

## MINUTES OF CONVOCATION

Thursday, 27<sup>th</sup> November, 2003  
9:00 a.m.

## PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Aaron, Alexander, Backhouse, Banack, Bourque, Campion, Carpenter-Gunn, Caskey, Cass, Chahbar, Cherniak, Coffey, Copeland, Dickson, Doyle, Dray, Ducharme, Eber, Feinstein, Filion, Finkelstein, Finlayson, Gottlieb, Harris, Heintzman, Hunter, Lawrence, MacKenzie, Manes, Martin, Millar, Murphy, Murray, Pattillo, Pawlitza, Potter, Robins, Ross, Ruby, St. Lewis, Silverstein, Simpson, Swaye, Symes, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick

The reporter was sworn.

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## IN PUBLIC

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TREASURER'S REMARKS

The Treasurer congratulated Tracey O'Donnell on the birth of her daughter Emma who is now one month old.

Congratulations were also extended to Robert Martin on his successful launch of two books and to Ab Chahbar who was re-elected a councillor in the City of London.

The Treasurer welcomed three students to Convocation from Heather Ross' Professional Responsibility course at the University of Western Ontario.

It was proposed by the Treasurer that written reasons from the hearing and appeal panels be delivered within 30 days upon conclusion of the matter. A list of those reasons that are outstanding for more than 30 days will be issued internally so that Benchers are aware of them.

The Treasurer advised that he and Mr. Ruby are discussing a process whereby the principles underlying the budget process can be discussed. He will report back to Convocation at a later date.

MOTION – APPOINTMENT TO GOVERNMENT RELATIONS & PUBLIC AFFAIRS COMMITTEE

It was moved by Mr. Caskey, seconded by Mr. MacKenzie that Bradley Wright be appointed to the Government Relations & Public Affairs Committee to replace Bob Aaron who has withdrawn from the Committee.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCETO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADAIN CONVOCATION ASSEMBLED

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

B.ADMINISTRATIONB.1. CALL TO THE BAR AND CERTIFICATE OF FITNESSB.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, November 27<sup>th</sup>, 2003:

Maria Luisa Abate	Bar Admission Course
Geoffrey Scott Allen	Bar Admission Course
Victor Yuk-Fai Au	Bar Admission Course
Natasha Bakht	Bar Admission Course
Karen Adele Beckett	Bar Admission Course
Kristen Elana Boon	Bar Admission Course
Eduardo Enrique Cisternas	Bar Admission Course
Saul Henry Cohen	Bar Admission Course
Peter Edwin Crofts	Bar Admission Course
Shiraz Kelly Gheyara	Bar Admission Course
Monique Marie Frances Higham	Bar Admission Course
Heather Antonia Arnotte Hinkson	Bar Admission Course
Beverly Kim Jacobs	Bar Admission Course
Thangavel Muthali Kesavan	Bar Admission Course
Jennifer Marion Kierans	Bar Admission Course
Bernard John King	Bar Admission Course
Jim Koumarelas	Bar Admission Course
Thérèse Marie Clémentine Laberge	Bar Admission Course
Joseph Michael John Toirdhealbhaic Langan	Bar Admission Course
Amélie Louise Marie Lavictoire	Bar Admission Course
Julie Anne Maclean	Bar Admission Course
Paul David Macneil	Bar Admission Course
Meysa Maleki-Yazdi	Bar Admission Course
Nancy Catarina McCormack	Bar Admission Course
Kathryn Marguerite McCulloch	Bar Admission Course
Melanie Dawn McNaught	Bar Admission Course
Emily Kathleen Morton	Bar Admission Course
Thuy Van Thy Ngo	Bar Admission Course
Carolyn Anne Noordegraaf	Bar Admission Course
Foluke Abimbola Ololade	Bar Admission Course
Jason Michael Pannu	Bar Admission Course
Nicole Paquet	Bar Admission Course
Charles Bruno Piroli	Bar Admission Course

Daniel William Puchniak	Bar Admission Course
Shazia Razzaque	Bar Admission Course
Maria Rossin	Bar Admission Course
Kelly Roberta Roulette	Bar Admission Course
Irina Daviana Ruth Berta Schnitzer	Bar Admission Course
Darcie Rana Sherman	Bar Admission Course
Dominique Durieux Smith	Bar Admission Course
Isabel Christina Stramwasser	Bar Admission Course
Stuart Glen Svonkin	Bar Admission Course
Dov Tal	Bar Admission Course
Mark Toufayan	Bar Admission Course
Suzana Lyla Vlaovic	Bar Admission Course
Eric Brian Ward	Bar Admission Course
Jeffery James Warwick	Bar Admission Course
Lorran Ferne Wiseman	Bar Admission Course
Jason Wolkove	Bar Admission Course
Dennis Yee	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examinations or the academic phases of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, November 27<sup>th</sup>, 2003:

Daniel Gogek	Province of Quebec
John Robert Kelly	Province of Quebec
Sophie Manuel	Province of Prince Edward Island
Roxanne Marie Porter	Province of New Brunswick

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

B.1.6. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, November 27<sup>th</sup>, 2003:

Joseph Augustine Bradford	Province of Alberta
Debbie Oy Chi Chan	Province of British Columbia
Natalie Ingeborg Cuk	Province of British Columbia
Paul Daniel Richard Fleming	Province of British Columbia
Naumaan Kazi Hameed	Province of Manitoba
Rebecca Rose Johnson	Province of Alberta
Mary Lou Jane McDonald	Province of Alberta
Sean Andrew Moreman	Province of Nova Scotia
Joel Jeffrey Oliphant	Province of Manitoba
Nicholas Owen Panther	Province of British Columbia
Donald Dwayne Short	Province of Alberta
Rana Pawinder Brar Thiara	Province of British Columbia
Janice Lynn Wattis	Province of British Columbia

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

B.1.8. The following member of an approved law faculty asks to be Called to the Bar and admitted as a solicitor on Thursday, November 27<sup>th</sup>, 2003, without examination, under sec. 5 of By-Law 11 made under the *Law Society Act*:

Edward Michael Iacobucci

Faculty of Law,  
University of Toronto

ALL OF WHICH is respectfully submitted

DATED this the 27<sup>th</sup> day of November, 2003

It was moved by Mr. Hunter, seconded by Mr. Cherniak that the Report of the Director of Professional Development & Competence, setting out the candidates for Call to the Bar, be approved.

Carried

CALL TO THE BAR (Convocation Hall)

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

Maria Luisa Abate	Bar Admission Course
Victor Yuk-Fai Au	Bar Admission Course
Natasha Bakht	Bar Admission Course
Karen Adele Beckett	Bar Admission Course
Kristen Elana Boon	Bar Admission Course
Eduardo Enrique Cisternas	Bar Admission Course
Saul Henry Cohen	Bar Admission Course
Peter Edwin Crofts	Bar Admission Course
Shirza Kelly Gheyara	Bar Admission Course
Monique Marie Frances Higham	Bar Admission Course
Heather Antonia Arnotte Hinkson	Bar Admission Course
Beverly Kim Jacobs	Bar Admission Course
Thangavel Muthali Kesavan	Bar Admission Course
Jennifer Marion Kierans	Bar Admission Course
Bernard John King	Bar Admission Course
Jim Koumarelas	Bar Admission Course
Thérèse Marie Clémentine Laberge	Bar Admission Course
Joseph Michael John Toirdhealbhac Langan	Bar Admission Course
Amélie Louise Marie Lavictoire	Bar Admission Course
Julie Anne Maclean	Bar Admission Course
Paul David Macneil	Bar Admission Course
Meysa Maleki-Yazdi	Bar Admission Course
Nancy Catarina McCormack	Bar Admission Course
Kathryn Marguerite McCulloch	Bar Admission Course
Melanie Dawn McNaught	Bar Admission Course
Emily Kathleen Morton	Bar Admission Course
Thuy Van Thy Ngo	Bar Admission Course
Carolyn Anne Noordegraaf	Bar Admission Course
Foluke Abimboa Ololade	Bar Admission Course
Jason Michael Pannu	Bar Admission Course

Nicole Paquet	Bar Admission Course
Charles Bruno Piroli	Bar Admission Course
Daniel William Puchniak	Bar Admission Course
Shazia Razzaque	Bar Admission Course
Maria Rossin	Bar Admission Course
Kelly Roberta Roulette	Bar Admission Course
Irina Daviana Ruth Berta Schnitzer	Bar Admission Course
Darcie Rana Sherman	Bar Admission Course
Dominique Durieux Smith	Bar Admission Course
Isabel Christina Stramwasser	Bar Admission Course
Stuart Glen Svonkin	Bar Admission Course
Dov Tal	Bar Admission Course
Mark Toufayan	Bar Admission Course
Suzana Lyla Vlaovic	Bar Admission Course
Eric Brian Ward	Bar Admission Course
Jeffery James Warwick	Bar Admission Course
Lorran Ferne Wiseman	Bar Admission Course
Jason Wolkove	Bar Admission Course
Dennis Yee	Bar Admission Course
Joseph Augustine Bradford	Transfer, Province of Alberta
Debbie Oy Chi Chan	Transfer, Province of British Columbia
Natalie Ingeborg Cuk	Transfer, Province of British Columbia
Paul Daniel Richard Fleming	Transfer, Province of British Columbia
Naumaan Kazi Hameed	Transfer, Province of Manitoba
Rebecca Rose Johnson	Transfer, Province of Alberta
Mary Lou Jane McDonald	Transfer, Province of Alberta
Sean Andrew Moreman	Transfer, Province of Nova Scotia
Joel Jeffrey Oliphant	Transfer, Province of Manitoba
Nicholas Owen Panther	Transfer, Province of British Columbia
Donald Dwayne Short	Transfer, Province of Alberta
Rana Pawinder Brar Thiara	Transfer, Province of British Columbia
Janice Lynn Wattis	Transfer, Province of British Columbia
Daniel Gogek	Transfer, Province of Quebec
John Robert Kelly	Transfer, Province of Quebec
Sophie Manuel	Transfer, Province of Prince Edward Island
Roxanne Marie Porter	Transfer, Province of New Brunswick
Edward Michael Iacobucci	Faculty of Law, University of Toronto

#### MOTION – DRAFT MINUTES OF CONVOCATION

It was moved by Mr. MacKenzie, seconded by Dr. Eber that the Draft Minutes of Convocation of July 8, 10, 15 and 17, 2003 and October 23, 2003 be confirmed.

Carried

#### REPORT OF THE ACCESS TO JUSTICE COMMITTEE

Mr. Robins presented the Report of the Access to Justice Committee to Convocation.

Access to Justice Committee  
November 27, 2003

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat  
Julia Bass 416 947 5228

## OVERVIEW OF POLICY ISSUE

### PRO BONO LAW ONTARIO PROPOSED CONFERENCE

#### Request to Convocation

1. The Committee requests Convocation's approval for the Law Society to support the proposed conference on *pro bono* to be organized by *Pro Bono Law Ontario*. This would involve permitting the Law Society's name to be used on conference materials and promoting the conference to members.

#### Summary of the Issue

2. The Law Society was a partner in the creation of Pro Bono Law Ontario, 'PBLO', and is represented on the PBLO board of directors. PBLO has requested the Law Society's support for a conference on *pro bono* to be held in 2004, with the objective of promoting *pro bono* legal service to the membership.
3. PBLO has sufficient budget to pay for the conference from existing Law Foundation of Ontario funding. It is not contemplated that the conference would involve any cost to the Law Society other than the insertion of advertisements on the *Ontario Reports* and the inclusion of materials on the conference in the mailing of the *Ontario Lawyers' Gazette*. These costs are nominal.

## THE REPORT

#### Terms of Reference/Committee Process

1. The Committee met on October 8th, 2003. Committee members in attendance were Marion Boyd (Chair), Andrea Alexander, Mary Louise Dickson, W. Paul Dray, Judith Potter and the Honourable Sydney Robins. Benchers Ab Chahbar also attended. The staff person in attendance was Julia Bass.
2. The Committee is reporting on the following matter:

#### Policy – For Decision

- Pro Bono Law Ontario Conference

### PRO BONO LAW ONTARIO CONFERENCE PROPOSAL

#### Background

3. The Law Society is a partner in PBLO and is represented on the PBLO board of directors.
4. A description of PBLO activities to date is attached at Appendix 1, and the most recent PBLO newsletter is attached at Appendix 2.
5. PBLO is proposing to hold a conference in 2004, to highlight its successes to date and to promote awareness of the role of *pro bono* in increasing access to justice. A draft of the conference programme is attached at Appendix 3.

#### Recommendation to Convocation

6. The Committee requests Convocation's approval for the Law Society to support the proposed conference on *pro bono* to be organized by *Pro Bono Law Ontario* in 2004. This would involve permitting the Law

Society's name to be used on conference materials and promoting the conference to members.

## FOR INFORMATION

### REPORT ON THE SYMPOSIUM ON ACCESS TO JUSTICE, MAY 28<sup>TH</sup>, 2003

7. The Law Society of Upper Canada presented a Symposium entitled " Access to Justice for a New Century ~ the Way Forward" at the Marriott Hotel Eaton Centre, Toronto, on Wednesday May 28<sup>th</sup>, 2003. The Access to Justice Committee reported to Convocation in June of this year on the successful conclusion of the Symposium.
8. The grant provided by the Law Foundation of Ontario for the Symposium was conditional on the publication of the proceedings, and an amount of \$50,000 was allocated by the Foundation to support the preparation, editing, production and distribution of the work. The volume is to be edited by the academic consultants retained for the Symposium, Professors Fred Zemans and Bill Bogart.
9. The committee is pleased to report that the high quality of the papers has enabled the editors to secure the interest of University of British Columbia Press in publishing the volume as part of their series on 'Law & Society'. (This is not expected to alter the required budget, although the allocation of the budget will change slightly. The Law Foundation has been consulted about this change and is in agreement). Work is now accordingly proceeding with a view to publication of the volume as early as possible in 2004.

Appendix 1

## Pro Bono Law Ontario Supporting & Promoting Pro Bono in Ontario PBLO Accomplishments 2002-2003

### History

When PBLO opened its doors in January 2002, there were no organized pro bono initiatives in Ontario , with the exception of a struggling Volunteer Lawyers Service (VLS) and the law school pro bono programs. As such, the first stage of our operations as a resource centre was to create viable pro bono projects.

PBLO developed a support plan to ensure that every project is delivered according to adequate professional standards. PBLO guarantees that projects will receive ongoing support, consultation and technical assistance tailored to individual project circumstances. The support plan also includes:

- *A Best Practices Manual for Pro Bono Delivery* – PBLO developed this 14 page manual that outlines key aspects of pro bono delivery and gives practical advice on areas ranging from designing and implementing projects to training volunteers, to quantifying outcomes and recognizing volunteers. The manual is so thorough that Pro Bono British Columbia used it as a model for its own version. In order to qualify as a BPLO registered project, project managers must commit to following *Best Practices*.
- *A computerized case management system* – PBLO has licensed rights to use Kemp's Case Works in Canada to facilitate case management for high volume pro bono service providers. The system, designed for staff and pro bono management in U.S. legal aid clinics, maintains accurate records of clients, volunteer lawyers, can complete eligibility and conflict checks and has a tickle letter and calendar system. It also tracks outcomes by result and main benefit.
- *A continuing legal education curriculum* – in order to volunteer for PBLO registered projects lawyers must be in good standing with the Law Society and be properly trained in the particular area of law. As such

PBLO helps fund and coordinate CLE's to train volunteers. PBLO has coordinated a "Nonprofits 101" CLE for Volunteer Lawyers Service volunteers, two education law programs for the Child Advocacy Project, a "Disability Primer" for ARCH's pro bono project, etc.

- *Outreach support* – Balancing outreach to both volunteers and clients is crucial to a project's success. As such, PBLO provides general outreach support to pro bono projects by developing strategic plans, materials such as pamphlets, posters and flyers and by assisting with press releases and medial relations.
- *Grant writing* – PBLO recognizes that a project cannot survive without a dedicated coordinator to manage day-to-day operations including conducting intake and screening, matching clients with volunteers, conducting on-going case management and trouble shooting. As such PBLO provides grant-writing services to support projects. For example in 2002, PBLO obtained one grant from the Ontario Trillium Foundation to provide 7 regional projects with \$25,000 seed money each. PBLO has also helped AIDWYC and ARCH obtain project funding.
- *A website* – In 2002 PBLO launched its website [www.probononet.on.ca](http://www.probononet.on.ca). The site currently relays information about PBLO registered projects as well as upcoming CLE's. PBLO is in the process of developing its interactive features so that volunteer lawyers can be matched to projects according to geographic location and practice area, and so prospective volunteers can obtain relevant CLE materials.

PBLO's project development strategy is to target specific populations – united by demographic factors such as ethnic background, geographic location, age, learning disabilities or HIV + status – and mobilize members of the private bar to provide tailored pro bono legal services to fill gaps in existing services. PBLO develops its projects according to two guiding principles:

1. The projects should all compliment, but never duplicate, services offered by Legal Aid Ontario.
2. The projects should all be community based and community driven.

Wherever possible, PBLO has involved the active participation of specialty and community legal clinics. In fact, of PBLO's 10 law firm initiatives, 4 have specialty clinics as active partners. Of the 7 regional projects, 5 are being coordinated by community legal clinics, and legal aid is also involved in 6 of the 9 independent projects.

To ensure that communities are actively involved in pro bono initiatives, PBLO has tried to include community groups in as many partnerships as possible. In 2002 PBLO was awarded a \$250,000 grant from the Ontario Trillium Foundation create local pro bono projects, and to provide training, support and \$25,000 seed money in order to create pro bono projects outside of the Greater Toronto Area. In seven cities local members of the judiciary, private bar, legal aid and community groups are working together to design and implement pro bono projects that will respond to local needs.

#### Incubation and Roll-outs

In the course of project development PBLO found that certain projects, such as South Asian Legal Clinic of Ontario (SALCO), VLS, TeamChild and the Child Advocacy Project (CAP) needed an "incubation" period. These projects required more intensive in-house management from PBLO: organizing and training the private bar, communications and outreach support, case management supports, and acquiring competent program coordinators and training them according to PBLO's *Best Practices Manual*. Most importantly, PBLO created partnerships with law firms, legal aid clinics and community groups to provide necessary infrastructure so that the projects could move away from intensive management and become self-sufficient members of a larger service provider environment. As such, PBLO is entering a "roll-out" phase at the close of 2003 marked by SALCO, VLS and TeamChild's official independent launch.

In the case of other projects, such as the law firm initiatives and the regional projects, where project partners with significant infrastructure are already in place, PBLO has assisted with creating pro bono mandates or governance bodies (law firm pro bono policies and pro bono committees). Pre-existing governance and partnership agreements mean that these projects can avoid a lengthy incubation phase and will all be independently managed once the nuts



and bolts of program structure are ironed out. Here PBLO's role more closely resembles its mandate to be a resource centre. Its function is limited to supervision, providing ongoing technical support and training to program managers and assisting in areas such as grant writing and communications.

#### Rolling Out PBLO Registered Projects – SALCO, VLS & TeamChild

South Asian Legal Clinic of Ontario (SALCO) Pro Bono Program:

##### *Clients served since January 1, 2003*

Direct legal services: 52  
Notarization clinics: 570  
Community legal education: 164  
Total: 786

For the past year and a half SALCO's pro bono initiative has been run out of PBLO offices and has been supported by Mehreen Raza, a PBLO employee whose time has been leveraged to support SALCO's pro bono operations. PBLO's role has been to provide support and incubation for the project until it could sustain itself. In August 2003, SALCO officially hired Raza (as a result of funding obtained by PBLO) as their Pro Bono Projects Manager. She has been on SALCO payroll as of September 1, 2003.

PBLO has monthly meetings with SALCO to ensure the pro bono project receives appropriate support and direction. PBLO also continues to provide outreach, case management and strategic guidance.

SALCO has also relocated to 2 Carleton St. & and is sharing space with the Ontario Council of Agencies serving Immigrants (OCASI).

Volunteer Lawyers Service:

##### *Clients served since January 1, 2003:*

Direct legal services: 53  
Community Legal Education: 93  
Total: 146

VLS is in the process of incorporating as an independent nonprofit organization. On September 3, 2003, Shanthi Weerasesera took over the duties of Project Coordinator for VLS. She is responsible for all the projects day-to-day operations and is being assisted by Lisa Cruji who acts as VLS's Project Facilitator. VLS will continue to be run out of PBLO.

PBLO will continue to provide strategic guidance and ensure that the organization receives appropriate support and direction.

TeamChild:

##### *Clients served since January 1, 2003:*

Participating in Wraparound pilot: 8  
Lawyers currently involved in wraparound: 3  
Total: 8

In June 2003, PBLO formalized its partnership agreement with Promoting Economic Activity and Community Health (PEACH) to include pro bono legal services as part of its Wraparound Project. The Wraparound concept is

adapted from a successful model developed by lawyers and community workers in Seattle. It provides holistic services for youth at-risk by creating tailored support teams composed of educators, social workers, relatives and lawyers. The lawyers work with the youth to identify legal issues (i.e. income maintenance, special education) and direct them to appropriate legal service providers. The lawyers are also available answer basic questions about legal rights and responsibilities and to be mentors to the youth.

On June 10, 2003 PBLO held a CLE training for CABL and other lawyers interested in volunteering with the program. The project is in its pilot phase (one year) and aims to enroll 10 children for intensive Wraparound services. To date, 8 children have been enrolled in the project and 3 of them have been assigned pro bono lawyers.

PBLO has been developing an educational pamphlet on the *Safe Schools Act* that will be handed out to students and parents at Westview Centennial School.

#### On-Going Incubation – CAP, Regional Projects, Law Firm Initiatives

Child Advocacy Project (CAP):

*Clients served since January 1, 2003:*

Direct Legal Services: 31  
Community Legal Education: 50-60  
Total: 81-91

Because CAP referrals cycle with the school year, there is general inactivity over the summer followed by spurts of activity at the start of new semesters (September/October) and during IPRC hearings (December/May). These cycles also influence requests for lawyers to speak to school groups. An August through September outreach campaign by PBLO, combined with eligibility rules drafted by PBLO, the Advocate's Society and Justice for Children and Youth resulted in a sharp rise in referrals. Currently, the CAP caseload is nearing capacity and the program is scheduling new trainings to recruit additional volunteer lawyers in:

- London
- Toronto
- Ottawa

CAP clients seeking assistance typically have moderate to severe disabilities including: autism, severe anxiety disorders, brain injury and combinations of ADHD and Asperger's, Cerebral Palsy, ADD, learning disabilities coupled with a sensory processing disability. The average client is 10 years old. At the stage we see clients, they are usually filing complaints with OHRC. The remainder of clients usually turns to the program when seeking assistance with mediating wrongful discipline cases.

#### Coordination

In September 2003 PBLO hired Nicole Kellow, as the Children's Projects Coordinator to ensure that CAP and projects like TeamChild will receive adequate attention. Nicole is a non-lawyer, but has training as a legal assistant and law clerk. Her work at a firm handling human rights law and civil litigation involved various aspects of client intake and screening. She is more than competent to handle client intake and screening for the CAP project. Her presence has helped streamline the intake and referral structure of the program. (Previously intake was conducted solely by JFCY, and referrals were coordinated through PBLO).

#### Rollout

As part of the PBLO Regional Access to Justice Project, two communities have opted to adopt a local CAP program for their specific projects. Both projects will be coordinated out of local legal aid clinics – Community Legal Clinic

(Simcoe Haliburton, Kawartha Lakes) and the Hamilton Mountain Legal Clinics. Both projects are keen to partner with Advocate's Society members in their communities.

#### Regional Projects:

In 2002 PBLO received a \$250,000 grant from the Trillium Foundation to facilitate provincial pro bono programming. Included in this grant is \$25,000 seed money to help establish a regional pro bono project in seven areas outside Toronto. The terms are as follows:

- The funds will be allocated for the 1<sup>st</sup> year of the project's existence. The year is determined by the project's launch and not the calendar or fiscal year. Thus if the project is launched on September 1, 2003, then funding will cover the period between September 1, 2003 and August 30, 2004.
- In order to receive funds, each project must be designated as a registered Pro Bono Law Ontario project and commit to the following:
  - Adopt PBLO's "Best Practices for Pro Bono Delivery"
  - Submit a one page annual report to PBLO indicating the number of clients served, the number of volunteer lawyers supporting the project, and (if applicable) the number of community legal education seminars held.
- A portion of the local funding, if not all of this funding, will be allocated to the salary of a Project Coordinator whose task will be organizing and implementing the project, conducting intake, screening and referrals as well as reporting to PBLO.

In October & November 2002 PBLO conducted needs assessments in seven cities across the province: Ottawa, Owen Sound, Thunder Bay, Sudbury, Hamilton, Barrie and Windsor. We conducted separate sessions for legal service providers and social service providers to understand the different legal needs of communities across the province.

On March 3, 2003 PBLO released its findings in our: *Phase II Access to Justice Project: In-depth Regional Report* (see attached). We also used the findings to identify leaders in the community – judiciary, benchers, law association presidents, legal clinic directors and representatives from community – who would agree to sit on pro bono committees. They have proposed different pro bono projects to meet the unmet legal needs in their communities, and PBLO is assisting each committee with implementing its regional project.

Northeast: On September 30, 2003 Lynn Burns and Yonit Fuhrmann traveled to Sault Ste. Marie for to meet with the Algoma Law Association and discuss plans for a regional project. PBLO will work with the Law Association and legal aid clinic to develop a pro bono project to increase resources available for youth with mental and behavioural difficulties. Pro bono services will involve supporting advocacy groups, direct advocacy services, and, where possible, discrete tasks.

Central West: On September 23, 2003 Lynn and Yonit met with the Central West Council in Newmarket to approve Community Legal Clinic, Simcoe, Haliburton, Kawartha Lakes' proposal to develop signature projects for barristers and solicitors. The barristers' project will focus on advocacy and representation for youth in the area of education law. The solicitors' project will focus on community economic development efforts such as assisting community organizations whose focus includes providing access to affordable housing and job creation as well as assisting micro-entrepreneurs in 'blighted' neighbourhoods. A CLE has been scheduled for November 28, 2003 and PBLO staff is working with CLC and area law associations to plan the event.

Southwest: In early September 2003, the Dean of the University of Windsor law school approved LAW's involvement in a regional project. PBLO has been working with Legal Assistance Windsor (LAW) to determine organizational needs and capacity in order to develop an effective implementation plan for the mentorship students to facilitate workshops at community agencies that specialize in settlement issues. Students, under lawyer supervision, will also represent clients on limited (5-25 hour) retainers. On October 29, 2003 Lynn & Yonit traveled

to Windsor to discuss the project and implementation plan. We are refining the project proposal and preparing it for distribution to Essex Law Association members.

Eastern: PBLO is working with the Carleton County Law Association to develop its community support project. In this project volunteer lawyers will facilitate workshops and provide pro bono representation on limited retainers for members of either the Somali or Cambodian community. On October 7, 2003 L. Burns met with CCLA members in Ottawa, who have endorsed the project. On December 4, 2003 Lynn and Yonit will meet with CCLA, legal aid and University of Ottawa representatives to discuss community outreach and coordination strategies. Lynn and Yonit have also scheduled another council meeting for the same date.

Eastern (2): In an effort to enhance service delivery in more rural parts of the region, Lynn and Yonit met with the staff of Hastings Prince Edward Legal Services (Belleville) on October 9, 2003. The clinic suggested a mutual-benefit skill-sharing project. In this project private bar members would form specialized pro bono panels to assist the clinic in matters they cannot cover. In exchange the clinic will act as a resource centre for the private bar for legal matters in which they have developed expertise. PBLO believes that it is important to consider pro bono and publicly funded legal services together. Much of what is good for one- -such as better ways to share expertise- -will also be good for the other.

Northwest: PBLO is working with the Northwest Council to develop a proposal for an ask-a-lawyer radio show. It was agreed that this is the most effective means of service delivery considering the size of the region relative to the number of lawyers available. CBC Radio for Northwestern Ontario has expressed interest in producing and carrying the show across the entire region. Dougall Media in Thunder Bay has also expressed interest in a radio show with a tie-in column in the Thunder Bay Post. We are developing a refined proposal for distribution to TBLA members.

Central South: On September 12, 2003 Lynn and Yonit met with clinic directors of Hamilton Community Legal Clinics to discuss their coordination of a regional project. The council has expressed interest in developing an advocacy and representation project for youth similar to the Central West project. In addition, the legal aid partners would like a solicitor's project that would provide wills and Power of Attorney assistance to low-income members of the community that are elderly, chronically or terminally ill. Lynn and Yonit will meet with the Council in Hamilton on November 20 to discuss the project and implementation plan.

#### Law Firm Initiatives:

On May 29, 2003 PBLO held its third Managing Partners Roundtable to discuss law firm pro bono policies and set the stage for implementing pro bono projects.

Osler's has formalized a partnership agreement with the HIV AIDS Legal Clinic of Ontario to provide the clinic with a full range of litigation support, including co-counselling with the clinic's two *Charter* cases.

Gowling's has formalized its agreement with Aboriginal Legal Services to create the Aboriginal Artists Support Services, a project that will utilize the firm's IP department to help aboriginal artists turn their art into livelihoods. The litigation department of Gowlings will also provide a full range of litigation support to the staff lawyers of ALS.

Blake's has agreed to partner with the Family Services Association, a United Way member agency whose mandate is to strengthen individuals and families in just and supportive communities. A meeting was held on September 29, 2003 to formalize the partnership and develop an implementation plan.

Hicks Morely has agreed in principle to support VLS with intensive consultation, legal education and direct representation services to nonprofits in the area of employment law. They are also considering board development initiatives.

McCarthy's is considering participating in a community economic development project that will be implemented in concert with the Regent Park redevelopment initiative. In addition, they are considering a program to support the Office of the Children's Lawyer to represent children detained in immigration matters.

Lynn has also been meeting with Faskens, BLG, Stikeman Elliot and Weir Foulds to develop law firm pro bono policies and signature firm projects.

Misc. Projects in Development – Court of Appeal, ARCH, Dickson Circle, DASEP, Freedom of Information Act Project and Office of the Children's Lawyer Projects, AIDWYC

Court of Appeal Project:

PBLO has developed a proposal and a committee to create a Court of Appeal Pro Bono Scheme. (See attached draft) PBLO will coordinate this in conjunction with the Advocates' Society and the large firms. The Advocates' Society will most likely coordinate the Project. David Stockwood and Lynn have drafted a formal proposal that will address issues of eligibility, screening, timing of referral, etc. PBLO is also going to develop a grant proposal to secure sufficient funding to dedicate an AS employee's time to project coordination.

ARCH:

In July 2003, PBLO helped ARCH secure funds from the Law Foundation to organize training materials and hold a CLE session on November 27, 2003 for the purpose of creating a panel of pro bono lawyers willing to take on cases in disability law. The CLE, which is the first in a series, will be held in Toronto, taped and broadcast in 4 additional cities. PBLO is assisting ARCH coordinate the CLE and conduct outreach and recruitment efforts.

Dickson Circle:

PBLO is working with Bryan Finlay to revitalize the Dickson Circle. PBLO brokered a relationship with the Community Legal Clinic of Simcoe, Haliburton, Kawartha Lakes who have a list of potential test cases that they wish to bring forward with the assistance of the Dickson Circle.

PBLO also arranged a meeting with the LAO Clinic Resource Office and the Dickson Circle will most likely be providing support to the Clinic Resource Office (CRO) as well. (See attached proposal)

DASEP:

In April 2003, Barbra Schlifer Commemorative Clinic, PBLO and New Directions were awarded a \$60,000 grant from the Attorney General's Domestic Violence Community Coordination Grant Program. Through the Domestic Abuse Survivors Empowerment Project (DASEP) PBLO and its partners will create an educational video, pamphlets and workshops geared towards survivors of domestic violence.

The materials are intended to provide basic legal education, clarifying the legal process to survivors and will give them the tools they will need to effectively communicate with their lawyers. The focal point of the project is a video that is being designed as a "best practices" for clients, and will be released in tandem with Schlifer Clinic's *Best Practices* manual for family law lawyers in spring 2004. DASEP is utilizing volunteer law students and recent grads to create a legal information directory for survivors of domestic abuse by cataloguing and evaluating materials from the federal and provincial government, community legal clinics, CLEO, Canadian Women's Federation, etc. In addition, volunteer lawyers will be recruited to provide community legal education workshops for survivors. Pre-production for the video is well underway, and PBLO has begun recruiting volunteers for the directory.

All products will be made available to women's shelters, legal clinics and doctor's offices and family law practitioners across the province.

Freedom of Information Act Project:

The Freedom of Information and Privacy Commission approached PBLO in the spring of 2003 with its concerns about unrepresented parties. Since then, PBLO has worked with the Commission to develop a pro bono project. A volunteer lawyer has agreed to coordinate the project, which will call upon wide spread law firm participation; and PBLO is working with her to organize a recruitment CLE scheduled for early 2004.

#### Office of the Children's Lawyer Projects:

PBLO has been meeting regularly with Clare Burns, of the Children's Lawyer; to discuss ways that PBLO can work with the Children's Lawyer's to increase its capacity to help children. The Children's Lawyer has indicated that it has been inundated with requests to assist orphaned children with property rights issues. The Children's Lawyer is also seeking assistance for approximately 150 detained children who are illegal immigrants. Lynn is developing project proposals and is negotiating with Weir Foulds and McCarthy's to form partnerships with the Children's Lawyer.

#### AIDWYC:

In June 2003, PBLO helped AIDWYC secure funding from the Law Foundation of Ontario for a much needed operations manager. For many years, AIDWYC's roster of dedicated volunteer lawyers has donated countless hours and out-of-pocket expenses in the aid of the wrongfully convicted. These efforts were recognized when PBLO awarded AIDWYC the *Distinguished Service Award* at the Law Society's Access to Justice Awards in May 2003.

PBLO's work on behalf of AIDWYC is typical of the support that we are designed to provide: fundraising, publicity, and building bridges across the profession and with the community. It is through these efforts that AIDWYC (and legal aid, for that matter can focus on its mandate – helping those in need.

DRAFT  
APPENDIX 3

#### Pro Bono Law Ontario First Province-Wide Pro Bono Conference

Date: May 6 –7, 2004

Two Day Conference with an Awards Dinner & Keynote Speaker

Potential Partners: Law Foundation of Ontario, Law Society of Upper Canada

Conference Name – Transforming Access to Justice, Building Partnerships to Increase Access to Justice

#### Subthemes:

- Developing a Pro Bono Culture
- Social Responsibility and Legal Practice
- Pro Bono Models in Ontario
- Global Perspectives on Access to Justice

#### Attendees:

- Pro Bono Providers
- Legal Clinic Lawyers
- Public Interest Lawyers
- Law Students
- Law Firms
- Corporate Lawyers
- Government Lawyers
- Judiciary
- Charitable/Nonprofit Community
- CDLPA
- Ontario Bar Association

## CONFERENCE PROGRAM

### Day One

- 8:45 AM: Registration
- 9:30 AM: Welcome – Raj Anand  
Opening remarks – The Hon. Roy McMurtry, Chief Justice of Ontario  
Treasurer Frank Marrocco
- 9:50 AM: Plenary 1: *Lawyers' Social Responsibility - Global Perspectives on Pro Bono*  
Moderator: Marion Boyd  
Speakers:  
Esther Lardent, The Pro Bono Institute, U.S.  
Prof. David Weisbrot, Law Reform Commission, Australia  
Lord Peter Goldsmith, Attorney General, U.K.
- 11:30 AM: Coffee Break
- 11:45 AM: Concurrent Workshops – Session 1

Best Practices for Pro Bono Delivery Moderator: Susan Ursel Yonit Fuhrmann Dan Pinnington	Best Practices for Law Firm Pro Bono Delivery Moderator: Paul Schabas Speakers: Jim Sandman, Brian Morgan, Esther Lardent, Lynn Burns	Leveraging Legal Resources for Community Economic Development Moderator: Michael Barrack Speakers: Terry Hunter. Susan Pigot, CED expert from NY, Ruby Lam
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- 1:00 PM: Lunch
- 2:15 PM: Plenary 2: *Effecting Positive Change in Our Communities: Pro Bono and Law Reform* –  
Moderator: Hon. S. Goudge  
Speakers: David Weisbrot, Brian Finley and/or Raj Anand, Terry Hunter
- 3:30 PM: Afternoon Tea
- 4:00 PM: Concurrent Workshops – Session 2

<u>Childrens' Projects</u> Moderator: Veronica Lacey Speakers: Clare Burns, Martha MacKinnon, Community Program Director, Greg Richards	Corporate Social Responsibility Moderator: Malcolm Heins Speakers: Rob Granatstein, Exec Dir of Imagine, Corporate sector, Jim Sandman	Meeting Rural and Regional Needs Moderator: Chief Roberta Jamieson Speakers: Pro Bono B.C., Yonit Fuhrmann, legal clinic partner, Tony Carfagnini/Clive Algie
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- 5:30 PM: Closing Session
- 7:00 PM: Conference Dinner

Ron Manes - Emcee  
Welcome: Raj Anand

Chief Justice presents Awards:

Music:

Keynote speaker: Attorney General Michael Bryant

Day 2:

9:00 AM: Plenary 3: *Pro Bono Culture in Ontario* – The Values of Ontario Lawyers Moderator: Raj Anand  
Speakers: Lynn Burns, Hon. Sid Linden, Hon. Stephen Goudge, Bill Bogart

10:40 AM: Coffee Break

11:00 AM: Concurrent Workshops – Session 3

Involving Pro Bono Students Moderator: Prof. Bill Bogart Speakers: Ron Daniels, Dean Queen's Law, Pam Shime, law firm interviewing committee person, Katie Wood, pro bono project coordinator	Pro Bono in the Clinic Context Moderator: Justice Stephen Goudge Speakers: Kimberly Murray, Michelle Leering, Terry Hunter, Hugh Tye, Matthew Cohen, Law Association Partner.	Law Firm Pro Bono Models Moderator: Michael Barrack Speakers: James Buchan, Laura Cooper, Esther Lardent, Brian Morgan	Community Needs and Pro Bono Legal Services Moderator: Ruth Carey Speakers: ALS and SALCO, ARCH(?), Ruby Lam, Paul Schabas
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12:30 PM: Wrap-up Session – History of PBLO and Future - Ron Manes.

1:00 PM: AGM Lunch

2:15 PM Members Meeting

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

(1) Copy of PBLO newsletter.

(Appendix 2, pages 16- 23)

It was moved by Mr. Robins, seconded by Mr. MacKenzie that Convocation approve the Law Society's support of the proposed conference on pro bono to be organized by *Pro Bono Ontario*, which would involve permitting the Law Society's name to be used on conference materials and promoting the conference to members.

Carried

REPORT OF THE TASK FORCE ON ELECTRONIC ACCESS TO COURT RECORDS

Mr. MacKenzie presented the Report of the Task Force on Electronic Access to Court Records to Convocation.



Task Force on Electronic Access to Court Records  
November 27, 2003

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Report to Convocation

Purpose of Report:            Decision

Prepared by the Policy Secretariat  
Julia Bass 416 947 5228

TASK FORCE ON ELECTRONIC ACCESS TO COURT RECORDS

1. Convocation appointed the Task Force on September 25<sup>th</sup>, 2003. The role of the Task Force was to review the discussion paper on 'Open Courts, Electronic Access to Court records and Privacy', prepared on behalf of the Judges Technology Advisory Committee of the Canadian Judicial Council, which had requested comments (see Appendix 1).
2. The Task Force members are: Gavin MacKenzie (Chair), Carole Curtis, Alan Gold, Dr Allan Gotlib and Professor Robert Martin.
3. The Task Force met three times, on October 14<sup>th</sup> and 27<sup>th</sup> and November 12<sup>th</sup>.
4. The discussion paper comes to 33 conclusions, which are attached at Appendix 2. The full report is available on the Canadian Judicial Council's website at <http://www.cjc-ccm.gc.ca/english/publications/OpenCourts-2-EN.pdf>
5. The Task Force recommends sending the attached submission to the Canadian Judicial Council (Appendix 3).
6. While comments were originally requested by October 15<sup>th</sup>, the Task Force has been in touch with the Canadian Judicial Council to extend the deadline. The end of November is acceptable.

APPENDIX 2

APPENDIX A

COMPENDIUM OF CONCLUSIONS

1. The right of the public to open courts is an important constitutional rule.
2. The right of an individual to privacy is a fundamental value.
3. The right to open courts generally outweighs the right to privacy.
4. There is disagreement about the nature of the exemptions to the general rule of openness.
5. "Open courts" includes both the right to be present in the courtroom as the proceedings are conducted and the right to access the court record and docket information upon which the judicial disposition was made.

6. While no court in Canada is now providing electronic access to court records, and the pace at which that capability is being introduced is unknown, such accessibility is nonetheless inevitable.
7. Electronic access to docket information is varied.
8. Access policies ought to be established before access is afforded.
9. There is inconsistency in the availability of reasons for decision in family law cases.
10. The Canadian Judicial Council has a leadership role to play in initiating discussions and debate about the development of electronic access policies.
11. Before establishing policies of access to electronic court records and to docket information, it is essential that the differences in access in the paper and electronic environments be considered.
12. It may be that there are broad areas of consensus of access between the paper and electronic environments, such as in civil matters, and that in, for example, family cases, access policies in the electronic medium should be different from access policies in the paper environment.
13. The purpose for which the court record was filed and the docket information was created is a factor to be considered in deciding who has access to all or part of the court record and docket information.
14. There may be little controversy about the accessibility of some of the contents of the court file, such as the information or indictment (in criminal matters) and pleadings (in non-criminal matters) and judicial work product (endorsements, orders and judgments).
15. There will likely be controversy about accessibility to most of the other documents and information contained in the court file.
16. There will be competing interests involved in establishing policies of accessibility.
17. Rules or policies as to accessibility out to take into consideration that there are trial and appellate courts for which consistent approaches may be desirable.
18. There is currently no consistent approach as to what is contained in docket information and with whom it is shared or to whom it is made available.
19. Statutes and rules of procedures which mandate the contents of documents ought to be examined to: (a) identify mandated forms which require early or excessive personal identifiers; (2) propose amendments to the forms to remove the need for the personal identifiers, postpone the filing of the personal identifiers until a disposition is sought, and or direct the filing of personal identifiers in a manner which would segregate it from the court file to which public access is given.
20. Statutes and rules of procedures which establish methods by which a litigant or a witness might request a publication ban, a sealing order, or an order for anonymization ought to be considered to determine whether they require amendments which would reflect the electronic medium.
21. The purpose for which bulk access is sought is crucial to a decision whether to afford access to all or part of court records and docket information.
22. The purposes for which media and commercial enterprises intend to use court records and docket information may conflict with the interests of the parties.
23. Access may be restricted, for example, by facilitating single searches only and prohibiting or limiting bulk searches.

24. The implications of electronic filing and electronic access on the tort of defamation should be considered.
25. There may be important issues of liability (a) if court records or docket information which is inaccessible by statute, regulation or order is wrongly made available; (b) if incorrect court records or docket information is made available; of (c) if correct information is given to an unauthorized person.
26. When software solutions are chosen, it will be necessary to ensure that vendors of the technology provide software which facilitates removal of data rather than inhibits it.
27. It may become necessary to differentiate between remote public access and on-site access.
28. In any events, on-site electronic access will be essential to ensure equality of treatment of various segments of the public.
29. Consideration ought to be given to what purpose would be served by tracking the identity of users, whether the court office should track the identity of users, and if so, how to track and whether and how to inform those who are tracked that their identity is being tracked.
30. If a decision is made to track or to have the option to track, vendors must supply software which facilitates it. Otherwise, the software will dictate the option.
31. The implications of the access policies on court records and docket information in existence prior to the implementation of the policy ought to be identified and considered.
32. Archiving and retention policies must be established.
33. Once access policies are established, there must be systems in place for communicating, applying and enforcing those policies.

### APPENDIX 3

#### SUBMISSION TO THE CANADIAN JUDICIAL COUNCIL ‘OPEN COURTS, ELECTRONIC ACCESS TO COURT RECORDS AND PRIVACY’

##### Introduction

1. The Law Society of Upper Canada appreciates the opportunity to comment on this important report and endorses the report's conclusions. The Law Society's comments are confined to emphasizing certain points and pointing out areas for further consideration.
2. As a general rule, the Law Society endorses the present primacy of the right to open courts over the right to privacy. Court records should be presumed to be public unless there is a valid reason for restricting access. The Law Society recognizes at the same time that exceptions to the general rule will be necessary to protect legitimate privacy interests. It is essential that electronic access policies not facilitate the exploitation of children or other vulnerable persons.

##### Different Access for Different Groups and Documents

3. In considering access, there is a need to break down the ‘public’ into different groups, which may deserve differing degrees of access. For example,
  - a. Judges;
  - b. Parties to the proceedings and their counsel;
  - c. Other lawyers;
  - d. Media;
  - e. General public;
  - f. Commercially interested parties.

4. It is also important to distinguish between different categories of documents, e.g.
  - a. Judgments and orders;
  - b. Pleadings;
  - c. Affidavits;
  - d. Exhibits;
  - e. Medical and financial reports.
5. There are also different means of electronic access possible, i.e.
  - a. On-site access, where persons would still have to attend at the court office;
  - b. Remote access, where a person could work from any computer workstation.
6. Regardless of the means of access under the preceding paragraph, there is also the important question of whether the database can be used for:
  - a. Access by identifying information (requiring the user to know information such as the file number or names of the parties);
  - b. Searchable access (where a person can specify a name, or a term such as 'psychiatrist's report' or 'sexual assault' and call up all instances of these names or terms without specifying a particular case).
7. These categories could be used to develop a matrix of differential levels of access for different users in different circumstances.

#### Judgments and Orders

8. The Law Society supports the widest access for judgments and orders. Only in very unusual circumstances should these be restricted.

#### Protection of Privacy Interests

9. Family law cases are particularly sensitive, but any case in which medical records are in evidence and certain commercial cases also raise sensitive privacy issues. At present all paper files are open unless ordered sealed.
10. Although most files are in theory accessible now, access is in fact limited by the requirement to attend at the court office and request the paper file. In this sense, the technology is not neutral, as making all files searchable on-line could produce a radically different result, depending on how it is implemented. For example, if files are searchable on-line from remote locations, it would permit 'fishing expeditions' that are not now possible.
11. For this reason the Law Society is of the opinion that limiting users to onsite access rather than remote access would be more consistent with the present practice.
12. In the case of sensitive material (such as psychiatric reports or reports of sexual abuse) it may be appropriate for the electronic file to indicate that a document exists, without disclosing its contents. In this way, those with a valid interest would be able to apply to receive the contents of the document. Such access could be limited by use of a login system requiring a password, or if necessary by application to the court. This approach would maintain the principle of openness without unnecessarily violating the privacy of innocent persons.
13. It may be appropriate to review how other public databases such as the records of drivers' licences, are treated for these purposes. This might provide useful guidance on a balanced approach.
14. As an example of a policy designed to protect the interests of vulnerable individuals, the Law Society has reviewed the QUICKLAW Case Name Indexing Manual.
15. Depending on the level of access provided, there may need to be a means whereby a lawyer can apply to protect certain information, in the same way that an application can now be brought to seal a file.

16. In the US, it has been suggested that lawyers be required to file two different versions of documents, a complete copy and one with certain identifying information removed. The Law Society does not support this approach. Such a policy would raise difficulties of implementation, and would in fact change the role of lawyers in litigation if they were required to delete certain information from the documents they file. There would also be a need for a mechanism to resolve disputes about the information to be deleted.
17. The increase in unrepresented litigants is a particular concern. Whatever system is adopted should ensure that such persons are not hindered in preparing their cases.
18. Commercial interests seeking access deserve less consideration, as they generally have better resources to obtain information, and their objectives are less fundamental to the value of open public access to the courts.
19. In some cases, it may be appropriate to charge user fees for access, e.g. commercial interests requesting bulk information for business purposes. Charging a fee could also generate information about those requesting access, which may be useful in modifying access policies in the future.
20. Hacking is a serious concern, as is the fear of identity theft. The proper investment in protective systems must be made to protect files that are not meant to be accessible.

#### Future Steps

21. The implementation of many of the recommendations in the report lies within jurisdiction of the provincial Attorneys General. We support the concern for a consistent national approach; this is not the case at the moment regarding paper files. The Law Society, and possibly the Federation of Law Societies of Canada, could play a role in supporting the implementation of an appropriate policy.
22. The Law Society of Upper Canada has a continuing interest in the accessibility of the court system as a fundamental aspect of access to justice and would appreciate an opportunity to be involved in further work on this important topic, as the Council and other stakeholders proceed to develop and implement the policies identified in the Council's report.

Respectfully submitted

THE LAW SOCIETY OF UPPER CANADA

November 27<sup>th</sup>, 2003

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

- (1) The Canadian Judicial Council's request for comments on their discussion paper re: 'Open Courts, Electronic Access to Court records and Privacy'.

(Appendix 1, page 3)

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the submission to the Canadian Judicial Council set out in Appendix 3 of the Report be approved.

Carried

Mr. MacKenzie thanked the members of the Committee and Julia Bass for the work they did.

EQUITY & ABORIGINAL ISSUES COMMITTEE/  
Comité sur l'équité et les affaires autochtones Report

Ms. St. Lewis presented the Report of the Equity & Aboriginal Issues Committee to Convocation.

Equity and Aboriginal Issues Committee/  
 Comité sur l'équité et les affaires autochtones  
 November 27, 2003

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Report to Convocation

Purpose of Report: Decision and information

Prepared by the Equity Initiatives Department  
 (Josée Bouchard; 416-947-3984)

OVERVIEW OF POLICY ISSUE

CREATION OF ALTERNATE DISCRIMINATION  
 AND HARASSMENT POSITION

Request to Convocation

1. That Convocation approve the following recommendations:
  - a. That the position of Alternate Discrimination Harassment Counsel (DHC) be created to assume the function of DHC when he or she is temporarily unable to fulfill his or her duties.
  - b. That the function of the Alternate DHC be that of the DHC, with the exception of the duty to provide semi-annual reports to the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.
  - c. That the Alternate DHC provide semi-annual reports to the standing committee of Convocation responsible for matters relating to equity and diversity only when the Alternate DHC assumes the function of the DHC for an uninterrupted period of more than six months.
  - d. That the Alternate DHC maintain statistical information relevant to the reporting function of the DHC and provide such statistical information to the DHC on request.
  - e. That the Alternate DHC be bound by the duty of confidentiality outlined in By-law 36.
  - f. That an appointment process for the Alternate DHC be adopted which provides that Convocation appoints to the position of Alternate DHC persons recommended by the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.
  - g. That, unless modified by Convocation, the Alternate DHC function on a fee-for-services basis at an hourly rate not to exceed \$175.00 and the funding level of the program be maintained at \$100,000.00.
  - h. That By-law 36, other relevant By-laws and the *Rules of Professional Conduct* be amended to reflect the recommendations adopted by Convocation in this report.

Summary of the Issue

2. In June 2001, Convocation approved the establishment of a permanent Discrimination and Harassment Counsel (DHC) program. This report addresses the pressing issue of establishing an Alternate DHC position and an appointment process for that position. Other issues relating to the improvement of the DHC program will be presented in a report to Convocation in 2004 that will include a thorough analysis of policy options and financial implications.

## THE REPORT

### Terms of Reference/Committee Process

3. The Committee met on November 10, 2003. Committee members in attendance were Joanne St. Lewis (Chair), Marion Boyd, Mary Louise Dickson, and William J. Simpson. Invited member in attendance was Katherine Hensel, Co-Chair of Rotiio<sup>></sup> taties Aboriginal Advisory Group. Staff members in attendance were Josée Bouchard, Margaret Froh and Heather MacDonnell.
4. The Committee is reporting on the following matters for decision:

#### Policy – for Decision

- Creation of Alternative Discrimination and Harassment position

#### For Information

- Demographic analysis of the Ontario legal profession based on the 2001 Canada Census
- Participation on the advisory committee of the CBA's project to develop equity audit tools for law firms
- Public Education Report

## CREATION OF ALTERNATE DISCRIMINATION AND HARASSMENT POSITION

### Background

5. In June 2001, Convocation approved the establishment of a permanent Discrimination and Harassment Counsel (DHC) program. By-law 36 – Discrimination and Harassment Counsel (the By-law - Appendix 1) provides that Convocation appoints the DHC, who holds office at the pleasure of Convocation. The By-law also requires the DHC to report to Convocation and defines the function of the position.
6. This report addresses the pressing issue of establishing an Alternate DHC position and an appointment process for that position. Other issues relating to the improvement of the DHC program will be presented in a report to Convocation in 2004 that will include a thorough analysis of policy options and financial implications.

### By-Law 36 Appointment Process

7. The By-law deals with most aspects of the DHC position, but does not create the Alternate DHC position and contains no mechanism for appointing an Alternate DHC. The ability to appoint an Alternate DHC is necessary to deal with circumstances where, for example, the DHC is temporarily unable to fulfill her or his duties. An Alternate DHC could also assume the duties of DHC when the DHC goes on vacation, is ill or when there is a conflict of interest with respect to a complaint (for example, if a complaint were made against a lawyer at the law firm where the DHC is a partner).
8. The importance of addressing this issue became manifest when the former DHC was appointed to the Bench. The By-law did not provide for the appointment of an Alternate DHC who would be bound by the duty of confidentiality imposed in the By-law. Consequently, there was no Alternate DHC to replace the DHC on a temporary basis and until the appointment of a new DHC. To avoid an undue interruption of services, Convocation appointed Cynthia Petersen on an interim basis without following the recruitment process outlined in the By-law. Cynthia Petersen was later appointed DHC in accordance with the By-law for a period of three years. The necessity to bypass the appointment process outlined in the By-law could have been avoided had an Alternate DHC process been available.

### Duty of Confidentiality

9. The main function of the DHC is to assist any person who believes she or he has been discriminated against or harassed by a member or student member. The Law Society recognizes that communications with the DHC must remain confidential. Therefore, the *Rules of Professional Conduct* have been amended to include a statement that the DHC will not be called by the Society or by any investigative committee to testify at any conduct, capacity, or competence hearing without the consent of the person from whom the information was received.<sup>1</sup>
10. The duty of confidentiality imposed on the DHC is outlined in the By-law under section 6:
  - (1) The Counsel shall not disclose,
    - (a) any information that comes to his or her knowledge as a result of the performance of his or her duties under clause 4 (1) (a); or
    - (b) any information that comes to his or her knowledge under subsection 4 (3) that a benchler, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12.
  - (2) For greater certainty, clause (1) (a) prevails over the Society's *Rules of Professional Conduct* to the extent that the *Rules* require the Counsel to disclose to the Society the information mentioned in clause (1) (a).
  - (3) Subsection (1) does not prohibit,
    - (a) disclosure required in connection with the administration of the Act, the regulations, the by-laws or the rules of practice and procedure;
    - (b) disclosure of information that is a matter of public record;
    - (c) disclosure of information where the Counsel has reasonable grounds to believe that there is an imminent risk to an identifiable individual or group of individuals of death, serious bodily harm or serious psychological harm that substantially interferes with the individual's or group's health or well-being and that the disclosure is necessary to prevent the death or harm;
    - (d) disclosure by the Counsel to his or her counsel; or
    - (e) disclosure with the written consent of all persons whose interest might reasonably be affected by the disclosure.
11. In order to fulfill the mandate of the DHC, an Alternate DHC would have to be bound by the duty of confidentiality imposed by the By-law and the *Rules of Professional Conduct*.

### Function of the Alternate DHC

12. The function of the DHC is outlined in section 4 of the By-law. It is the function of the DHC:
  - a. to assist any person who believes that he or she has been discriminated against or harassed by a member or student member;
  - b. to assist the Society, as required, to develop and conduct for members and student members information and educational programs relating to discrimination and harassment; and
  - c. to perform such other function as may be assigned to the DHC by Convocation.
13. The DHC is also required to present semi-annual reports to the standing committee of Convocation responsible for matters relating to equity and diversity (the Equity and Aboriginal Issues Committee), and to Convocation for information purposes.

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<sup>1</sup> The *Rules of Professional Conduct* impose a duty on lawyers to report to the Society any situation where a lawyer's clients are likely to be severely prejudiced. The commentary to the *Rules* states that it is proper for a lawyer to report to the Society any instance involving a breach of the *Rules*. Consequently, without the exception adopted by Convocation to that Rule, a DHC who is also a member of the Law Society would be under an obligation to report to the Law Society, behaviour or conduct by a member that may be discriminatory or harassing.



14. The Alternate DHC would likely perform all the functions of the DHC such as answering calls, discussing options with complainants, providing support to complainants, keeping records of calls and providing mediation services when appropriate. However, the function will be assumed on a temporary basis only and often with very short notice. Therefore, the Alternate DHC might not be required to provide reports to the Committee if she or he were to assume the function of the DHC for only brief periods of time, but would be expected to keep statistical information relevant to the DHC's reporting function. Were the Alternate DHC to assume the function of the DHC for an extended period of time, he or she might be required to provide a report to the Committee and to Convocation.
15. The following should be taken into account when determining the preferred appointment process option:
  - a. The Alternate DHC will act as a replacement to the DHC;
  - b. The Alternate DHC will assume the function of DHC on a temporary basis only;
  - c. The Alternate DHC may be asked to replace the DHC on short notice;
  - d. The Alternate DHC may assume the function of the DHC for very brief periods of time or for more extended periods of time, depending on the need;
  - e. To avoid undue interruptions of the program, the Alternate DHC must have easy access to files and support systems already in place;
  - f. There may be instances when an Alternate DHC has to be appointed urgently.

#### Options

16. The Equity and Aboriginal Issues Committee considered the following appointment process options:
  - a. Convocation delegates its appointment powers to the DHC;
  - b. Convocation appoints to the position of Alternate DHC persons recommended by the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.
  - c. Convocation adopts a separate appointment process for the Alternate DHC;
  - d. Convocation delegates its appointment powers to the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession (the Equity and Aboriginal Issues Committee).
17. The following outlines the arguments in favour and against each option.
 

*A. Convocation delegates its appointment powers to the DHC*

  18. As mentioned above, the DHC holds office at the pleasure of Convocation. The first option is for Convocation to delegate its appointment powers to the DHC while ensuring that the Alternate DHC is bound by the duties of confidentiality outlined in the By-law.
  19. This option would perhaps create the easiest administration structure for the program to function effectively. The DHC would be at liberty to appoint an Alternate DHC that has easy access to files, the DHC's assistant, phone lines and fax lines and other support systems, and who works well with the DHC. Therefore, the Alternate DHC could readily take on the function of the DHC on short notice and for brief periods of time.
  20. This option, however, presents a fundamental issue of accountability and would be in breach of governance principles. The DHC is accountable to Convocation in the performance of the function outlined in the By-law. The nature of the function of the DHC is to assist any person who believes that he or she has been discriminated against or harassed by a member or student member and to assist the Society in information and educational programs relating to harassment and discrimination. Although the DHC reports to Convocation, the DHC is not part of the governing body of Convocation and does not fulfill any of the governing functions of the Law Society. The DHC does not have a fiduciary responsibility to act faithfully and loyally in the best interests of the Law Society. Therefore, although the DHC's views on the appropriate person to take on the position of Alternate DHC would be helpful, the DHC is not an appropriate decision-making party.
  21. Accordingly, the first option should not be adopted.

- B. Convocation appoints persons recommended by the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.*
22. The By-law provides in subsection 2 (2) that the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession (the Equity and Aboriginal Issues Committee) shall give Convocation a ranked list of at least two persons the committee recommends for appointment as DHC. Convocation appoints a DHC from that list.
  23. The appointment process outlined in the By-law could be amended to include a provision by which Convocation also appoints the Alternate DHC from the ranked list of candidates recommended by the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession. This would allow Convocation to appoint the DHC and Alternate DHC simultaneously by using the same process and pool of candidates.
  24. The difficulty with this option is that the requirements for someone (who would be acting on a short term basis each time he or she was called upon) to act as Alternate DHC may be different from those for a full time DHC. Geographic proximity to the DHC (for access to files, for example) and availability on short notice would be important for an Alternate DHC but irrelevant for a DHC. Also, it may well be that the unsuccessful candidates for DHC would not fully be committed to acting as an Alternate DHC.
  25. Notwithstanding the difficulty mentioned above, this option has the advantage of ensuring that the Alternate DHC and the DHC are selected based on the same rigorous process and have been endorsed by Convocation. This is consistent with the fact that the Alternate DHC will hold office at the pleasure of Convocation and be accountable to Convocation. For this reason, the Equity and Aboriginal Issues Committee recommends that Convocation adopt this option.
- C. Convocation adopts a separate appointment process for the Alternate DHC*
26. The third option is for Convocation to adopt a separate appointment process for the Alternate DHC. This option has the following advantages:
    - a. The appointment process could be structured to take into account the nature of the Alternate DHC position, such as the fact that the position is assumed on a temporary basis;
    - b. The appointment process could be structured to allow Convocation to appoint on an urgent basis;
    - c. Convocation could appoint an Alternate DHC that has easy access to files, the DHC's assistant, phone lines, fax lines and other support systems and therefore create an easy administration structure for the program to function effectively.
    - d. This option is consistent with governance principles, as Convocation retains its appointment power.
  27. One disadvantage of this option relates to the difficulty of undertaking two separate appointment processes for positions that serve similar functions. The qualifications for the Alternate DHC position are similar to those for the DHC position and the pool of candidates would likely be the same. If Convocation were to adopt separate and different appointment processes for the two positions, the public and members of the profession might perceive the functions served by the Alternate DHC as different and less important than the functions performed by the DHC. The second option mentioned above, that Convocation use the present DHC appointment process to also appoint the Alternate DHC, makes it easy for Convocation to appoint the DHC and the Alternate DHC at the same time and ensures that persons are appointed to these positions following the same rigorous appointment process. Therefore, the second option is the preferred option.
- D. Convocation delegates its appointment powers to the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession (the Equity and Aboriginal Issues Committee)*

28. The fourth option is for Convocation to delegate its appointment powers to the Equity and Aboriginal Issues Committee while ensuring that the Alternate DHC is bound by the duties of confidentiality outlined in the By-law.
29. This option has the following advantages:
- a. The appointment process could be faster than a process by which the appointment has to be made by Convocation;
  - b. The appointment process could be structured to allow the Equity and Aboriginal Issues Committee to appoint on an urgent basis;
  - c. The Equity and Aboriginal Issues would be at liberty to appoint an Alternate DHC that has easy access to files, the DHC's assistant, phone lines and fax lines and other support systems, therefore creating an easy administration structure for the program to function effectively.
  - d. This option is consistent with governance principles. The Equity and Aboriginal Issues Committee is a standing committee of Convocation and is accountable to Convocation. Members of the Equity and Aboriginal Issues Committee have a fiduciary responsibility to act faithfully and loyally in the best interests of the Law Society.
30. The difficulty with this option is that Convocation appoints the DHC. Therefore, Convocation should also appoint the person who will replace the DHC when she or he is unable to perform the duties of the position. As with the third option mentioned above, if Convocation delegates its authority to appoint the Alternate DHC to the Equity and Aboriginal Committee, the public and members of the profession might perceive the functions served by the Alternate DHC as different and less important than the functions performed by the DHC. For that reason, the fourth option is not the preferred option.

#### Financial Implications

31. Convocation established that the DHC program functions at a funding level of \$100,000.00 per year and on a fee-for-services basis at an hourly rate not to exceed \$175.00.<sup>2</sup> The Equity and Aboriginal Issues Committee recommends that, unless modified by Convocation, the Alternate DHC assume the function on a fee-for-services basis at an hourly rate not to exceed \$175.00 and the funding level of the program be maintained at \$100,000.00. Consequently, the creation of the Alternate DHC position would not have significant financial implications for the program. There would be costs associated with setting up support systems for the Alternate DHC. However, it is anticipated that these costs would be minimal.

#### Request to Convocation

32. That Convocation approve the following recommendations:
- a. That the position of Alternate Discrimination Harassment Counsel (DHC) be created to assume the function of DHC when he or she is temporarily unable to fulfill his or her duties.
  - b. That the function of the Alternate DHC be that of the DHC, with the exception of the duty to provide semi-annual reports to the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.
  - c. That the Alternate DHC provide semi-annual reports to the standing committee of Convocation responsible for matters relating to equity and diversity only when the Alternate DHC assumes the function of the DHC for an uninterrupted period of more than six months.
  - d. That the Alternate DHC maintain statistical information relevant to the reporting function of the DHC and provide such statistical information to the DHC on request.
  - e. That the Alternate DHC be bound by the duty of confidentiality outlined in By-law 36.
  - f. That an appointment process for the Alternate DHC be adopted which provides that Convocation appoints to the position of Alternate DHC persons recommended by the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.
  - g. That, unless modified by Convocation, the Alternate DHC function on a fee-for-services basis at an hourly rate not to exceed \$175.00 and the funding level of the program will be maintained at \$100,000.00.

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<sup>2</sup> Minutes of Convocation, June 22, 2001.

- h. That By-law 36, other relevant By-laws and the *Rules of Professional Conduct* be amended to reflect the recommendations adopted by Convocation in this report.

#### INFORMATION

##### DEMOGRAPHIC ANALYSIS OF THE ONTARIO LEGAL PROFESSION BASED ON THE 2001 CANADA CENSUS

33. In October 2003, the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee), recommended that funds not exceeding \$30,000 from the 2003 Equity Initiatives Department budget be allocated to undertake an analysis of the social characteristics of lawyers in Ontario based on the 2001 Canada Census data. The budget of \$30,000 does not include expenses related to the purchase of the Canada Census data from Statistics Canada.
34. Professor Ornstein, Social Research Consulting, will undertake the demographic analysis of the Ontario legal profession based on the 2001 Canada Census (Proposal presented at Appendix 2). Professor Ornstein will duplicate the results of the report he prepared for the Law Society of Upper Canada in 2001 entitled *Lawyers in Ontario: Evidence from the 1996 Census* and include additional comparisons between the 1991, 1996 and 2001 Censuses.

##### PARTICIPATION ON THE ADVISORY COMMITTEE OF THE CBA'S PROJECT TO DEVELOP EQUITY AUDIT TOOLS FOR LAW FIRMS

35. In October 2003, the Law Society received an invitation to participate as a member of an advisory committee in a Canadian Bar Association project to develop equity audit tools for law firms.
36. The mandate of the advisory group will be to comment on drafts of the research and identify resources for it. The group will also be asked to provide guidance on contacts for both the research and for any focus groups.
37. The following Law Societies have agreed to participate in this project: Law Society of Manitoba, Law Society of British Columbia, Nova Scotia Barristers Society, Law Society of Alberta. The Advocacy Research Centre for Persons with Disabilities has also agreed to participate. The CBA anticipates participation from large law firms and from the Canadian Association of Black Lawyers, the Indigenous Bar Association and REACH.
38. The Committee recommended that the Law Society participate in this project as a member of the advisory group. However, the Committee decided that the Law Society not participate in funding proposals for this project and will not be responsible for administering any funds received in relation to this project.

#### PUBLIC EDUCATION REPORT

39. The Fall 2003 report of the Public Education Program of the Equity Initiatives Department is presented at Appendix 3.

#### APPENDIX 1

#### BY-LAW 36

Made:	June 22, 2001
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Amended:	July 26, 2001 September 28, 2001
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## DISCRIMINATION AND HARASSMENT COUNSEL

### *Appointment*

1. (1) Convocation shall appoint a person as Discrimination and Harassment Counsel in accordance with section 2.

### *Term of office*

(2) The Counsel shall be appointed for a term not exceeding three years and is eligible for reappointment

### *Appointment at pleasure*

(3) The Counsel holds office at the pleasure of Convocation.

### *No appointment without recommendation*

2. (1) Convocation shall not appoint a person as Counsel unless the appointment is recommended by the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.

### *Vacancy in office*

(2) When a vacancy exists in the office of Counsel, the committee shall conduct a search for candidates for appointment as Counsel in accordance with procedures and criteria established by the committee.

### *List of candidates*

(3) At the conclusion of the search, the committee shall give Convocation a ranked list of at least two persons the committee recommends for appointment as Counsel, with brief supporting reasons.

### *Additional candidates*

(4) If the committee gives Convocation a list of persons it recommends for appointment, Convocation may require the committee to give Convocation a list of additional persons who are recommended by the committee for appointment.

### *Recommendations considered in absence of public*

(5) Convocation shall consider the committee's recommendations in the absence of the public.

### *Application of s. 2*

3. Section 2 does not apply if Convocation reappoints the Counsel under subsection 1 (2).

### *Function of Counsel*

4. (1) It is the function of the Counsel,

(a) to assist, in a manner that the Counsel deems appropriate, any person who believes that he or she has been discriminated against or harassed by a member or student member;

(b) to assist the Society, as required, to develop and conduct for members and student members information and educational programs relating to discrimination and harassment; and

(c) to perform such other functions as may be assigned to the Counsel by Convocation.

### *No authority to conduct investigation*

(2) Despite clause (1) (a), the Counsel has no authority to require an investigation to be conducted or to conduct an investigation under section 49.3 of the Act.

*Access to information*

(3) Except with the prior permission of the Secretary, the Counsel is not entitled to have any information in the records or within the knowledge of the Society respecting a member or student member.

*Annual and semi-annual report to Committee*

5. (1) The Counsel shall make a report to the committee,

(a) not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year; and

(b) not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.

*Report to Convocation*

(2) The committee shall submit each report received from the Counsel to Convocation on the first day following the deadline for the receipt of the report by the Committee on which Convocation has a regular meeting.

*Confidentiality*

6. (1) The Counsel shall not disclose,

(a) any information that comes to his or her knowledge as a result of the performance of his or her duties under clause 4 (1) (a); or

(b) any information that comes to his or her knowledge under subsection 4 (3) that a benchler, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12.

*Rules of Professional Conduct*

(2) For greater certainty, clause (1) (a) prevails over the Society's Rules of Professional Conduct to the extent that the Rules require the Counsel to disclose to the Society the information mentioned in clause (1) (a).

*Exceptions*

(3) Subsection (1) does not prohibit,

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

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

(c) disclosure of information where the Counsel has reasonable grounds to believe that there is an imminent risk to an identifiable individual or group of individuals of death, serious bodily harm or serious psychological harm that substantially interferes with the individual's or group's health or well-being and that the disclosure is necessary to prevent the death or harm;

(d) disclosure by the Counsel to his or her counsel; or

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

## APPENDIX 2

Michael Ornstein  
Social Research Consulting  
337 Delaware Avenue, Toronto, Ontario M6H 2T7  
(416) 536-3353

3 October 2003

Ms. Josée Bouchard, Acting Equity Advisor  
The Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5H 2N6  
FAX: (416) 947-3983  
jbouchar@lsuc.on.ca

Dear Josée

Here is my proposal for analysis of the social characteristics of lawyers in Ontario, based on the 2001 Census. Essentially, I will duplicate the results in my previous report on the 1996, with additional comparisons between the 1991, 1996 and 2001 Censuses.

This proposal covers the design of the analysis and report writing, but not the programming and computer work required to extract the results from the Census data files. These will be provided to my specification under a separate contract between the *Law Society* and Statistics Canada.

Cheers

Michael Ornstein

Social Characteristics of Lawyers in Ontario:  
Analysis from the 2001 Canadian Census

*A Proposal to the Law Society of Upper Canada*

Using the methodology of the previous report on the 1996 Census, this is a proposal to use the 2001 Canadian Census to analyze the representation among lawyers in Ontario of women, Aboriginal persons, members of visible minorities and Francophones. Because lawyers have long careers, over-time comparisons of the entire profession may give a misleadingly static impression. Analysis of change in recruitment to the profession will be based on comparisons of age cohorts in the 1991, 1996 and 2001 Censuses. The Census data will also be used to examine the places of employment – in law firms, government, businesses, and other organizations – and remuneration of female, Aboriginal and visible minority lawyers.

The Census is a unique and nearly ideal database for this research: non-response is very low; the design of the questions is meticulous; and a context for interpreting the findings is provided by the responses to identical questions from *millions* of other Canadians. Moreover these data are already available and need not be gathered in a special purpose survey. Information is available for one in every five lawyers in Canada, from the “long form” of the Census.

The significance of the proposed study rests on the quality of the data and statistical analysis, but also on the effectiveness of the presentation and interpretation of the quantitative findings. The results must be clear to non-statisticians, but without oversimplifying or hiding the limitations of the data or the decisions and assumptions on which the numbers rest. Near universal access to the web and widespread use of PDF files will allow easy access to the report.

### Analytic Issues in Detail

The analysis of the representation of women, aboriginal persons, members of visible minorities and Francophones will begin with the simple question of how many Ontario lawyers are in each category. For larger groups, such as women, the focus is on the level of overall representation; but for smaller groups, such as Aboriginal and African-Canadian lawyers, the absolute numbers tell an important story about whether there is a critical mass within the legal community and a sufficient number of practitioners to represent members of their communities who want their legal services.

Interpreting the statistics on representation necessarily involves a context. To benchmark the progress of minorities in the legal community in Ontario, the report will provide comparable figures for:

- a number of other professions and occupations, including physicians, engineers, university faculty and senior and middle level managers;
- lawyers in the other provinces and territories of Canada;
- the general population of Ontario, in order to assess overall representativeness; and
- the employed population in Ontario and the employed population with university degrees, in order to measure the nature of selection into the legal profession.

A related concern is how to measure the changing composition of a profession in which lifetime employment is common and whose members are largely unaffected by compulsory retirement policies. A good research strategy is to compare the characteristics of currently practicing lawyers in different age groups. Such comparisons imply that, as time passes, each cohort assumes the place of the next. This assumption is safer for lawyers than for persons whose career paths normally involve a sequence of occupations, but the profession is affected by expansion and contraction of legal employment, by changes in the roles of solo practice, partnerships of different size and “in house” legal employment, and by changing patterns of retirement. For this reason, researchers now favour comparisons based on data collected at two or points in time. Data from the Censuses of 1991, 1996 and 2001 will allow this to be done.

The Census data will also be used to make comparisons of where lawyers in the various groups work and their remuneration. The question is whether women, aboriginal persons and minority group members are concentrated in particular sectors and whether they earn less, either as a result of this, or because they are paid less than other lawyers in the same employment situations. Of course it is necessary to compare individuals at the same stages of their careers.

### Limitations of this Research

There is no substitute for the answers to these research questions provided by the Census, and the proposed research is very cost effective. But “snapshots” provided by the Censuses are not a substitute for direct study of the trajectories of individuals’ careers, which also allows analysis of organizational contexts and explicit identification of institutional barriers and “best practices.” Of course this involves the expense and difficulty of special purpose surveys to obtain accounts of individuals’ careers, as well as posing its own methodological dilemmas. Longitudinal surveys risk bias from non-response and, unless the sample is replenished, become increasingly unrepresentative of a changing population. Some longitudinal analysis could be conducted using administrative data from the *Law Society’s* annual forms (but not covering visible minorities, unless this information is gathered and added to the existing files). Specialized survey data are also necessary to understand the perceptions and attitudes that shape careers, including views of the “climate” of the profession.

Intentionally, this proposal makes no mention of disability. Although the Censuses include summary measures of disability, Statistics Canada does not regard these as adequate and the results are *not* reported publicly. Instead the answers are used by Statistics Canada to identify a sample for its much more detailed “Participation and Activity Limitation Survey.” Using the Census to address disability risks unfairly minimizing its impact, not only because of the limited measurement (just one question asks about limitations in the workplace) but because the Census cannot be used to identify the barriers *throughout a person’s career*, from gaining admission to law school to practicing effectively, that are faced by persons with disabilities.



## Using the Census to Examine the Characteristics of Lawyers in Ontario

It is first necessary to identify lawyers in the Census, using the occupational category for “lawyers and Quebec notaries” (in Ontario, the only lawyers are included). The accompanying information describing *industry* of employment includes a separate category for “offices of lawyers and notaries,” and allows identification of lawyers employed by government, organizations, and private industry. There are insufficient data to study more detailed categories, such as lawyers employed by trade unions.

In the proposed analysis, a person’s location is her or his place of residence, not workplace; Ontario lawyers are those who live in Ontario. Probably, the only major concern is lawyers working in the Ottawa region who live in adjacent areas of Quebec. While a person’s place of work is available from the Census, switching the basis the study would produce results inconsistent with the previous report, and it raises the question of whether one should then remove lawyers who live in Ontario but work in, say, Hull, Quebec.

In the 1996 and 2001 Censuses, members of visible minorities can be obtained in two different ways:

- from a single question about the “ethnic and cultural group(s)” to which each person’s “ancestors” belong, asked in “open-end” form *without* suggested responses; or
- from two questions offering pre-specified responses. The first asks about Aboriginal persons (distinguishing “North American Indians,” Métis and Inuits), and the second asks non-Aboriginals if they are: White, Chinese, South Asian, Black, Arabs, West Asians (the latter two combined in the 1996 but not 2001), Filipino, South East Asian, Latin American, Japanese or Korean. An additional blank box labelled “Other - Specify” allows the respondent to write in another answer. The respondent can select to or more responses.

While the answers to the two kinds of questions have been found to be highly consistent, they will not give exactly the same results. Because membership in visible minority groups is addressed more directly with the second questions about pre-defined groups, these measures will be used. This allows exact comparisons between the 1996 and 2001 Censuses, but comparisons prior to 1996 must be based on ethnic and cultural group membership, as no other question was included in pre-1996 Censuses.

The 2001 census asks each respondent to report her or his “total wages and salaries” and “net non-farm income from unincorporated business, professional practice, etc.” from self-employment. Other questions ask if the respondent worked mainly full- or part-time and how many weeks she or he was employed in 1995. A potential difficulty is that the questions about occupations refer to the date of the Census (May 2001), while the income measures cover the calendar year 2000. The reported 2000 income might derive from an occupation and/or conditions of work different from a person’s workplace the next May, but the amount of mobility is not likely large enough to pose a serious problem.

In assessing the representation of women, Aboriginal persons and members of minorities, a key issue is to whom lawyers should be compared. Thinking about the age distribution reveals the problem. On average, members of visible minorities are younger than the population with European heritage and “younger” groups include more adults and children who are not yet employed. Comparing the number of lawyers who are members of visible minorities to their representation in the entire *population* could therefore lead to inappropriate conclusions about the under-representation of lawyers among visible minorities. Similarly, with growing numbers of women entering law, one would expect that the incomes of women lawyers would, on average, be lower than men’s incomes because they are younger (though many studies have also shown that women earn less than men *of the same age*, so the gender gap is not reducible to an age difference). The analysis of income differences therefore requires “adjustment” for group differences using regression.

An important analytic issue concerns the separation of the categories of potential disadvantage, particularly gender and membership in visible minorities. Many empirical studies have shown that gender differentials may differ among visible minority groups, and vice-versa. It is therefore necessary to examine separately the representation of women and men of non-European origins.

Because only one in five households receives the “long form” of the Canadian Census, the data used here actually constitute a very large sample survey rather than a complete “census” of the population. Responses from approximately 6,000 lawyers, one fifth of about 30,000 lawyers in the province, are used to represent the entire

profession. Some categories will include relatively few respondents, for example older, female lawyers from individual visible minority groups. Statistical procedures will be used to account for sampling error and to prevent our drawing conclusions from insufficient data.

In order to preserve respondent confidentiality, Statistics Canada requires that reported Census results are be rounded to the nearest five. This results in some imprecision in reported the numbers of the smallest groups, but poses no serious threat to the analytic goals of the report.

#### Schedule, Deliverables and Budget

The proposed analysis requires access to the Census data in their entirety and without any the grouping of categories used to protect the identity of respondents in the public microdata file. Analysis of the file can only be conducted at Statistics Canada offices in Ottawa and will be provided to specification by Statistics Canada.

The following conditions of payment, on invoice by the contractor: \$5,000 on agreement to proceed with this project; the balance on submission of the final report. The budget below does not include the purchase of data tabulations from Statistics Canada. Included in the cost is a public presentation summarizing the results of the study.

Steps in a Study of the Social Characteristics of Lawyers in Ontario			
Project Element	Deliverable	Expected Duration	Principal Investigator, days
Draw up plan for analysis, consult, revise	Informal analysis outline	2 weeks	2.5
Preparation of tabulations by Statistics Canada		6 weeks	
Write report, draw up presentation tables	Draft of complete report, for comment	3 weeks	7
Consultation on revision		1 week	1
Revise report	Final Report	2 weeks	2.5

Study of the Social Characteristics of Lawyers in Ontario–Budget		
Item	Rate	Total
Principal investigator Michael Ornstein – consultation, data analysis, writing	13 days @2000	\$26,000
GST (#884153412RT0001)	@7 %	\$1820
Total		\$27,820

## Intellectual Property

The final report will be provided as “camera ready” copy, with computer files in standard formats to allow reformatting of the text, the addition of an introduction if desired, etc. Non-cosmetic changes to the final published text require the approval of the principal investigator.

The Report and statistical data purchased from Statistics Canada will be the property of the Law Society of Upper Canada. The researcher has the right to use the statistical data (including published and unreported results) in other publications. Any such research shall not result in release of results until after their publication by the *Law Society of Upper Canada*, or twelve months after the submission of the final report, whichever is earlier.

## APPENDIX 3

### Public Education Events Fall 2003 Report November 10, 2003

The Law Society of Upper Canada hosted the following events  
between September 1, 2003 and November 10, 2003:

*CABL Reception for the Honourable Mr. Justice Irving W. Andre*  
Thursday, October 23, 2003  
Convocation Hall, Law Society of Upper Canada  
Partner: The Canadian Association of Black Lawyers

The Canadian Association of Black Lawyers (CABL) and the Law Society of Upper Canada organized a reception for the Honourable Mr. Justice Irving W. Andre of the Ontario Court of Justice. The event was held to highlight and recognize the achievements of Mr. Justice Andre to raise awareness and promote greater involvement in, and understanding of the legal system by Black Canadians. It is part of the Law Society’s mandate to promote equity and diversity in the legal profession.

#### Objectives:

The objectives of the event were to: 1) host a networking event to recognize the achievements of Mr. Justice Andre 2) increase the visibility of CABL, its efforts and partnership with the Law Society 3) hold a reception for 75 guests representing members of the legal profession, the community and public.

#### Outcomes:

Approximately 100 participants attended the event.

A networking event was successfully delivered that enabled CABL members to share experiences. In addition, the speeches from Mr. Justice Andre and Mr. Justice Tulloch inspired other lawyers, students and members of the community to achieve greater involvement in and understanding of the Canadian legal system.

#### Participants:

Participants included members of CABL and justices from the Superior Court and the Ontario Court of Justice. Treasurer Frank Marrocco, benchers, CEO Malcolm Heins, and other Law Society staff, represented the Law Society.

Representatives from the business community, governments and academia also attended. As part of the Law Society's Equity and Diversity Initiative activities, a group of university students interested in a career in law came to network with members of CABL and were introduced to justices and Law Society senior management and staff.

The keynote speaker was the Honourable Mr. Justice Michael Tulloch, who was recently appointed to the Superior Court of Justice. Prior to his appointment to the bench, Mr. Justice Tulloch was the president of CABL. The master of ceremonies was Sandra Thomas, Department of Justice Canada Crown Counsel and CABL vice-president.

The Canadian Association of Black Lawyers is an organization dedicated to increasing the representation of Black Canadians in all sectors of the legal profession, including the judiciary. The association is made up of Canadian lawyers, judges, academics, and other workers and citizens involved in the legal community.

#### Planning:

The Law Society and CABL began planning for the event in early September. The co-organizers of the event were Rudy Ticzon, Community and Policy Advisor at the Law Society, and Sandra Thomas, Vice-president of CABL.

Planning activities included, selection of keynote speaker, coordinating the involvement of the Treasurer, developing speaking notes, producing invitations, developing a targeted mailing list, and booking catering and set-up of the venue.

#### Promotion:

The Law Society listed the event on its website and developed an invitation list with CABL in mid-September. Written invitations were sent out one month prior to the event to judges, Law Society members, community members, and colleagues, friends and family of Mr. Justice Andre. An e-mail invitation was also sent out by CABL.

The Law Society also invited members of Convocation and senior management staff. Coverage of the event will include an article with photos in the next Ontario Lawyers Gazette and reports to Law Society committees.

#### External Events Sponsored by the Law Society:

The Law Society of Upper Canada sponsored the following events between September 1, 2003 and November 10, 2003.

##### *1. LEAF (Women's Legal Education and Action Fund) Persons Day Breakfast*

October 17, 2003

Sheraton Centre Hotel, Toronto

Keynote Speaker: Patricia Monture – Lawyer, scholar, activist and author

The Persons Day breakfast is an annual event organized by LEAF, a national non-profit organization that advances the equality of women in Canada through litigation, law reform and public education using Canada's *Charter of Rights and Freedoms*.

Persons Day is celebrated each year to recognize the Persons Case decision of October 18, 1929. The Persons Case came about when five women – Judge Emily Murphy, Nellie McClung, Irene Parlby, Louise McKinney and Henrietta Muir Edwards – and their supporters, challenged a law that symbolized how women were seen and treated. The law at the time said that women were not "persons" and could not be appointed to the Senate of Canada. The "Famous Five" won, and the case had a profound influence on women's civil, political, economic, social and cultural rights after.

The Law Society was a sponsor of the event and purchased one table. Three benchers and Law Society staff attended the breakfast.

##### *2. Professional Women's Symposium: Networking – Women in Untraditional Fields*

October 23-24, 2003

Sheraton Hotel, Hamilton

The Law Society sponsored the event with staff from the Equity Initiatives Department in attendance.

#### Upcoming Events:

The following events are upcoming:

*1. Commemoration of Louis Riel Day – Métis Victory at the Supreme Court of Canada: What Does R.v. Powley Mean?*

November 14, 2003

Panel Discussion: 12:00 p.m. – 2:00 p.m.

Lamont Lecture Hall, Law Society of Upper Canada

Partners: The Métis Nation of Ontario, City of Toronto, Rotiio> taties, Metis National Council

A panel discussion will explore the legal and policy implications of the recent Supreme Court of Canada decision in *R. v. Powley*. Panel speakers include: Tony Belcourt, President of the Métis Nation of Ontario, Phil Fontaine, Assembly of First Nations National Chief, Jean Teillet, Legal Counsel for the Powley family, and Jason Madden, Legal Counsel at the Métis National Council.

*2. Launch Reception for AccèsJustice.ca – A Website Promoting Equal Access to Justice in Both Official Languages of Canada*

November 21, 2003

4:00 p.m. – 6:00 p.m.

The Law Society of Upper Canada, Museum Room

The Law Society and the Access Justice Fédération des associations de juristes d'expression française de common law (FAJEFCL) are hosting a reception to launch the access to justice website.

*3. The Canadian Association of Black Lawyers Celebrates the Honourable Julius Alexander Isaac Scholarship Dinner*

November 22, 2003

The Marriott Toronto Airport Hotel

Reception 5:00 p.m., Black-Tie Dinner 6:00 p.m.

The Law Society of Upper Canada is a sponsor of the event. One table has been purchased.

*4. Continuing Legal Education Program: Disability Law Primer (CLE supported by the Equity and Diversity Training Program )*

November 27, 2003, (morning session)

The Law Society of Upper Canada

Partners: Pro Bono Law Ontario, Advocacy Resource Centre for Persons with Disabilities

*5. National Day of Remembrance and Action on Violence Against Women*

December 5, 2003

12:00 p.m. – 2:00 p.m.

The Law Society of Upper Canada

Staff event

The Law Society will be holding a forum for employees to commemorate National Day of Remembrance and Action on Violence Against Women.

National Day of Remembrance and Action on Violence Against Women coincides with the anniversary of the massacre of young women at l'École Polytechnique de Montréal in 1989 and encourages Canadians to think about the results of deliberate acts of violence.

It was moved by Ms. St. Lewis, seconded by Mr. Millar that Convocation approve the following recommendations:

- a. That the position of Alternate Discrimination Harassment Counsel (DHC) be created to assume the function of DHC when he or she is temporarily unable to fulfill his or her duties.
- b. That the function of the Alternate DHC be that of the DHC, with the exception of the duty to provide semi-annual reports to the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.
- c. That the Alternate DHC provide semi-annual reports to the standing committee of Convocation responsible for matters relating to equity and diversity only when the Alternate DHC assumes the function of the DHC for an uninterrupted period of more than six months.
- d. That the Alternate DHC maintain statistical information relevant to the reporting function of the DHC and provide such statistical information to the DHC on request.
- e. That the Alternate DHC be bound by the duty of confidentiality outlined in By-law 36.
- f. That an appointment process for the Alternate DHC be adopted which provides that Convocation appoints to the position of Alternate DHC persons recommended by the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.
- g. That, unless modified by Convocation, the Alternate DHC function on a fee-for-services basis at an hourly rate not to exceed \$175.00 and the funding level of the program be maintained at \$100,000.00.
- h. That By-law 36, other relevant By-laws and the *Rules of Professional Conduct* be amended to reflect the recommendations adopted by Convocation in this report.

Carried

#### Items for Information Only

- Demographic Analysis of the 2001 Census Data
- Participation on the Advisory Committee of the CBA's Project to Develop Equity Audit Tools for Law Firms
- Public Education Report

#### REPORT ON FEDERATION OF LAW SOCIETIES OF CANADA ANNUAL MEETING

Mr. Hunter reported on the Federation's annual meeting held in Victoria, British Columbia from November 6 to 8, 2003.

Report on Federation of Law Societies of Canada Annual Meeting  
November 27, 2003

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Report to Convocation

Purpose of Report: Information

Prepared by the Policy Secretariat

Sophia Sperdakos (416-947-5209)

## REPORT ON ANNUAL MEETING OF THE FEDERATION OF LAW SOCIETIES OF CANADA

November 2003

### INFORMATION

#### OVERVIEW

1. The Federation of Law Societies of Canada ("the Federation") held its annual meeting in Victoria, British Columbia from November 6 to 8, 2003. This was the first annual meeting of the Federation since its members adopted a new governance structure in the spring of 2003.
2. Appendix 1 contains background information on the Federation. Appendix 2 describes the Federation's new governance structure.
3. In recent years, the Federation has assumed an increasingly important national role speaking on behalf of all law societies on issues of significance to the governance of the legal profession in the public interest. This has included initiating a court challenge to sections of the federal government's money-laundering legislation and intervening in a number of court proceedings before the Supreme Court of Canada. As well it has led a number of initiatives, including national mobility for lawyers and the development of CANLII.
4. Law societies across the country face many similar issues and challenges, both internally and externally. Although public interest issues must be addressed with each jurisdiction's context in mind, it has become increasingly clear that law societies can accomplish important goals by sharing strategies, developing common approaches and speaking with a single voice on a variety of issues. The Federation will become more, not less, important in the coming years and decades.

#### ANNUAL MEETING HIGHLIGHTS

Address to the Federation Meeting by Minister of Justice and Attorney General of Canada, the Honourable Martin Cauchon

5. The Minister of Justice spoke to the Federation members on November 8, 2003. The President noted that the Minister had made the trip from Ottawa for the sole purpose of addressing the Federation and thanked him for doing so.
6. The Minister was well briefed on national issues of importance to the Federation and expressed his belief that the federal government and the Federation could work together on such issues. These included mobility, patent and trademark agent issues, and money laundering.

Address by F. William Johnson, Canadian Bar Association President

7. The new CBA President addressed the Federation members and spoke of the importance of co-operation between the two organizations. He paid particular attention to joint efforts on money-laundering, submissions on the WTO and GATS, and emerging issues.
8. He noted that the CBA is currently updating its model code. He indicated, however, that if the Federation proceeded to develop a model code, the CBA would relinquish responsibility for this initiative to the Federation.

#### Rotating Presidency

9. As part of its restructuring, the Federation has approved a nine-year flexible rotation proposal for choosing the President, annually. Under the rotation plan the Council chooses its President based on representation from the following regions, in the following order: Quebec, Western Provinces, Ontario, Atlantic Provinces, and the North.

10. A president from the North will serve for one year during years five through nine. Each of the other four regions will be represented for two one-year terms during the nine years. Any region can waive its place in the rotation or, with the consent of the Federation members, defer to another year.
11. On November 8, 2003 Francis Gervais, of the Barreau du Québec, assumed the Presidency. Lori Spivak (Manitoba) assumed the Vice-Presidency. In one year she will become President. At that time, it will be Ontario's turn in the rotation to appoint a representative to become Vice-President. The representative must have been on Council for at least one year prior to appointment to the Executive.
12. Ontario's Vice-President representative would become President of the Federation in November 2005.
13. If Ontario waives its place in the rotation, the Atlantic Provinces are next in line.

#### Mobility

14. In July 2003, seven of the eight signatories to the National Mobility Agreement implemented the Agreement in their jurisdictions. A National Mobility Implementation Working Group made up of law society staff was established to address ongoing implementation issues at a national level.
15. During the annual meeting, a Panel discussing the future of mobility considered issues of implementation, addressed some of the concerns non-signatories have about the Agreement and discussed international mobility. Members then discussed the issues in small groups. A number of priorities emerged from the discussion.
16. The members agreed that the Federation must establish a policy working group to consider compensation fund/defalcation fund issues. There are differences in plans across the country that must be addressed in the face of national mobility to ensure that members of the public are protected regardless of the jurisdiction in which their lawyer is a member.
17. The members also agreed that the Federation should undertake the development of a model Code of Professional Conduct. Using Ontario's code as a starting point, the Federation will consider the work done in other jurisdictions (most recently the Prairie Provinces and New Brunswick) and develop a model set of rules. Unlike a national code that would require unanimous approval that might be difficult to obtain, a model code provides useful guidance to law societies. They may use part or all of it.
18. Two provinces and three territories have not signed the National Mobility Agreement. The Federation members agreed that there should be discussions with these jurisdictions to consider their concerns and determine how they can be addressed. In addition, discussions are ongoing with the Chambre des notaires to develop enhanced mobility for its members.
19. The mobility panel also discussed international mobility. George Riemer, Deputy Director and General Counsel for the Oregon State Bar Association described internal limitations on inter-state mobility in the United States and the American Bar Association report recommending greater mobility for American lawyers within the United States. Oregon is one of the few states that have voted to adopt the ABA recommendations. Furthermore, the Oregon State Bar House of Delegates has approved rules to allow lawyers from outside the United States to provide legal services in Oregon in specified circumstances. The proposed rules are pending before the Oregon Supreme Court.
20. The panel also reported that there have been some discussions with the Law Society of England and Wales about mobility. To obtain membership in the Law Society of England and Wales a Canadian lawyer is required to write only one two-hour examination in Professional Conduct and Accounts. Solicitors from the Law Society of England and Wales who wish to be admitted in Canada must first obtain a certificate from the National Committee on Accreditation and pass the bar admission program of the jurisdiction in which they seek admission.



21. The Federation members agreed that it is important for the Federation to continue to investigate international mobility.
22. Finally, it was agreed that the National Mobility Implementation Working Group should be the body to coordinate all implementation issues and keep track of new developments, so that it can report to the National Mobility Task Force and the CEOs of each law society. This is so that the mobility provisions remain uniform across the country and reflect the National Mobility Agreement.

#### Personal Information Protection and Electronic Documents Act (PIPEDA)

23. PIPEDA is the federal legislation that sets out rules for organizations' collection, use and disclosure of personal information in the course of commercial activities. The Act also establishes the Privacy Commissioner for Canada as the ombudsman for privacy complaints.
24. Federally regulated organizations have had to comply with the Act since January 2001. Full compliance will be required by all organizations engaged in commercial activity effective January 2004.
25. Organizations operating in provinces that have adopted substantially similar privacy legislation are exempt from this. Ontario has no such legislation.
26. Law societies have examined the legislation and, in particular, the definition of "commercial activity" and agree that they are not subject to the legislation. A number of law societies are applying for investigative body status in the regulations. This status will allow other organizations that are subject to PIPEDA to share information with such law societies.

#### Effective Self-Governance

27. The Federation members had several sessions on effective self-governance. They identified a number of issues relevant to the legal profession's effective self-governance in the public interest, including transparency of proceedings and relationships with the courts and government. The issue has ongoing importance to all members of the Federation. Jurisdictions agreed to share information and address issues of common interest.

### APPENDIX 1

#### BACKGROUND INFORMATION ON THE FEDERATION OF LAW SOCIETIES OF CANADA

The Federation of Law Societies is the umbrella organization for the fourteen Canadian law societies, including the *Chambre des notaires du Québec*. Each law society governs the legal profession within its respective province or territory.

Historically, the Federation was a vehicle through which the Law Societies exchanged information. In more recent years, the law societies have agreed that there are areas where the Federation should take a leading role in matters that have national and international scope. As a result, the work of the Federation has increased substantially.

The Federation addresses a number of issues associated with the legal profession in Canada, including issues related to professional regulation and the independence of the legal profession, money laundering, mobility and regulation of lawyers in Canada and internationally, GATS and the WTO multi-disciplinary practices, copyright of legal materials, national continuing legal education materials, and legal aid.

Twice a year the Federation meets in general meeting. In addition, the Federation Council meets four times a year to review and carry out policies and programs. The Federation carries on its activities through a number of committees. It is also the Government of Canada's designated representative for the legal profession respecting implementation of the NAFTA provisions on legal services. The Federation is a member of the International Bar Association and the *Union internationale des avocats*.

An Executive Director and Secretary-Treasurer staff the Head Office of the Federation, in Montreal. Member law societies contribute annual funding to the Federation. The Federation's web site is [www.flsc.ca](http://www.flsc.ca).

## APPENDIX 2

### FEDERATION OF LAW SOCIETIES GOVERNANCE STRUCTURE

#### MEMBERSHIP

Each law society is a member of the Federation. This includes the Chambre des notaires in Quebec.

#### COUNCIL

The Council manages the Federation's business and property. The Council consists of one director for each of the fourteen (14) law societies, together with a President, Vice-President and Past-President. The term of office of a director is at the pleasure of his or her governing body, but it is anticipated that appointments will last for more than one year.

#### OFFICERS

The officers are a President, a Vice-President, the Past-President, and a Secretary-Treasurer. The terms are for one year. There is a succession process. The President becomes the Past-President. The Vice-President becomes the President. The Officers are in addition to the Council members and are *ex officio* members of the Council. They are not entitled to a vote, except that the President may cast a deciding vote.

#### ROTATING PRESIDENCY

The Federation has approved a nine-year flexible rotation proposal for choosing the President. Under the rotation plan the Council chooses the President, based on representation from the following regions in the following order: Quebec, Western Provinces, Ontario, Atlantic Provinces and the North. A president from the North would serve for one year during years five through nine. Each of the other four regions would be represented for two one-year terms during the nine years. Any region could waive its place in the rotation or, with the consent of the Federation members, defer to another year.

#### VOTING

Members of the Council make decisions on Federation business. This is a change from the former structure in which two representatives from each Society voted on business at the two general meetings. The two general meetings will continue to be held, but their purpose will be to discuss policy matters.

#### UNANIMITY

The Federation convention has been to operate by way of unanimity on policy matters and decisions. The members believe this is an important principle, given the Federation's role as a national voice of law societies. Majority vote applies to business or administrative matters, such as where a meeting will be held. The President has the casting vote.

#### COMMITTEES

The Federation continues to have committees. The goal is to have at least one member of Council on each committee. Senior staff members of each law society continue their role in the Federation through committees and through their participation at the AGMs.

Convocation took its morning recess at 10:30 a.m. and resumed in camera at 10:50 a.m.

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IN CAMERA

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IN PUBLIC

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REPORT OF THE LAW FOUNDATION OF ONTARIO

Mr. Banack presented the Report of the Law Foundation of Ontario to Convocation for information only.

The Law Foundation of Ontario  
November 27, 2003

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Report to Convocation

Purpose of Report: Information

Prepared by The Law Foundation of Ontario

The Law Foundation of Ontario

The Law Foundation was created in 1974 by an amendment to the Law Society Act. The Foundation was created to receive interest accruing on monies held in lawyers' mixed trust accounts (IOLTA) and to establish and maintain a fund to be used for the purposes of legal education and legal research, legal aid and the establishment, maintenance and operation of law libraries. At least 75% of the net revenue received from interest accrued on mixed trust accounts must be paid to Legal Aid Ontario established under The Legal Aid Act.

The purpose of The Law Foundation of Ontario is to advance legal knowledge and to facilitate public access to legal services benefiting the people of Ontario. The Law Foundation achieves its mandate by awarding grants to organizations for law-related programs and initiatives.

The activities of the Law Foundation include:

- making grants to Legal Aid Ontario in accordance with statutory provisions;
- making grants to organizations to fund law-related projects and programs benefiting the people of Ontario;
- maintaining a fund for future grants to assure renewable discretionary grants;

- receiving and tracking interest on lawyers' mixed trust accounts and managing compliance related issues (you will all be familiar with the Annual Form 1 Report to The Law Foundation of Ontario, included with your annual Law Society filings).

The Law Foundation also owns and administers the Class Proceedings Fund, although all Class Proceedings Fund funding decisions are made by the Class Proceedings Committee, an independent committee appointed by the Law Foundation and the Attorney General. A report on the Fund is included in the Law Foundation's Annual Report.

The Law Foundation is governed by a five member Board of Trustees, three of whom are appointed by the Law Society, two by the Attorney General.

The Foundation is staffed by an Executive Director, four full time employees and one part time grants administrator. It maintains its own premises, owns its own assets and its auditors, currently Ernst & Young, are selected by its Board of Trustees. The Foundation reports annually to the Attorney General and issues an Annual Report in English and French, which is available on its web site [www.lawfoundation-on.org](http://www.lawfoundation-on.org). The Annual Report contains the audited financial statements.

The Foundation follows a Statement of Investment Policies which provides the investments objectives, performance expectations and guidelines for the management of these investments. The Statements of Investment Policies requires that all investments must fall within the Trustee Act of Ontario and requires that certain additional restrictions must be met. Investments are managed in-house with outside professional advice.

Because IOLTA income is volatile, subject to prevailing interest rates and balance levels (dictated by general economic conditions), the Law Foundation has adopted relatively conservative fiscal strategy with respect to its grants program and has maintained the Future Commitment Fund (originally the reserve fund) to enable us to maintain at least some level of consistency in funding our perennial grantees.

#### An Historical Perspective – Evolution of the Organization

##### Sydney L. Robins, Chair 1974 to 1976

The first few years of the Law Foundation's existence were devoted to setting up the administration, confirming banking arrangements, developing grants protocol and policy.

Amongst the first applications for grants were the Law Society (Bar Admission Course and County and District Law Libraries) and Ontario's six law schools - a practice which has not changed in our 30 year history.

Other grants awarded were various groups including Toronto Community Law School, Legal Assistance of Windsor, Ontario Legal Education Council, Canadian Bar Review, Neighbourhood Legal Services etc.

##### Stuart Thom, Chair 1977 to 1982

During Mr. Thom's Chairmanship, the Foundation began setting in place a more formal grants process and hired a special advisor with expertise in reviewing and assessing the various types of projects being brought before the Foundation for grant money. The Trustees also undertook to set the groundwork for a policy for longer term investments. The first investments purchased were Hydro Bonds yielding 8.72%.

##### H. Donald Guthrie, Chair 1982 - 1995

During this time, the Law Foundation was facing the challenges of an ever more changeable and unpredictable economic climate. On one hand, there were fluctuating interest rates and the potential benefits to be realized from increasingly sophisticated banking technologies; on the other, there was an ever increasing importance and reliance placed upon the role of the Foundation as a funder of legal aid, legal education, law libraries and legal research.

Under Donald Guthrie's leadership the Law Foundation dramatically increased yields on trust accounts after negotiating a series of ever improving interest arrangements with the banks. Over time, the original interest arrangement of 3% on minimum monthly balances was improved to a market based rate based on the current Prime lending rate less a fixed percentage, paid on average daily balances. By 1995, the average yield on trust accounts was about Prime minus 4.3%. The Foundation also began building a reserve account and between the improved

yields and the reserves, the Foundation was able to sustain at least a minimum level of funding for its intended beneficiaries during times of extreme economic hardship. One noteworthy event was the creation of significant special endowments for Ontario's six law schools, created in early 1995.

#### Roger Yachetti, Chair 1995 to 1998

Under Roger Yachetti's leadership the Foundation continued to negotiate interest improvements with the Banks, and by 1998 the average yield on trust accounts had been improved to about Prime minus 3.4%. The Trustees also undertook to review and formalize the Foundation's governance, investment, granting and administration policies. As a result, the Law Foundation began to establish itself more firmly as an independent and important grant-making body whose presence and good works in both the legal community and the community at large would be made more widely known. The Law Foundation also undertook during this time to more formally separate its role and functions from the Law Society of Upper Canada and to establish stronger ties with other grant making bodies. The Law Foundation also became active in IOLTA organizations in both the United States and Canada. Also of special note during this time, The Law Foundation of Ontario Guthrie award was created to honour the previous Chair, Donald Guthrie and the work of the Foundation in a more public way.

#### Ronald Manes, Chair 1998 to 2003

Under Ron Manes the Foundation continued to fine-tune the Foundation's governance (e.g., created a task force system to deal with important Board issues such as bank negotiations, Class Proceedings Fund etc); and to professionalize its grants administration and the related development of process and policy (e.g., acquired the services of a professional grants administrator). During this time average yields on trust account improved to about Prime minus 2.65%.

During this time the Law Foundation also decided to more formally articulate its grant making theme as access to justice for the public of Ontario and its focus as pro bono and public legal education activities whose purpose is to enhance that access.

The Foundation began looking at ways to increase the impact of its grants and moved more aggressively into initiating and funding major initiatives and forging partnerships with other funding bodies, thus producing broader and farther-reaching benefits for the people of Ontario.

One example of this more pro-active grant making approach is Pro Bono Law Ontario. Initiated by the Law Foundation, co-funded by Legal Aid Ontario, with in-kind support from the Law Society, Pro Bono Law Ontario formally came into existence in 2002 and has continued to grow and thrive. PBLO promotes access to justice in Ontario by creating and promoting opportunities for lawyers to provide pro bono legal services to persons who lack the means to hire a lawyer. Pro Bono is not meant to be a substitute for an adequately funded legal aid system, but a support and complement to it.

Another example is the Ontario Justice Education Network (OJEN), an organization whose purpose is to facilitate co-ordination of public legal education endeavours among justice related institutions. OJEN brings together leaders from the province's legal and education communities to develop and deliver public legal education programs.

#### To Day

As mentioned above, the Law Foundation, under the leadership of each succeeding Chair, has systematically and consistently improved the returns on the balances in lawyers' mixed trust accounts (IOLTA), using a strategy of tying major banking negotiation initiatives to significant events and changing circumstances in the banking and economic environment. The Foundation has built and maintains a comprehensive data bank of information on the balances in IOLTA accounts and has been able to use the information to good advantage when building its business case for interest improvements.

As a result of these ongoing negotiations, over time the Law Foundation has improved the yield on mixed trust balances by about 7 to 8 percentage points relative to prevailing interest rates, and by focusing on the "spread" between our yields and bank interest rates, the improvement is stable. If interest rates go up, our yields go up by the same amounts. Included in every interest agreement is a waiver of regular service charges on the operation of lawyers' mixed trust accounts; that is, they are charged to neither the Law Foundation nor the lawyers involved.

Because the balance levels in Ontario lawyers' mixed trust accounts are so large, and our governing legislation stipulates that rates paid must have the approval of our Board of Trustees, Ontario has the best returns on IOLTA accounts in Canada, and outpaces most, if not all, U. S. IOLTA programs.

To give some sense of the volatility of Law Foundation income, IOLTA for 2001 was \$34,489,072; for 2002, \$18,027,827; for 2003 is projected to be about \$29,000,000. Average Prime interest rates were 6.3%; 4.15%; and 4.70% respectively. While our contribution to Legal Aid Ontario (75% of net IOLTA) was as volatile as our income, the Foundation was able to hold its discretionary grants levels relatively stable at \$6,799,332; \$5,690,412; and about \$6,000,000 respectively.

A partial roster of recently and currently funded projects and programs will give some sense of the Foundation's ongoing commitment to access to justice and legal education in its broadest sense, and of the importance of our work to both the profession and the community at large:

Pro Bono Law Ontario (PBLO)  
 Ontario Justice Education Network (OJEN)  
 Volunteer Lawyers Service (VLS)  
 Canadian Civil Liberties Education Trust (CCLT)  
 The Osgoode Society of Canadian Legal History  
 Metro Action Committee on Public Violence Against Women and Children  
 Native Law Centre, University of Saskatchewan  
 Black Law Students' Association of Canada  
 Canadian Foundation for Children, Youth and the Law  
 The Odysseus Victim Services Project Inc.  
 Resource Library for the Environment and the Law  
 The Canadian Environmental Law Association (CELA)  
 REACH, Equality and Justice for People with Disabilities  
 Parkdale Community Legal Services  
 South Asian Legal Clinic (SALCO)  
 Association In Defence of the Wrongly Convicted (AIDWYC)  
 ARCH, A Legal Resource Centre for Persons with Disabilities  
 Ontario Bar Association – Law Day  
 Ontario's six law schools  
 LibraryCo  
 The Law Society of Upper Canada (Bar Admissions and Archives)  
 The Law Society of Upper Canada, Access to Justice Conference

MSB/LFO  
 November 2003

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

Copy of a graph entitled IOLTA Returns – An Historical Perspective.

#### REPORTS FOR INFORMATION ONLY

Lawyers Fund for Client Compensation Committee Report

- Appointments to the Review Sub-Committee
- Budget and Fund Levy Discussions
- Insurance for 2004
- Grants Paid-Referee Reports and Staff Memoranda

Lawyers Fund for Client Compensation Committee  
 November 27, 2003

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## Report to Convocation

Purpose of Report: Information

Prepared by the Lawyers Fund for Client  
Compensation Department  
(Maria Loukidelis: 416-596-4642)

## THE REPORT

### TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Lawyers Fund for Client Compensation Committee (“the Committee”) met on October 22, 2003. Committee members in attendance were Robert Topp (Chair), Larry Banack (Vice-Chair), Ronald Cass, Q.C. Andrew Coffey, Abraham Feinstein, Q.C., and Dr. Richard Filion. Also in attendance were Malcolm Heins (CEO), Zeynep Onen (Director of Professional Regulation), Dan Abrahams, Maria Loukidelis, Paul McCormick, Fred Grady and Craig Allen (VP & Actuary, LawPRO).
2. The Committee is reporting on the following matters:  
  
Information
  - Appointments to the Review Sub-Committee
  - Budget and Fund levy discussions
  - Insurance for 2004
  - Grants Paid-Referee Reports and Staff Memoranda

### REVIEW SUB-COMMITTEE APPOINTMENTS

#### *Background*

3. The Review Sub-Committee of the Lawyers Fund for Client Compensation Committee receives the recommendations of staff for all grants in excess of \$5,000 as well as all reports of Referees following a hearing and makes the determination as to whether the recommendation will be followed.
4. With the term of some lay benchers coming to an end as well as the change in composition of the committee following the Bencher election, the Review Sub-Committee was down to one member (from the usual three that sit at any one time).

#### *Decision of the Committee*

5. The Committee approved the appointment of Abraham Feinstein, Q.C. and Dr. Richard Filion to the Review Sub-Committee.

### FINANCIAL SITUATION OF THE FUND

#### *Report to the Committee*

6. Craig Allen, actuary with LawPRO, reported that the Fund balance as at September 30, 2003 is \$17.3 million, up from \$16.5 million as at June 30, 2003 and up from \$15.3 million at December 31, 2002. In light of the positive claims experience for the third quarter, Mr. Allen’s report forecasts that the Fund

Balance will reach \$17.6 million by the end of the year, in the continued absence of a large-scale defalcation.

7. It was also reported that the unpaid claims liability for the Lawyers Fund as at September 30, 2003, is estimated to be \$10.3 million, a slight decrease from the amount as at December 31, 2002, which was set at \$10.7 million. Mr. Allen reported that the decrease was primarily due to favourable developments with respect to claims reported prior to December 31, 2002.
8. The Committee was advised that the Fund has enjoyed a stable year to date in terms of claims reported. The number of claims to the Lawyers Fund pending at September 30, 2003 was 195, compared to 181 as at December 31, 2002.

#### BUDGET AND LEVY ISSUES FOR 2004

##### *Report to the Committee*

9. The Committee was presented with the Lawyers Fund for Client Compensation Draft Budget for 2004. In a memorandum to the Committee from Wendy Tysall, Chief Financial Officer, it was reported that the 2004 budget presented to the Finance and Audit Committee on October 9, 2003, recommended a 2004 Compensation Fund levy of \$230, a decrease of \$50 from the 2003 levy.
10. The Committee was advised that the 2004 proposed budget provided for a claims loss provision of \$3 million as compared to \$4 million in 2003. In combination, the Fund balance, the annual claims loss provision and the excess insurance obtained through LawPRO, allow the Fund to meet claims up to \$30 million. This provides the Fund sufficient strength to support the reduction in the annual levy from \$280 to \$230.

##### *Decision of the Committee*

11. The Committee did not approve or adopt the proposed Compensation Fund levy. Instead, the Committee decided simply to receive the budget. The Committee also indicated they wish to be consulted earlier in the process next year, before presentation of the budget to the Finance and Audit Committee.

#### FUND INSURANCE FOR 2004

##### *Background*

12. The Fund first obtained insurance for extraordinary high claims in the 2001 financial year, to help provide a measure of stability to the Fund and to avoid the necessity for substantial levy increases which might result from a large scale defalcation. The insurance coverage for 2001 provided \$14 million in coverage in excess of \$6 million, meaning coverage would commence after \$6 million in grant payments were made for claims where notice was received in 2001, up to a maximum of \$20 million. Due to the surplus in the Fund (an increase in the uncommitted Fund balance) as a result of reduced claims in 2001 and 2002, the Fund was able to increase the point at which the insurance attaches for subsequent years and thereby reduce insurance premiums while still affording protection to the Fund for large losses. In 2003, coverage was obtained for \$10 million excess of \$15 million, protecting the Fund from an aggregation of claims over \$15 million for claims made in the year 2003.
13. LawPRO has been asked to provide the Law Society with an indication of premiums for 2004 in accordance with the same policy conditions as the expiring policy. LawPRO is currently negotiating with reinsurers for the purpose of providing pricing. It is anticipated that a final figure will be available in December.



*Decision of the Committee*

14. The Committee approved the continuance of the reinsurance program for 2004 with similar coverage as that obtained in 2003.

## REFEREE REPORTS AND STAFF MEMORANDA

15. The Committee wishes to report that the following Referee Reports and Staff Memoranda were approved between February 15, 2003 and October 14, 2003 and the amounts shown have been paid out or are in the process of being paid out.

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
C. Anthony Keith, Q.C.	Paul D. Squires (Former member disbarred Sept. 22, 1994)	1	NIL
Maria Loukidelis	Solicitor #98 (Former member permitted to Resign May 20, 2003)	1	\$ 40,000.00
	Morris J. Cree (Former member disbarred December 4, 2002)	2	\$ 90,500.00
	Michael G. Decosimo (Former member disbarred March 25, 1999)	2	\$ 25,000.00
	Douglas R. Millar (Suspended December 17, 2002)	1	\$ 1,900.00
	James W. Sinclair (Former member disbarred April 24, 2003)	2	\$ 57,458.13
	Solicitor #99 (Administrative Suspension October 21, 2002-Discipline Pending)	2	\$ 125,000.00
	Solicitor # 103 (Suspended August 1, 2003)	1	\$ 9,250.00

Heather Werry	Ronald C. Filipovich (Former member disbarred October 24, 2002)	2	\$ 76,669.23
	George W. S. Harrington (Former member disbarred December 15, 2000)	1	70.70
	James W. Sinclair (Former member disbarred April 24, 2003)	1	\$ 2,750.00
	Deborah J. Snead (Former member deceased May 8, 2001)	1	\$ 3,000.00
	Eric G. Tran (Former member disbarred April 22, 2003)	10	\$ 5,282.70
	Morris C. Orzech (Former member permitted to resign April 15, 1996)	2	\$ 55,000.00
	Solicitor #75 (Suspended December 18, 2001)	1	\$ 70.00
	Solicitor #89 (Administrative Suspension October 21, 2002)	1	\$ 300.00
	Gabriel Piscelli (Former member disbarred September 9, 2003)	2	\$ 72,000.00
	Solicitor #101 (Administrative Suspension September 25, 2001)	4	\$ 10,190.40
	Solicitor # 105 (Former member Suspended September 25, 2001)	1	\$ 99,500.00

	Solicitor # 107 (Administrative Suspension July 15, 1997)	1	\$ 5,000.00
	Solicitor # 108 (Administrative Suspension September 25, 2001)	1	\$ 21,000.00
	Solicitor # 109 (Administrative Suspension February 24, 2003)	1	\$90.70
	Solicitor # 111 (Suspended September 5, 2003)	2	\$150,772.28
Sara Hickling	Mark O. Addo (Former member disbarred December 19, 2001)	3	\$ 26,000.00
	Mary Martha Coady (Former member permitted to Resign January 8, 2002)	1	\$ 2,700.00
	Robert D. Gelling (Former member disbarred September 24, 2002)	2	\$ 100,500.00
	Robert M. Rubba (Former member deceased October 27, 2002)	1	\$ 1,500.00
	John A. Sproule (Former member deceased August 19, 1994)	1	\$ 49,231.55
	Larry Michael Mavis (Former member disbarred August 12, 2003)	8	\$ 185,010.72

R. Paul McCormick	Mary B. A. Dagenais (Former member disbarred November 21, 2002)	1	\$ 6,195.00
	Michael P. F. Dunn (Suspended January 21, 2003)	1	\$ 3,684.25
	Graham I. Howard (Former member disbarred May 1, 2003)	1	\$ 48,350.08
	Doron J. Kolman (Disbarred October 5, 2001)	1	\$ 16,508.00
	Rene St-Fort (Disbarred March 2, 2000)	3	\$ 14,431.00
	Donald H. Tait (Former member permitted to resign December 4, 2002)	1	\$ 2,000.00
	George O. Tokar (Former member permitted to Resign May 16, 2001)	1	\$ 8,000.00
	Solicitor # 9 (Administrative Suspension September 25, 2001)	1	\$2,387.00
	Solicitor # 16 (Former member disbarred October 17, 2002)	2	\$ 8,412.00
	Solicitor # 89 (Administrative Suspension September 25, 2001)	1	\$ 500.00
	Solicitor # 100 (Administrative Suspension June 25, 2003)	2	\$ 8,362.00
	Solicitor # 110 (Administrative Suspension September 25, 2001)	5	\$ 9,066.00
TOTAL			\$ 1,477,630.71

## LibraryCo Report

- Report to Shareholders: 2003 Year End

LibraryCo Report to Shareholders: 2003 Year End  
Law Society of Upper Canada, November 2003

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As 2003 draws to a close, LibraryCo will have completed two full years of meeting the library service needs of the lawyers of Ontario. LibraryCo has come a long way but continues to look forward to the many exciting challenges ahead in 2004.

- LibraryCo's Board of Directors have displayed commitment and dedication to the County and District Law Libraries in this year. Under the very capable leadership of Gregory M. Mulligan, a lawyer from Simcoe County, the current Directors are: Michael Adams, a lawyer from Simcoe County; Marion Boyd, a Benchler, from London; Jennifer Carten, a lawyer from the Kenora District; Abe Feinstein, Q.C., a lawyer from the County of Carleton; Karen MacLaurin, Representative for the Ontario Courthouse Librarians Association (OCLA) and Executive Director/Law Librarian for the County of Carleton Law Association; Anne C. Matthewman, Library Manager/Executive Director for the Metropolitan Toronto Lawyers Association (MTLA); Jacques Menard, the Ontario Bar Association representative and lawyer from Frontenac County; Janine Miller, Director of Libraries, The Law Society of Upper Canada, Toronto; Judith Potter, Benchler and a lawyer from Middlesex County; Urmas Suits, a lawyer from the Parry Sound area; Robert S. Whitmore, a lawyer from Hamilton; Richmond Wilson, Q.C., a lawyer from the County of Carleton; David Ziriada, a lawyer from Essex County; and Rob Zochodne, CDLPA representative a lawyer from the Durham Region.
- An integral goal of LibraryCo's is to support continuing education activities and improve the education levels of all law library staff in the County and District Law Libraries. To that end, the LibraryCo Board of Directors passed the following resolution on Friday, February 28, 2003:

*Be it resolved that the three requests for funding of the LibraryCo Bursaries for Continuing Education for County and District Law Library staff, as advanced by the Staffing Standards Team be approved.*

- In the time since that resolution was passed Library Co has supported 8 Library Assistants and Library Technicians to attend the *Canadian Association of Law Libraries Conference* in May 2003; 7 Library Technicians to take courses either through Mohawk College in the Library Technician program or through the University of Toronto's Faculty of Library and Information Studies; and 16 Library Assistants to enroll in courses with Mohawk College or advanced *Simply Accounting* courses. In total, LibraryCo's continuing education support for library staff through this bursary initiative amounts to \$17,000 to date.
- *Principles and Standards for Document Delivery* established a formalized document delivery mechanism for the 48 County and District law libraries starting in 2003. This move clearly was a major step in establishing this formerly "ad hoc group of libraries" into a system where one could look at the resources of all libraries as theirs. Taking the concept of universal access one step further, this agreement states that:

*Membership in the LibraryCo System has many benefits, including a higher level of service within the system. The following principles are fundamental to this high quality service standard for document delivery. Each LibraryCo Library:*

- *will provide service to the lawyers of Ontario*
- *will respect internal policies of the individual libraries*
- *will respect and adhere to requirements by law concerning copyright and other individual licensing agreements which may exist outside of this agreement*
- *will process requests as soon as possible but no longer than three working days*
- *will not charge fees to other LibraryCo libraries*
- *will keep Document Delivery statistics*
- The Roving Law Librarian, Wendy Hearder-Moan, to date in 2003 has undertaken 51 visits to County and District Law Libraries while the Executive Director Suzan Hebditch has made 39 visits. The Roving Law Librarian has a very specific mandate to assist the 28 smaller Local Law Libraries in the system. This assistance takes the form of: completing the assessment and evaluation of collections, staff and technology

requirements; consulting with and advising Local Law Association Executives, Library Committees and law library staff on collection development issues; aiding law library staff with weeding and other collection management matters; conducting and/or facilitating training opportunities for lawyers and law library staff on electronic resources; and acting as a general resource person for the Local libraries specifically and the Executive Director and Board of Directors in general. In 2003 the Roving Law Librarian has undertaken a major role in the library moves in both Grey and Kent counties. In 2004 she will be involved with Leeds and Grenville.

- LibraryCo organized, hosted and sponsored the 3<sup>rd</sup> annual Conference for Ontario Law Associations' Libraries (COLAL) October 22 through 24, 2003 in Burlington. The excellent program attracted 56 library staff from around the province. The theme was...*Donning Different Hats: Delivering Service in Ontario's County and District Law Libraries*. Among the topics on the program were:
  - *The Liability of Information Professionals*
  - *Accounting Principles for Non-Accountants*
  - *GST Issues for County Law Libraries*
  - *WestlaweCarswell Role Play*
  - *LibraryCo Benefit Package: What is included, what is not?*
  - *BAR-eX: Online Communication and Collaboration*
  - *Short Snapper: Reports from Collections Standards Team, Document Delivery Team, Staffing Standards Team and Statistics Team*
  - *Update from The Great Library*
  - *A Reception by and Tour of the Hamilton Law Association Library*
  - *and more*
- Delivering legal information to the desk top of lawyers in the 28 Local Associations was one of the key initiatives in the *Business Plan*. The corporation instituted the desktop delivery initiative to lawyers in those Associations whose libraries are designated as Local. Via the LibraryCo web page at [www.libraryco.ca](http://www.libraryco.ca) an exhaustive tool kit of the following resources has been made available:
  - *Canada Statute Service* (from Canada Law Book)
  - *Canadian Criminal Law Library* (from Canada Law Book)
  - *Canadian Estate Administration Law Guide and Estate Planning Guide* (from CCH Canadian)
  - *Canadian Family Law Guide* (from CCH Canadian)
  - *Canadian Insurance Law Reporter* (from CCH Canadian)
  - *FamilySource* (from WestlaweCARSWELL)
  - *LawSource* (from WestlaweCARSWELL)
  - *Ontario Real Estate Law Guide* (from CCH Canadian)
  - *Ontario Citorator Service* (from CCH Canadian)
  - *Ontario Corporation Law Guide* (from CCH Canadian)

This access is unprecedented in Canada. No other jurisdiction can boast this level of information delivery to lawyers.

In addition to all these tools being available through the desktop initiative, all of these plus the following are provided to the lawyers of Ontario in each of the 48 County and District Law Libraries. They are:

- *Civil Practice Partner* (from Carswell Thomson Professional Publishing)
  - *Employment Law Partner* (from Carswell Thomson Professional Publishing)
  - *Personal Injury Partner* (from Carswell Thomson Professional Publishing)
  - *QL Systems* (from LexisNexis Butterworths)
- Delivering on its promise from the Law Foundation submission for 2002) to “build on competencies,” LibraryCo launched its web page at [www.libraryco.ca](http://www.libraryco.ca). This page offer a portal for law and law-related information resources for the lawyers of Ontario and conveniently facilitate seamless delivery to the desktop for lawyers taking advantage of this service. Additionally, the site acts as a central cite to receive information for, about and from LibraryCo and County and District law libraries in the province. In the last five months alone the LibraryCo web page has had some 24,000 individual visits.
- A number of creative staffing solutions have been undertaken in 2003. The ability to be flexible has permitted LibraryCo to more readily meet local Associations’ needs better. For instance:
- In March the part time Library Technician resigned her position in Stormont, Dundas & Glengarry for a full time appointment elsewhere. With the assistance of LibraryCo, that Association was able to hire a library-trained individual with years of experience to assist the lawyers using that library.
  - When the part time Library Assistant in Essex retired this year, it was clear that there was a need in that Association for a full time Library Technician to assist the Law Librarian. In May just such an individual was hired for that Association. LibraryCo participated in that selection process and ensured appropriate funding for the position.
  - Norfolk and Haldimand Law Associations now have the same staff person. When the Library Assistant in Haldimand resigned in July, LibraryCo in consultation with the Haldimand President approached the part time Assistant in Norfolk to see if she would consider adding a day of work in Haldimand to her schedule. She has delighted in this arrangement since August and the lawyers, who go between the courthouses in Cayuga and Simcoe, love the fact that they have the same Library Assistant in both libraries.
  - When in Victoria & Haliburton one of the part time staff retired, LibraryCo facilitated the other staff person assuming those responsibilities. She was appropriately compensated, provided with additional training and offered more hours which suited her schedule. The lawyers are happy in that they have a person more consistently in the law library and it is someone that they know.
  - With the resignation of the part time assistant in Prescott and Russell in the summer, LibraryCo facilitated an arrangement between the Prescott and Russell Association and the County of Carleton Law Association for a Library Technician from Carleton to attend one day per week in the Prescott and Russell library, one hour away.
  - LibraryCo was approached by the Algoma Law Association when it became clear that they needed a full time person in their Area library. A competition was held with LibraryCo assisting in the selection process. Candidates were screened, interviewed, references were checked and an offer made. As of late October the Algoma law library is now staffed on a full time basis with a well-qualified, experienced Library Technician managing their library.
  - With the retirement of the part time Library Assistant in Muskoka, LibraryCo recommended that perhaps the Muskoka and Parry Sound Law Associations should advertise for a Library Technician to work in the two Association libraries for a total of three days per week. The competition is currently underway with interviews to be held in mid-November.
  - The members of the Perth County Law Association recognize that their staff needs have changed over time as well. They are currently, with the assistance of LibraryCo, in the process of staffing for a 15 hour a week Library Technician which they hope to fill in December.

- One of the critical issues addressed in *Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers* was the matter of staffing standards. For this past year, the LibraryCo Staffing Standards Team consisting of all types of library staff from the three types of libraries have been working toward developing these standards. On October 3, 2003 the LibraryCo Board of Directors discussed at length the three cornerstones of a system-wide staffing standard: position descriptions, performance appraisals, and salary bands. In keeping with its mandate from *Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers* and a stated goal for 2003 from *Out of the Box...and Beyond the Walls: Business Strategies for LibraryCo Inc. 2002-2005* LibraryCo has moved toward a competence-based staffing standard. At the end of the discussion the following resolution was passed unanimously:

*Resolved that the Realigning Compensation for County and District Library Staff 2004, Annual Salary Bands for County and District Library Staff, the performance evaluation documents and the position descriptions be approved.*

Staffing packages have been provided to all library staff, Presidents and Library Committee Chairs in order that these standards are implemented in 2004. LibraryCo looks forward to feedback from the Associations as we move forward in instituting a staffing standard that will ensure informed, skilled, well qualified library staff to assist the lawyers of Ontario with their legal information needs.

- As the year winds down, LibraryCo is working to finish the assessment of the libraries' capital needs. Over the summer months, LibraryCo surveyed the libraries seeking input on capital needs involving potential library moves and/or renovations and equipment (computers, copiers, printers etc) and/or furniture needs. Upon assessing those requests and completing the review LibraryCo in 2003 will follow up on the Board of Directors resolution that states:

*In view of LibraryCo's aggressive move to the delivery of information in an electronic format to the lawyers of Ontario and that it is critical that the LibraryCo funded law libraries must keep pace with the technology, be it resolved that LibraryCo will disbursement up to \$200,000 for capital expenditures to the County and District Law Libraries that require new computer/Office equipment and library furniture.*

- Going forward...it is evident from the April 2003 Law Society Study *Information and Library Services at the LSUC: a qualitative research study* that LibraryCo in conjunction with the Great Library is being challenged to deliver a legal information strategy for the lawyers of Ontario. To that end 20 law librarians and library technicians from the LibraryCo funded libraries and the Great Library met for a meeting termed *Moving Forward: A brainstorming session to discuss outcomes of Information and Library Services at the LSUC: a qualitative research study* on October 20. From this session it was determined that two areas would be further examined as first steps. They are a more coordinated and integrated document delivery between the 49 libraries and some exploratory investigations into a virtual reference system for the province. These two teams of law librarians from the LibraryCo funded libraries and the Great Library are currently beginning this work.
- The 2004 Budget submission presented to the Law Society successfully passed approval of Convocation on October 23. LibraryCo is confident that the funding sought from the members will position our libraries nicely to face the information needs of the lawyers of Ontario in 2004.

#### *LibraryCo Fast Facts* For Law Society Benchers

##### Mandate

*LibraryCo Inc. is mandated to carry on the central management of the Ontario County and District Law Library system on a not-for-profit basis in accordance with the objectives of the Blended System framework for the purpose of development and enhancing skills for the "competent lawyer" in Ontario.*

##### Incorporation



LibraryCo was established under the laws of the Province of Ontario by *Articles of Incorporation* originally registered on December 20, 2000 and later amended by Articles registered on April 12, 2001. LibraryCo has two shareholders: the Law Society of Upper Canada and the County and District Law Presidents' Association.

#### Governance

LibraryCo's affairs are governed by a 15-member Board of Directors with rotating terms of office. The composition is made of representatives appointed by the Law Society of Upper Canada (LSUC), the County and District Law Presidents' Association (CDLPA), the Ontario Bar Association (OBA), the Ontario Courthouse Librarians Association (OCLA), the Metropolitan Toronto Lawyers Association (MTLA), and several members appointed at large. The current Board Chair is Gregory M. Mulligan, lawyer from Orillia.

The role of a Director of LibraryCo Inc. is one of stewardship. Directors are responsible for monitoring, rather than actively managing the business affairs of the Corporation. They oversee the financial management of the corporation, determine future directions and priorities in keeping with the mandate of the corporation and set policies in accordance with the *Unanimous Shareholders Agreement for LibraryCo Inc.* while consulting with interested stakeholders.

The Corporation is staffed by an Executive Director, an Assistant to the Executive Director and a Roving Law Librarian.

#### The County and District Law Library System

Consisting of 48 County and District Law Libraries across the province, these libraries are staffed from 4 to 40 hours per week with a variety of personnel ranging from Library Assistants to professional Law Librarians. In total, there are some 70+ staff. The staffs are wholly employed by Law Associations of dedicated volunteer lawyers serving on Boards of Directors. However, the Direct funding allocations come through LibraryCo from a portion of the Law Society of Upper Canada fees paid annually by the lawyers of Ontario.

#### Key Resource Documents

- *Out of the Box...and Beyond the Walls! Business Strategies for LibraryCo Inc.* 2002-2005 documents a rolling business plan for LibraryCo Inc. It can be found at [www.libraryco.ca](http://www.libraryco.ca)
- LibraryCo produced its first annual report *Advancing the Blended System: The First Annual Report of LibraryCo Inc. for the year ending, 2001 in April of 2002. Moving Law Libraries Out of the Box and Beyond the Walls!: The Second Annual Review of LibraryCo Inc. for the Year Ending 2002* was published in March 2002. These documents can be found at: [www.libraryco.ca](http://www.libraryco.ca).
- *Core Titles for an Ontario Courthouse Law Library* at [www.libraryco.ca](http://www.libraryco.ca) was released in January 2003 as a tool for the Local Courthouse Law Libraries in the LibraryCo System.
- At the same time *The Essential Law Library: LibraryCo Inc.* was established as an important tool for the larger Area Courthouse Law Libraries in the LibraryCo System. This can be found at [www.libraryco.ca](http://www.libraryco.ca).
- *LibraryCo Principles and Standards for Document Delivery* is a key tool for resource sharing among the 48 law libraries.

#### Key Initiatives during 2003

- Developing standards for County and District law library collections to ensure "competent lawyers" for Ontario. (see the resources *Core Titles for an Ontario Courthouse Law Library* and *The Essential Law Library: LibraryCo Inc.*)
- Developing staffing standards across the province in order to ensure appropriate support for the lawyers of Ontario.
- Establishing document delivery mechanisms in order to share resources among the law libraries in the LibraryCo system. (see *LibraryCo Principles and Standards for Document Delivery* at [www.libraryco.ca](http://www.libraryco.ca)).

- Co-operating in nation-wide Resource Sharing Arrangements with all Law Society and Courthouse Law libraries from coast to coast to coast including the Law Society of Upper Canada's The Great Library.
- Employing toll free numbers for the five Regional Law Libraries in order to assure the lawyers of the province that during business hours, there will always be a professional law librarian available to assist with their research.
- Delivering more and better electronic resources to the lawyers of Ontario through their County and District Law Libraries. In 2003 through the *toll kit of legal resources* on the LibraryCo webpage lawyers have access to 10 key internet-based electronic tools in their law libraries.
- Continually exploring opportunities with The Great Library to develop creative options of bringing better service and resources to the lawyers of Ontario.
- Partnering with legal publishers and vendors including BAR-eX and the Law Society to feed appropriate, meaningful and timely training and continuing education opportunities for lawyers in Ontario.
- Assisting County and District Law Associations with their hiring practices in the law libraries. (*see Human Resource Guide #1: Hiring new law library staff? Some tips on how LibraryCo can help...* and *Human Resource Guide #2: Employment Standards Information* on the LibraryCo webpage at [www.libraryco.ca](http://www.libraryco.ca).)
- Providing continuing education opportunities to library staff of all levels from all County and District law libraries through an annual meeting and conference called *Conference for Ontario Law Associations' Libraries (COLAL)* and through three new bursary initiatives.
- Providing consultation services regarding collections, facilities, training and technology for the Local Associations through the services of the Roving Law Librarian.
- Implementing the desktop delivery initiative to lawyers whose law association library is designated as "Local".
- Coordinating more "bulk purchase" opportunities for continuing education resources in order to take advantage of discount prices to make member dollars stretch further.
- Establishing a uniform and consistent financial reporting mechanism for all 48 Law Associations utilizing a common accounting software package.
- Establishing a uniform and consistent statistics reporting mechanism for all 48 Law Associations.
- In addition to delivering hard dollar grants in 2003 of some \$4.6 million LibraryCo will distribute on average \$42,500 in centralized purchases for each of the 48 law libraries. In 2002 the figure was an average of \$38,400 per law library.

## CONVOCATION ROSE AT 12:15 P.M.

The Treasurer and Benchers had as their guests for luncheon, Rory Fowler, Melanie Nancekievill and Lisa Robinson, law students from the University of Western Ontario.

Confirmed in Convocation this 22<sup>nd</sup> day of January, 2004

Treasurer