Committee”) met on November 8, 2007. Committee members in attendance were: Beth Symes (c.), Marshall Crowe, Ab Chahbar, Vern Krishna and Ross Murray.
2. Staff in attendance were Wendy Tysall, Fred Grady and Brenda Albuquerque Boutilier. Also in attendance were Akhil Wagh from LawPro, and auditors from Deloitte & Touche LLP, David Ross, Paula Jesty and Sam Persaud.

#### FOR INFORMATION

#### GENERAL FUND – FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2007

3. The Audit Committee recommends the financial statements for the General Fund for the third quarter of 2007 be received by Convocation for information.

General Fund  
Financial Statement Highlights  
For the nine months ended September 30, 2007

4. At the end of September, the Society’s General Fund has a surplus of \$194,000 and an accumulated fund balance of \$37.2 million. A surplus of approximately \$1 million is expected in the Unrestricted Fund at the end of the year. In the approved budget for 2007, expenses of the Unrestricted Fund were projected to exceed revenues by \$500,000.

#### Accounting Standards Change – Financial Instruments

5. The Canadian Institute of Chartered Accountants introduced a new accounting standard for reporting financial instruments applicable for the first time this year. Under this requirement, the Fund’s portfolio investments are reported at fair (market) value.
6. As required by this standard, we reviewed the nature and intent of the long-term investment portfolio held and classified the investments as “held for trading”. The former Audit Sub-Committee approved this classification in December 2006. This classification method appropriately discloses the Law Society’s resources and funds available for distribution.

7. Selection of the held for trading classification requires that all gains and losses, realized or unrealized, be reported as income of the period. As a transitional step, accumulated unrealized gains of \$254,000 as at January 1, 2007 are reported on the Statement of Changes in Fund Balances.

#### Paralegal Fund

8. Convocation approved the paralegal start-up budget in February 2007. The budget projected a deficit in the fund of \$2.4 million at the end of 2007. This deficit was expected to be reduced to \$1.5 million in the first quarter of 2008 with the collection of examination fees from grandparent and transitional applicants writing the exam in first quarter of 2008. Convocation approved funding of this deficit from the Society's cash reserves with recovery from paralegal licensees over a number of years, yet to be determined.
9. At October 31, 2007, the submission deadline for grandparent and transitional applicants, it appears that the number of successful applicants will exceed 2,000, exceeding the conservative estimate used in initial financial projections by approximately 800. This significantly improves the start-up financing for paralegals compared to the paralegal start up budget approved by Convocation in February 2007.
10. As set out in the Statement of Changes in Fund Balances, a separate fund to track activity related to paralegal regulation has been set up. In the first three quarters of 2007, a net amount of \$529,000 was spent, primarily on paralegal exam development. Given the relatively late approval of the budget in February, spending is behind budget. Spending will accelerate through the balance of the year as implementation progresses.

#### Balance Sheet

11. Cash and short-term investments, accounts receivable, prepaid expenses and accounts payable and accrued liabilities comprise the working capital of the General Fund and total \$20.1 million (2006: \$17.9 million). Accounts receivable are for the most part lawyers' annual fees that are paid as part of the monthly installment plan and amounts due from the Compensation Fund. Accounts payable and accrued liabilities have decreased by \$1 million to \$3.3 million as a result of the payment or elimination of litigation provisions reported in 2006.
12. In 2007, portfolio investments are shown at market value compared to valuation at cost in 2006. Portfolio investments at September 30, 2007 are shown at market value of \$11.3 million (cost: \$11.3 million). Portfolio investments at September 30, 2006 are shown at a cost of \$10.7 million (market: \$10.8 million).
13. Deferred revenue of \$13.2 million is comprised largely of lawyers' fees billed but not yet earned and licensing process fees billed but not yet earned.

## Revenues and Expenses

14. Annual lawyer fee revenue is recognized on a monthly basis. Lawyers' fees have increased from \$30.2 million in 2006 to \$33.3 million in 2007 with an increase of approximately 750 lawyers and a fee increase of \$92 per lawyer, or seven percent.
15. Other income has increased approximately \$1.2 million over 2006, primarily attributable to the \$1.2 million in funding for CanLII expenses from the Law Foundation as part of the settlement of the Ottawa building grant. In the Statement of Changes in Fund Balances, this amount has been transferred to the Capital Allocation Fund to more accurately reflect the impact of the sale of the Ottawa building which initiated the CanLII transaction.
16. Investment income for the nine months is analyzed below:

Interest received	\$1,109,000
Realized gains	\$114,000
Unrealized loss	(\$251,000)
Excess investment income transferred from the E&O Insurance Fund	<u>\$2,438,000</u>
Total	<u>\$3,410,000</u>

17. It should be noted that the unrealized loss is reducing the \$254,000 gain accounted for at the beginning of the year, to bring the portfolio investments to market value at that time.
18. Overall, expenses are tracking close to 2006 with a few exceptions.
  - o At the end of September, professional development and competence expenses are less than for the same period in 2006 (\$10.8 million versus \$10.9 million). An analysis of expenditures is set out in the actual-to-budget narration.
  - o Actual regulatory expenses for 2007, year-to-date of \$11.0 million are higher than the same period in 2006 by \$1.3 million. The most significant component of this increase is counsel fees. Outside counsel fees to the end of September are \$1.4 million compared to the annual budget of \$950,000.
19. The Regulatory division is projecting that outside counsel will cost approximately \$1.5 million by year end. This is significantly more than the \$950,000 budgeted. The projected cost of outside counsel this year is generally attributable to a number of sensitive or unusual matters, including the following:
  - The use of experts on mortgage fraud cases
  - Potentially high profile matters involving complex issues where our staff lack the requisite resources
  - Matters in which court intervention has been required in order to facilitate a proper Law Society investigation.
  - Highly contested unauthorized practice matters

- Some matters assigned to outside counsel deemed especially significant to our role as a regulator.
20. Administrative expenses are \$500,000 more than the same period in 2006 largely because of increased spending on information systems, recruitment and training costs.
  21. Other expenses are \$471,000 more than the same period in 2006 largely because of new spending on the Law Commission of Ontario (\$100,000) and increased spending on benchers remuneration and expenses (\$100,000) and CanLII (\$170,000). The 2007 annual budget incorporated an increase in funding of \$240,000 for CanLII.
  22. Capital allocation fund expenses have increased from \$1.7 million in 2006 to \$2.4 million in 2007, reflecting the repayment of the LFO grant for the Ottawa building.

#### Changes in Fund Balances

23. The new disclosure requirements relating to financial instruments are being implemented in 2007. This means unrealized gains on investments at the beginning of 2007 of \$254,000 are separately identified on the Statement of Changes in Fund Balances and portfolio investments are shown at market value on the Balance Sheet. Changes in unrealized gains / losses during 2007 will be included in investment income.
24. The capital allocation fund balance has increased from \$3.5 million to \$4.2 million during the year reflecting a transfer of \$1.2 million from the Unrestricted Fund resulting from the sale of the Ottawa property.
25. The county library fund holds funds collected from lawyers' annual fees for transfer to Library Co for county library purposes. The fund shows a small deficit for the period of \$63,000.
26. The repayable allowance fund has made loans to students based on need in the total amount of \$77,000 to 28 students (2006: \$88,000 to 33 students).

#### FOR INFORMATION

#### COMPENSATION FUND - FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2007

35. The Audit Committee recommends the financial statements for the Compensation Fund for the third quarter of 2007 be received by Convocation for information.

Compensation Fund  
Financial Statement Highlights  
For the nine months ended September 30, 2007

36. The first three quarters of 2007 have been completed and the financial position of the Compensation Fund ("the Fund") remains strong. The Fund's Financial Statements for

the nine months ended September 30, 2007 identify a surplus of \$1.4 million for the period compared to \$1.7 million for the same period in 2006. This change is attributable to a relatively low level of claims paid of \$1 million, the downward revision of the Reserve for Unpaid Grants of \$540,000 since the beginning of the year and recoveries of \$392,000 during the year. The reduction in the Reserve is attributable to a number of files being closed without grants being paid in the quarter.

37. The Fund balance at the end of September 2007 is \$21.9 million compared to \$19.6 million at the same time last year and \$21.1 million at June 30, 2007.

#### Accounting Standards Change – Financial Instruments

38. The Canadian Institute of Chartered Accountants introduced a new accounting standard for reporting financial instruments applicable for the first time this year. Under this requirement, the Fund's portfolio investments are reported at fair (market) value.
39. As required by this standard, we reviewed the nature and intent of the long-term investments held and classified them as "held for trading". The Audit Sub-Committee approved this classification in December 2006. This classification method most appropriately discloses the results of the Fund's long-term transaction investments.
40. Selection of the held for trading classification requires that all gains and losses, realized or unrealized, be reported as income of the period. As a transitional step, accumulated unrealized gains of \$1.2 million as at January 1, 2007 are reported in the change in fund balance section of the Statement of Revenues and Expenses and Change in Fund Balance.

#### Balance Sheet

41. The Fund's balance sheet remains strong with total assets in excess of \$32 million and liabilities (including the Reserve for Unpaid Grants) of \$10.7 million.
42. Current liabilities have decreased from \$1.2 million to \$403,000 because of fluctuations in the amount due to the General Fund. Deferred revenues of \$1.6 million represent lawyer's fees billed but not yet recognized as income.
43. The combination of the Fund's short-term and long-term investments is stable at just over \$32.3 million (\$7.3 million + \$25 million). The market value of the portfolio investments exceeds book value by \$345,000, reduced from the \$908,000 at the same time in 2006.
44. The Reserve for Unpaid Grants is \$8.7 million compared to the \$8.3 million reported at the same time in 2006. However this is a \$540,000 reduction from the end of 2006 as a number of claims files have been closed during the year without grants being made. The Society's actuary reviewed the Fund's Reserve for Unpaid Grants and his report is attached.

## Statement of Revenues And Expenses and Change in Fund Balance

45. Fee revenues of \$4.7 million are nominally higher than 2006 due to equivalent full fee paying lawyers increasing by 750. Annualized fee revenue for the Fund will approximate the budget of \$6.4 million.
46. Investment income has decreased from \$850,000 to \$439,000 primarily because of unrealized losses since the beginning of the year. The components of investment income are:

Interest received	\$915,000
Realized gains	\$345,000
Unrealized loss	<u>(\$821,000)</u>
Total	<u>\$439,000</u>

47. It should be noted that the unrealized loss is reducing the \$1.2 million gain accounted for at the beginning of the year to bring the portfolio investments to market value in compliance with the new accounting standards for financial instruments.
48. Grants paid of \$1.1 million are significantly less than the \$3.6 million paid in the first three quarters of 2006 as some relatively large losses, previously reserved, worked their way through the system last year. Reductions in the Reserve for Unpaid Claims combined with these incurred claims means the net grants expense is relatively constant (low) from year to year.
49. Recoveries of \$392,000 are much lower than last year. Recoveries of \$968,000 were unusually significant in the first three quarters of 2006. Recoveries do not follow consistent sources or patterns.
50. The Fund's share of investigation, discipline and administrative expenses allocated from the unrestricted fund has increased from \$819,000 to \$936,000 year on year, in line with the increases in these activities approved in the 2007 budget.

## FOR INFORMATION

## LAWPRO FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2007

51. The Audit Committee recommends the second quarter combined financial statements for the Errors & Omissions Insurance Fund and the financial statements for Lawyers' Professional Indemnity Company be received by Convocation for information.

## INVESTMENT COMPLIANCE REPORTS – AT SEPTEMBER 30, 2007

## FOR INFORMATION

## STATEMENT OF COMPLIANCE – SHORT-TERM PORTFOLIO

52. The Audit Committee recommends the short-term investment compliance reports for the third quarter be received by Convocation for information.

INVESTMENT COMPLIANCE REPORTS

FOR INFORMATION  
STATEMENT OF COMPLIANCE – LONG-TERM PORTFOLIO

53. The Audit Committee recommends the long-term investment compliance reports for the third quarter be received by Convocation for information.

FOR INFORMATION

COMPLIANCE REPORT – GENERAL FUND AND COMPENSATION FUND - FOYSTON,  
GORDON & PAYNE

54. The Audit Committee recommends the long-term investment compliance reports from our investment managers for the third quarter be received by Convocation for information.

FOR INFORMATION

AUDIT PLANNING

61. Ms. Paula Jesty, Mr. David Ross and Mr. Sam Persaud, auditors, Deloitte & Touche LLP communicated with the Audit Committee on planning for the audit for the 2007 financial year which ends on December 31. The Committee reviewed the audit plan and associated fees.

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

- (1) Copies of The Law Society of Upper Canada General Fund Statements. (pages 12 – 14)
- (2) Copies of The Law Society of Upper Canada Compensation Fund Statements. (pages 21 – 22)
- (3) Copy of the Lawyers' Professional Indemnity Company Report to the Audit Committee dated November 8, 2007. (pages 24 – 42)
- (4) Copy of the Statement of Investment Compliance Short Term as at September 30, 2007. (page 44)
- (5) Copy of the Statement of Investment Compliance Long-Term as at September 30, 2007.

(page 46)

- (6) Copies of the Law Society of Upper Canada General Fund Compliance Report (Period ending September 30, 2007).

(pages 48 and 49)

.....

IN CAMERA

.....

**IN CAMERA Content Has Been Removed**

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

*REPORT FOR INFORMATION ONLY*  
HERITAGE COMMITTEE REPORT

- Sole and Small Firm Practitioners' History Project

Report to Convocation  
November 22, 2007

---

Heritage Committee

Committee Members  
Constance Backhouse (Chair)  
Gary Lloyd Gottlieb (Vice-Chair)  
Robert Aaron  
Patrick Furlong  
Allan Lawrence  
Laura Legge

Purposes of Report: Information

Prepared by the Policy Secretariat  
(Sophia Sperdakos 416-947-5209)

## COMMITTEE PROCESS

1. The Committee met on November 8, 2007. Committee members Constance Backhouse (Chair), Gary Lloyd Gottlieb (Vice Chair), Allan Lawrence and Laura Legge attended. Staff members Terry Knott, Susan Lewthwaite and Sophia Sperdakos also attended.

## INFORMATION

### SOLE AND SMALL FIRM PRACTITIONERS' HISTORY PROJECT

2. In September 2004, Convocation approved funding in the amount of \$33,548.32 for a Sole and Small Firm Practitioner History Project. The goal of the project was to encourage sole and small firm lawyers from diverse communities throughout the

- province who were recently retired or contemplating retirement to write their memoirs and donate their work, in whatever form, to the Law Society's Archives.
3. The Heritage Community undertook to communicate the project to the bar at large and sent information to,
    - a. legal organizations throughout the province to request that they advise their members of the project;
    - b. regional benchers for communication within their regions;
    - c. lawyers over 65 years of age;
    - d. law libraries for posting; and
    - e. specific individuals whose names had been provided to the Committee as possibly interested in writing their memoirs.
  4. To assist those who might wish to write their memoirs the Committee also developed some supporting information on,
    - a. writing autobiography (Appendix 1); and
    - b. background information available in the Archives and other departments of the Law Society (Appendix 2).
  5. The Ontario Lawyers Gazette publicized the project and the Law Society's web site contains a link for information on the project. This can be accessed by going to <http://www.lsuc.on.ca/about>, clicking first on the "history" link and then the link entitled "Heritage Committee's History Project."
  6. Historian Christopher Moore wrote an article for the Law Times about the project, a copy of which is attached at Appendix 3.
  7. Between June 2005 and October 2007 the Heritage Committee held four seminars with groups of lawyers interested in the project. The seminars have taken place in Toronto (June 2005), Ottawa (November 2005), London (September 2006) and Sudbury (October 2007). The meeting in Toronto was held at the Law Society. Then Treasurer George Hunter, James Caskey and Carol Hartman each offered space in their law firms for the meetings to be held.
  8. The list of participants is set out at Appendix 4. These were lawyers who had responded with interest to the Law Society's invitation to participate. They were at varying stages of their careers – some retired or considering retirement; others contemplating writing the biography of a relative; others contemplating the project for the future. Three of the four seminars were audio-taped and the tapes placed in the Law Society Archives.
  9. At each seminar the Chair of the Heritage Committee, Constance Backhouse, thanked the participants for coming, described the importance of history to future generations and the central role their experiences play in that history. Participants were encouraged at the outset of the seminar to talk about their background, provide information on why they chose to study law, and give a thumbnail sketch of their career. In the course of this

introductory segment, the individual narrations inevitably led to sharing of similar experiences, stories about other lawyers in the communities known to some or all of the participants, and general reminiscences about the joys and difficulties of practice.

10. The seminars offered a rich portrait of the practice of law in Ontario spanning eight decades. Across the four locations and the experiences of 38 lawyers the stories were remarkably similar, yet with important differences that were specific to each location. The participants reflected on a wide range of topics including, but by no means limited to,
  - a. their early lives and the reasons for which they sought a career in law;
  - b. their experiences at Osgoode Hall during the course of their legal education;
  - c. early days of practice and earning a living;
  - d. the war years;
  - e. the physical set up of offices and the typical equipment;
  - f. the informality of practice and the importance of individual integrity to building a place in the legal and wider community;
  - g. the camaraderie of practice;
  - h. the slow introduction of women into the profession, as well as members of racialized and other communities and Aboriginals;
  - i. the changes that have taken place in practice over the decades; and
  - j. their place in the communities in which they practised and life in those communities.
11. All the participants were consistent in their assertion that their stories were ordinary and of little consequence. All were wrong in their assessment. They collectively wove rich and colourful tales of their own lives and of the profession in which they have made a living for decades.
12. With these stories as an underpinning, at three of the four seminars a speaker with experience with oral history or memoir writing offered tips to the participants on how to get started and how not to get bogged down in the process. These speakers were,
  - a. Caroline Forcier Holloway, Library and Archives Canada;
  - b. Dora Nipp, historian, film-maker, lawyer and volunteer CEO of the Multicultural History Society of Ontario;
  - c. Dr. Lillian Petroff, Coordinator of Community Relations for the Multicultural History Society of Ontario; and
  - d. Patricia Skidmore, Chair of the Canadian Oral History Association.

13. Law Society staff provided some examples of the different types of contributions participants have made to the project, including,
  - a. a full memoir (over 180 pages), bound and presented to the Archives;
  - b. multi-page outline of life and career history;
  - c. scrapbooks of newspaper clippings and other memorabilia, loaned to Archives for copying and then returned;
  - d. article about life as a student-at-law in the 1950s;
  - e. draft chapters on which the author has sought and received feedback - work in progress;
  - f. interview transcript and memorabilia;
  - g. face to face interview and notes;
  - h. obituaries participants have provided of their contemporaries;
  - i. already published articles on aspects of practice and various legal communities throughout the province; and
  - j. plans for a law firm history.
14. The project funds also made it possible to retain an oral historian to interview a member of the profession who is in her late 90s and who provided a detailed portrait of practice. The transcript of these interviews will be housed in the Archives department.
15. With the completion of the fourth seminar in Sudbury, the formal part of the project has now been completed. The project has come in under budget, having cost approximately \$20,000 (\$13,000 under budget).
16. There will continue to be publicity encouraging the writing of memoirs. In particular, members who advise the Law Society that they intend to retire will now receive information about the memoir project, encouraging them to participate by writing their memoir or contributing photographs or other memorabilia to the Law Society Archives.
17. The legal profession in Ontario has a rich and complex history. Professional legal historians play a significant role in capturing that history, but individual lawyers have a unique perspective that comes from having lived and practised and worked in the profession in decades past. The Heritage Committee hopes that in a small way this project has opened a door to capturing that perspective.
18. The Committee is also of the view that further projects such as this are worth exploring to capture the richly textured nature of the profession. For example, as the profession becomes increasingly diverse, the history of those individuals who were early representatives of their communities in the profession should be captured for all. The Committee hopes to continue its success in pursuing the profession's worthy past.

## APPENDIX 1

## WRITING AUTOBIOGRAPHY

SUGGESTED AREAS FOR DISCUSSION <sup>1</sup>

An autobiography is an intensely personal recollection, the nature of which will differ from writer to writer. There is no “correct” way in which to write a memoir. At the same time, however, it may assist you to be able to consult a guide of suggested topic areas, when considering how to begin and how to focus your recollections.

Do not feel you have to use this guide or, if you do use it, follow it completely.

It is not intended that you write this memoir as a question and answer document addressing the topics set out below. The best autobiographies are first and foremost stories. Infuse into your memoir the life you have led and the experiences that are important to you. Give the memoir whatever focus and emphasis you believe best characterizes your story. You may only want to write about an aspect of your career or you may want to address its full range and span.

This is your project, your recollection, your opportunity to reflect on your career and the role you played in your community. Above all, have fun! This should be a challenging, but enjoyable project.

The Law Society Archives will benefit from your stories, for each is part of the rich history of the legal profession in Ontario, dating back to 1797.

## POSSIBLE TOPICS AREAS TO GUIDE YOU

## GENERAL

- Family origins: ancestors, parents’ backgrounds, siblings, politics, occupations, household, meals, religion, leisure
- Childhood and youth: leisure, summer and part-time work, elementary and high school, university
- Relationships; children

## CAREER

Decision to become a lawyer/education

- Recollections of how and when you decided to become a lawyer
- Did you face any barriers to becoming a lawyer?
- Influences on the decision

---

<sup>1</sup> Prepared by Sophia Spurdakos, policy counsel

- Reflections on the choices made
- Legal education; articling
- Nature of your educational experience; relationship with principal and firm
- Experience attending Osgoode Hall (as the law school)

#### Type of practice

- Choice of law
- Choice of practice structure
- Why those choices?
- Did you remain in the same practice structure throughout your career or change? (private practice, government, other; small firm/large firm)
- What were the challenges your practice structure or area of practice presented?
- How did practice change over the decades of your career?
- Did you use your legal education to work in a field other than private practice? How did your legal background assist you?
- If you were not in private practice why did you choose another type of legal job? (e.g. education; government)

#### Physical Nature of your Practice

- Type and location of office
- Support staff
- Equipment and Technology
- Costs of running the practice – how did that change?

#### Clients

- Who were your clients? (individuals, businesses, government, legally aided clients)
- Did you serve a particular demographic community?
- What did you observe about your clients over the years? How did they view you? How did they view the legal profession generally? Was it satisfying to represent them?

- If you were in government, how did the nature of that work, or the way you were instructed, change over the years?

#### Professional and Other Associations

- To what professional and other associations did you belong?
- Were these important to your career; to your life? How?

#### Context in which you practised

- How did the state of the world affect your practice/work decisions at various times? (e.g. war, depression, changing societal values; changing community structures)
- Did you experience any specific challenges to your right to work as a lawyer?

#### Image of the Legal Profession

- How has the image of the legal profession changed since you began practising law?
- Has it been important to you to be a member of a self-regulating profession?

### COMMUNITY

- Describe the place in which you practised. (urban/rural/smaller city)
- How has it changed over the years?
- What was the role of lawyers in the life of the city/town/community?
- How has that changed over the years?
- Do you have a sense of what role lawyers will play in the community in the future?

### REFLECTIONS

- What has being a lawyer meant to you?
- When you retired or as you think about retiring what are the images that come to mind about the decades as a lawyer?
- What were your most memorable files/cases? Why?
- What were the things you liked most about being a lawyer and about practice? The things you liked least?
- What has your being a lawyer meant to your family?

## RECORDS

- Do you have any photographs from your legal careers? Any awards? Memorabilia?
- Have you written anything before this? Do you still have a copy?
- Would you be interested in discussing donating material to the Law Society's archives?

## Appendix 2

Background Information Available at the Law Society<sup>2</sup>

## In Archives

Because the Law Society Archives contains records of past members and those participating in the Sole and Small Practitioners' History Project will still be members, the Archives will not likely have a great deal of useful information in its holdings on those writing their practice histories. Nevertheless, Archives will be able to supply the date of call of any member from 1797 to the present and may have additional biographical information.

Many members participating in the project will be descendants of lawyers, and Archives will be able to provide basic biographical information about those ancestors. That information might consist of: birth and death dates, call dates, and dates of K.C. and other appointments. Similar information can be obtained about lawyers who were colleagues of the participants.

Some members may wish to include reminiscences about their experiences at law school. To assist in reconstructing these accounts, Archives can supply lists of lawyers called to the Bar in the same year as the member.

Archives has graduating class photographs for most members who were called to the Bar between 1900 and 1967. Individual images can be ordered from the department.

Dates of the founding of county law associations can also be obtained from the Archives.

To access the Archives research service, contact Susan Lewthwaite at 416-947-3988 or by e-mail at <slewthwa@lsuc.on.ca>.

## In Membership Services

Member files are retained by the Membership Services Department. Members can access biographical information from their own member file by contacting the Member Resource Centre at <mrc@lsuc.on.ca>.

---

<sup>2</sup> Prepared by Susan Lewthwaite, Research Coordinator, Law Society Archives.

### At the Great Library

The Great Library Reference Room has a valuable collection of *Canada Law Lists* that date from the 1850s to the present. These annual publications provide the names and addresses of law firms both large and small. Members attempting to reconstruct their practice history or the practice histories of their ancestors or colleagues can consult these volumes in the Reference Room. Research assistance can be obtained by contacting Great Library Reference staff at 416-947-3315 or by filling out an e-reference request form on the Great Library Web site at [www.lsuc.on.ca/library/gl\\_ereference.jsp](http://www.lsuc.on.ca/library/gl_ereference.jsp).

### Other Information

Members attempting to consider their legal careers in a broader context will find Christopher Moore's *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997* a useful resource. The book can be consulted in the Great Library Reference Room or ordered from the Law Society's "E-Transactions" Web site (<http://ecom.lsuc.on.ca>). Click in "Gifts of Distinction" and then the tab "Etcetera").

Appendix 3

### Law Times

September 24, 2007

Take your place in legal history

What did you do in the law, dad (or mom)?

Few things in legal history are harder to track than things that seem most obvious at the time. What was it like practising law in a sole practice or in a small Ontario town in the 1960s, say? How did the lawyers get along? What was a big case or a big deal like?

At one point, everybody in the profession knew the answers. But that sort of thing never gets documented, and then . . . eventually those people are gone, and their experience of legal practice has gone with them.

The law society's heritage committee thinks there are lawyers willing to change that, and its legal memoirs project is trying to help. In recent months, interested lawyers have organized memoir seminars in Ottawa, London, and Sudbury, as well as Toronto, and the law society has been providing organizational help, pointers on memoir writing, and advice on oral-history interviewing.

"So often, we meet senior lawyers from small practices who say, 'I loved my work, but nothing I did was of historical interest.' That couldn't be further from the truth," says heritage committee chair Constance Backhouse of Ottawa. "Future generations will want to know what it was like to practice law in these settings, what the day-to-day experience was. As do many of us now."

The legal memoirs project is still in its infancy, but the committee can point to some promising examples. There's Kingston lawyer George Speal's 2002 memoir. Speal was Kingston's mayor when the city hosted the Olympic sailing events in 1976, and he can tell of spats with Jean Drapeau and the time Queen Elizabeth came to dinner. But he has stories of more routine law practice too.

A few notes saved from an admiralty law class at Osgoode Hall were all Speal had (or needed) years later when he found himself going down to Kingston harbour to arrest a ship. And he reports a newly called lawyer could expect to earn all of \$75 a month in a Kingston law firm in around 1959.

The project has also supported some oral history interviewing. After a family member contacted the legal memoirs project, historian Allison Kirk-Montgomery began interviewing a Hamilton female lawyer who was called to the bar in 1934. Other interviews will cover post-war practice in the Haliburton region.

Sophia Sperdakos, policy counsel at the Law Society of Upper Canada, has been helping out with the legal memoirs initiative. "They always say, 'I was just a typical lawyer, I didn't do anything historic.' But when they get to talking, the stories strike sparks every time." That's my experience too, and the stories are worth preserving. And you needn't be ancient: if you practised in the 1970s, you probably did lots of things that are hardly known today.

Working up a legal memoir needn't mean falling completely into anecdotage. To make a memoir more than just a retelling of favourite war stories, it might be worth reviewing the file or the case report to get dates and details.

Pointers? Here are five questions to which thoughtful answers remain rare and precious. Who was the best or top lawyer in the community (besides you, of course)? More important, why? What were the ingredients of successful practice, and did they change? Technology: Dictaphones, Selectrics, the first dedicated word processors, Quicklaw, all today's digital devices — how and when did all that change practice?

Clients: Who were they? Wills and house transfers? Mostly the local business community? How much court work? Did it change over time? What was most profitable? Most satisfying? Overheads: I heard a lawyer say that over several decades his overheads went from 35 per cent of revenues to 80 per cent. What was going on? How did a firm adjust?

What's an important question that would never occur to the bloody historian? Answer some questions like those, throw in your stories, let the law society archive it for you. Some 22 Century legal historian may yet celebrate your life.

There was a lawyer, long dead now, called Robert McLaughlin. In his day, he headed a substantial Bay St. firm and ran a trust company. No small career, but nowadays McLaughlin's chief claim to fame comes from the fact that in the 1880s, as a law student in Lindsay, he kept a diary that happened to be preserved. No famous cases, no royal visits, just the way that study and business and social life revolved around a small-town law office way back then. It is a rare description of lawyers in that era.

"As things pass into memory, what was most familiar becomes most precious."

The law society's legal memoirs web page can be found online ([www.lsuc.on.ca/about/a/history/heritage-committees-history-project/](http://www.lsuc.on.ca/about/a/history/heritage-committees-history-project/)). Or consult Sophia Sperdakos (This email address is being protected from spam bots, you need Javascript enabled to view it) about a memoirs workshop in your part of the province.

---

Christopher Moore is the author of several works in legal history. His website is [www.christophermoore.ca](http://www.christophermoore.ca)

## Appendix 4

## LIST OF PARTICIPANTS IN HISTORY SEMINARS

Toronto	Ottawa	London	Sudbury
David Bishop Mary Lou Dingle Aubrey Golden, Q.C. David Guyer F. A. Huckabone, Q.C. Kathleen Lickers Steven Lukinuk Donald Mann, Q.C. John Nelligan, Q.C., LSM The Honourable Maryka Omatsu Fred Porter, Q.C. Nicholas Pustina, Q.C. Donald Sayles George Speal, Q.C. James Wardlaw, Q.C., LSM The Honourable Jan van der Woerd	The Honourable Kenneth C. Binks, Q.C. The Honourable W. Dan Chilcott, Q.C. John Nelligan, Q.C., LSM E. Peter Newcombe, Q.C. James O'Grady Joseph E. Roach Wayne Spooner, Q.C. The Honourable John J. Urie, Q.C.	David G. Evans, Q.C. Gretta Grant, Q.C., LSM R.J. Lamon Jack. J. Lesser The Honourable Harry Momotiuk Daniel J. Murphy, Q.C. William Poole Paul Ross C. Owen Spettigue	Edward Conroy J.R. Jackabfy Tom Maki R. M. Swiddle Mary P. Weaver, Q.C. William Wilkins, Q.C.

CONVOCATION ROSE AT 12:50 P.M.

Confirmed in Convocation this 24<sup>th</sup> day of January, 2008.

Treasurer