MINUTES OF CONVOCATION

Thursday, 26th June 2003
9:30 a.m.

PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Aaron, Alexander, Arnup, Backhouse, Banack, Bobesich, Bourque, Boyd, Campion, Carpenter-Gunn, Caskey, Cass, Chahbar, Cherniak, Coffey, Copeland, Curtis, Doyle, Dray, Ducharme, Eber, Elliott, Feinstein, Filion, Finkelstein, Finlayson, Furlong, Gold, Goodman, Gotlib, Gottlieb, Harris, Heintzman, Hunter, Lawrence, Legge, MacKenzie, Manes, Krishna, Martin, Millar, Murray, O'Brien, O'Donnell, Pawlitza, Porter, Potter, Robins, Ross, Ruby, St. Lewis, Silverstein, Simpson, Strosberg, Swaye, Wardlaw, Warkentin and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer expressed sadness at the passing of The Honourable Wesley Gibson Gray on June 18th. Mr. Gray was Treasurer of the Law Society from 1976 to 1978 and was later appointed to the Supreme Court of Ontario. He was also awarded an Honorary Doctor of Laws degree in April 1981. Mr. Gray is survived by his wife of sixty years, Nancy Burton and his three children, Patsy Porter, Katy Waugh and Barbara Coyle.

Donations can be made to St. Michael's hospital.

The Treasurer thanked carpenter and longtime employee Derek Oxford for the ballot box he handcrafted.

TREASURER'S ELECTION

Benchers who had not voted at the advance poll cast their ballots for the election of the new Treasurer. The results of the first ballot were:

Abraham Feinstein	21
Earl Cherniak	18
Frank Marrocco	20

The results of the second ballot were:

Abraham Feinstein	28
Frank Marrocco	31

It was moved by Mr. Ducharme, seconded by Mr. Bobesich that Frank Marrocco be elected Treasurer of the Law Society of Upper Canada.

Carried

Mr. Marrocco took the Treasurer's chair.

Mr. Krishna addressed Convocation.

The Treasurer thanked Mr. Krishna for his service to the Law Society and the profession.

Messrs. Feinstein and Cherniak rose to congratulate Mr. Marrocco and thank those Benchers who had supported them.

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IN CAMERA

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IN PUBLIC

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CEO's REPORT

Mr. Heins took questions from Convocation regarding his Report.

Chief Executive Officer Report
June 26, 2003

Report to Convocation

Purpose of Report: Information

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INTRODUCTION

1. The first half of 2003 has continued to be a busy period at the Law Society. In December I outlined our strategic directions for the coming year and what we hoped to accomplish. We specifically committed to focusing on our core business areas – professional development and competence and professional regulation, and improving the service we provide to members of the public and the legal profession.

2. I am pleased to report that we achieved much of what we set out to do. This report details our accomplishments for the first half of the year and touches on other priorities and planning for the remaining year, as well as the upcoming budget process. Many of the initiatives that are now fully underway commenced in 2002. For details on specific programs, objectives and results, I encourage you to refer to our 2002 Annual Report.

3. In addition to the many products and services we delivered this year, I have dedicated some of my time to building relationships and enhancing our credibility with our many and diversified stakeholders. For example, I have visited various regions and met with representatives from the County and District Law Presidents' Association and discussed issues of mutual interest and importance.

4. I participated in the 13th Annual Commonwealth Law Conference where I met representatives from other law societies and legal organizations and had the opportunity to discuss issues facing the legal community on a global scale.

5. I have also attended many meetings and events involving elected officials at the municipal, provincial and federal level so that we can work together collaboratively and ensure that the Law Society's perspective is taken into consideration when government policies are developed.

POLICY

6. Law Society staff take seriously their role in identifying developments, changes and trends in Canadian law and the legal landscape and addressing the needs of those we serves. This means being at the forefront of major policy issues at a provincial, national and even international level so we can provide comprehensive, objective and insightful advice to Convocation to assist benchers in the role of policy making.

7. Policy issues during the first half of 2003 can be clustered into three categories:
   i. Bencher election support
   ii. Continuation of support on major policy issues that began in 2002 or earlier
   iii. Creation of new bylaws in support of policy decisions

2003 Bencher Election

8. Law Society staff oversaw the entire bencher election process. This included developing all of the materials required to run the election and to promote the entire process. The 2003 Bencher Election saw an increase in the number of candidates who ran for bencher from 84 in 1999 to 102. Additionally, staff widely publicized the process through a number of new communications vehicles which included:
   - proactive media relations including community notices and press releases
   - development of a separate section for the web site solely for bencher election with up to the minute coverage and reporting of results

   Despite this promotion member turnout declined once again, from 42% in 1999 to 36.7%. This should be a concern and Convocation should consider changing the by-law – to permit voting by electronic means. If the convenience of voting is improved, hopefully the turnout will increase.

9. Following the election, policy staff developed a comprehensive Bencher Orientation program. This was designed to help new benchers understand their role in Convocation, provide a detailed overview of the Law Society, its core functions and operations as well as direct benchers to the many Law Society resources available to them. A key part of this program included developing a curriculum for bencher education related to Hearing Panel matters – the first installment of bencher education.

Major policy issue support

10. Staff continued to provide extensive support on major policy issues:
- As a member of the Coalition for Legal Aid Tariff Reform, we were successful in obtaining a second 5% increase in the Legal Aid tariff
- We made a submission to the U.S. Securities and Exchange Commission on Sarbanes-Oxley which helped convince the SEC to reconsider rules that would have extended to Canadian lawyers
- Development of the mandate and project plan for the Small Firm and Sole Practitioner Task Force
- We made a submission to the legislative committee on Bill C-17, Public Safety Act
- We made a submission to the Ministerial committee on the Financial Services Commission of Ontario (FSCO) regulations, which included the regulation of paralegals appearing before FSCO
- We continued to work with the provincial government around the proclamation of the Limitations Act
- Contingency fee regulation and implementation
- Legal information and Library services strategy

Creation of new bylaws

11. As part of the implementation of policy decisions made at the end of 2002 or early 2003, policy staff wrote a number of bylaws which included:
- Inter-jurisdictional mobility by-law
- Foreign legal consultant by-law
- Specialist certification program by-law
- Complaints Review Commissioner by-law

PROFESSIONAL DEVELOPMENT AND COMPETENCE (PD&C)

12. The Law Society has taken a proactive, preventive approach to member competence designed to support lawyers in their efforts to provide quality service and legal work.

13. To deliver this approach, the department consists of core business units: Professional Development, Program Delivery, Office of the Registrar, Remedial Competence and the Great Library. These units work together as a fully integrated resource centre for education, practice support and remedial assistance, offering services and programs that support students and lawyers in their quest for life-long learning.

14. PD&C continues to focus on the needs of the profession, from acceptable practices through to best practices, and to provide learning and information supports to assist members to meet competence goals.

15. Much of 2003 efforts have focused on the continued implementation of programs and services created to meet the needs of lawyers in Ontario. The emphasis is on building on the momentum of last year's accomplishments by continuing to create learning opportunities that are relevant, affordable, accessible and flexible. That means delivering initiatives for students and lawyers that go beyond traditional learning methods and modes of delivery and content, while incorporating a greater focus on practice management and competence.

Continuing Legal Education (CLE)

16. Continuing legal education activities represent an important component of how we assist lawyers in their professional development and competence. CLE also provides a substantial revenue contribution to the organization.

17. In developing the current curriculum, we have placed a greater emphasis on incorporating a balance of both practice-management topics and resources, in addition to substantive law teachings. Members continue to respond positively to our offerings with numbers continually increasing.

Increased Participation

18. In 2002, almost 12,000 registrants participated in CLE throughout the entire year, which represented an increase of 38 % from the previous year.

19. In the first five months of 2003, we have developed and delivered 39 CLE programs with approximately 8,500 registrants.
- Seventh Annual Intellectual Property Law - January 16, 2003
- The Youth Criminal Justice Act - A Practical Guide to the New Act - January 18, 2003
- Writing with Style - January 21, 2003
- The Oatley-McLeish Guide to Personal Injury Claims Under Bill 59 - January 24, 2003
- What Civil Litigators Need to Know about Criminal Law - January 25, 2003
- Buying & Selling a Business: Your Roadmap to Success - January 29, 2003
- The Six-Minute Municipal Lawyer - February 5, 2003
- Tort Law: New Trends and Causes of Action - February 12, 2003
- The Annotated Will - February 14, 2003
- Plea Negotiations: Achieving a "Win-Win" Result - February 15, 2003
- Conduct of the Family Law Trial - February 18, 2003
- Return of the Six-Minute Commercial Leasing Lawyer - February 19, 2003
- Border Issues for Employees and Executives - March 4, 2003
- The Annotated Power of Attorney for Property - March 5, 2003
- Bill 198: Dealing with Ontario's Proposed New Securities Law Regime - March 19, 2003
- Best Practices for Commercial Mortgage Transactions - March 26, 2003
- Pre-Trial Strategies for Family Lawyers - March 28, 2003
- Practice Workshop: Opening Your Law Practice - April 1, 2003
- The Six-Minute Debtor-Creditor Lawyer Returns - April 2, 2003 (a.m.)
- Wrongful Dismissal: Navigating the Concurrency Maze - April 2, 2003 (p.m.)
- Tax for Real Estate Lawyers - April 9, 2003
- Special Lectures 2003: Law of Evidence - April 10 & 11, 2003
- Papering the Mediation: What You Need to Succeed - April 23, 2003
- Electronic Registration and Title Searching for Law Clerks - April 24, 2003
- The Six-Minute Labour Lawyer - April 25, 2003
- Splitting the Pie - April 28, 2003
- Advanced Drafting for Lawyers - April 29, 2003
- Understanding Financial Statements (Part One) - April 30, 2003 and Understanding Financial Statements (Part Two) - May 1, 2003
- The Sixth Annual Six-Minute Employment Law Lawyer - May 2, 2003
- SARS and the Law - May 6, 2003
- IT Law Spring Training II - May 12 & 13, 2003
- Annotated Documents for an Injunction - May 14, 2003
- The Annotated Trust - May 26, 2003
- Annotated Pleadings for a Personal Injury Action - June 3, 2003 (a.m.)
- 2nd Annual Family Law for Law Clerks - June 6, 2003
- 3rd Annual Six-Minute Criminal Defence Lawyer - June 7, 2003
- Limitations Act, 2002 - June 11, 2003
- Residential Tenancies - June 19, 2003
- Personal Injury for Law Clerks Part I: Trial Preparation - June 24, 2003

20. In addition to addressing the needs of members, our CLE programs remain cost-effective for the Law Society and for those participating. The average registration fee for programs has remained the same for the last three years at $175 for a half-day program and $245 for a full-day program. These registration fees are the same for programs offered on the Interactive Learning Network (ILN). Members can now participate in teleseminars for $95 without incurring travel costs and time.

New delivery methods of CLE

21. One of our objectives in 2003 is to make our learning opportunities more accessible, affordable, convenient and attractive to the membership. As a result, we are offering more CLE opportunities, with content that is relevant, specific and responsive to the issues that members have told us they would like to have addressed.

22. In February of this year, we launched our Interactive Learning Network (ILN) which allows lawyers to attend live CLE seminars in their own regions. In addition to ILN, we are also increasing the number of teleseminars and have provided on-demand archived web casts of every Law Society CLE program direct to members' desktops. This allows members more opportunities and options to attend programs without incurring travel and out-of-office expenses.

23. Our new interactive teleseminar format, launched in April, enables us to organize a CLE program on an important and timely issue (such as SARS) more quickly and in a format that makes it accessible to every member of the Bar across the province. Participants are able to access the program by telephone from the convenience of their office or meeting room. Registrants can also invite any number of their colleagues to join in at no additional cost.

24. Such initiatives are being well received by the membership and effectively demonstrate that the Law Society is responsive to lawyers' needs. For example, our SARS and the Law teleseminar attracted nearly 300 participants which included lawyers and Human Resources professionals and our ILN workshop on the Limitations Act, organized in partnership with the Ontario Bar Association and The Advocates' Society, drew nearly 600 members.

25. Comments made by participants include:

"Wonderful opportunity to hear presentations from very experienced lawyers. Nice to hear from those at other ILN sites."

26. In the first half of 2003, we sold more than 4,500 publications. For those who cannot participate in the programs or simply want materials for self-study, we launched e-Transactions, a new e-commerce service, and have registered approximately 1.7 million hits to the site since its launch late last year.

	1998	1999	2000	2001	2002	Projected 2003
Average attendance per program	N/A	N/A	128	127	190	210
Total attendance at CLE programs	6,009	8,086	8,942	8,539	11,788	14,700
Number of units/publications sold	N/A	N/A	6,125	8,249	11,424	12,000

Partnerships with other Legal Organizations

27. The Law Society recognizes the important role that other legal organizations have in providing CLE to members and the opportunities available to work in partnership. By doing so, we can offer members a greater variety of programs, delivery methods and range of perspectives and do so cost-effectively.

28. In 2003, we have already undertaken a number of joint program efforts with various law associations. This year we will partner with the County and District Law Presidents' Association (CDLPA), The Advocates' Society, the Ontario Bar Association, the Women's Law Association, the Family Lawyers' Association, LawPRO, the Metro Toronto Lawyers' Association (MTLA), the Ontario Trial Lawyers' Association (OTLA), the Carleton County Law Association, the Department of Justice, the University of Ottawa and the Institute of Law Clerks of Ontario (ILCO) on joint or co-sponsored events.

Bar Admission Course, Articling Program and Education Support Services

29. Realignment of staff and the elimination of redundancies under the new PD&C structure allowed us to maintain the cost of the Bar Admission Course (BAC) at $4,400 per student in 2003, while reducing the levy on a per member basis by $17.

30. The BAC program includes support systems for students in the Articling Program as well as the Education Support Services unit which assists with accommodation, financial and other issues being faced by Bar Admission applicants.

31. The BAC has also made tremendous strides in the application of e-learning for students with the development of the BAC e-Learning site in 2002. Student response to this support service continues to be very positive.

32. The 2003 BAC program has over 1,300 registered students, approximately the same number of students as 2002. The percentage of students using the e-Learning site has increased dramatically this year over last and we are projecting that a minimum of 80% of this year's students will use the site for substantial supplemental study activities during the course of the program, up from 60% usage in the first year of use in 2002. Attendance at the Skills Phase to date (two courses only) is averaging approximately 73% which is the same as last year. Attendance at the Substantive Phase in 2002 was only 42% and we anticipate that it will be lower this year with the advent of e-Learning for the student.

	1998	1999	2000	2001	2002	Projected 2003
Enrolment	1232	1235	1271	1247	1312	1317 (confirmed)
Avg attendance Skills Phase	N/A	N/A	N/A	80%	72%	70%
Avg attendance Substantive Phase	N/A	N/A	N/A	48%	42%	35%
Percentage of students using the e-Learning site	N/A	N/A	N/A	N/A	60%	80%
Tuition fees	3650	4015	4015	4400	4400	4400 (confirmed)
Transfer candidates	38	65	74	61	93	N/A

Specialist Certification

33. The Specialist Certification program is currently undergoing a complete revision from a program of simple designation to a program of combining developmental/educational accreditation with the experience designation. The redesigned program, which will be more transparent and will be promoted to the members, should result in an increased number of Specialists in the profession in Ontario. It is anticipated that the program will have between 18 and 20 specialties in place by the end of 2004.

	1998	1999	2000	2001	2002	Current 2003
Number of Specialists	584	594	593	617	611	618
Specialists in Toronto Area	304	321	333	349	344	350
Specialists outside Toronto	280	273	260	268	267	268
Number of specialty areas	9	9	10	10	10	13

The Great Library

34. The Great Library continues to support the competence of members by providing a variety of print and digital resources. The issue of the continued provision of relevant and adequate library and information services is being canvassed by a Working Group of the Emerging Issues Committee. This Committee will be reviewing the delivery and application of library information and resources through numerous vehicles subsidized by the members including the Great Library, LibraryCo. and CanLII.

	2001	2002	Projected 2003
Avg pages viewed on web site per day	N/A	2579	2900
Catalogue searches on web site	N/A	40,321	42,000
Avg pages viewed per day for "What's New in Law"	203	376	425
Avg visit to web site in minutes	5	6	6
Pages copied in custom copy service	68,437	56,159	50,000
Pages copied on self-copiers	481,473	397,957	300,000
Seminars held	4	6	6
Attendance at orientation tours and general instruction	413	350	350
Items processed by Acquisitions unit	17,000	17,553	17,500
Corporate Records and Archives research requests	679	677	650
Corporate Records and Archives new entries into records database	N/A	2,157	2,400

Spot Audit

35. The Spot Audit division has refocused efforts on targeting members in higher risk categories. The identification of different types of data that could be beneficial in detecting members involved in high-risk activities was viewed as an essential exercise to ensure that ongoing audits would help to mitigate the risk of client claims against the client compensation and the errors and omissions funds.

36. Spot Audit is seeing clear results from this refocusing, with an increased number of files being elevated to Investigations. At the same time, the division is undertaking initiatives to support the PD&C Department's remedial approach by developing guides and tools that could assist members in their record keeping practices. This complements on site audit guidance to members to correct minor deficiencies before they lead to serious non-compliance or misconduct issues.

37. In February 2003, the Spot Audit unit completed a full report to the Lawyers' Fund for Client Compensation, on the status of the program and results which was later reviewed by the Finance Committee.

Number of Audits Conducted and Age of Inventory

	1998	1999	2000	2001	2002	Projected 2003
Books & Records Audits	411	977	874	718	506	478
Complex Audits	13	180	183	319	401	501
Total Audits	424	1,157	1,057	1,037	907	979
Age of Audits (days)	13	24	75	109	52	25
Inventory of files (as at Dec. 31)	3	25	105	261	115	100

Audit Costs (comparing Law Society audit activity and external CA firm activity if the external firms applied the same audit standards as the Law Society auditors)

Cost of	1998	1999	2000	2001	2002	Projected 2003
LSUC Books & Records Audit	N/A	0	1,077	1,012	949	1,091
CA Firm Books & Records Audit	N/A	1,184	1,407	1,322	1,293	1,341
LSUC Complex Audit	N/A	1,498	1,846	1,735	1,627	1,871
CA Firm Complex Audit	N/A	2,296	2,417	2,544	2,578	2,981

Practice Advisory

38. Practice Advisory continues to receive almost 6,000 inquiries per year from members on issues related to professional responsibility, ethics and the application of the Rules of Professional Conduct. From these inquiries, PD&C develops helpful tools and training, including Practice Management Workshops as well as Practice Tips and Frequently Asked Questions, that provide members with quick input on a variety of issues that are being faced by lawyers across the province as they strive to achieve.

PROFESSIONAL REGULATION

39. Professional Regulation is the core function of the Law Society. Our success in maintaining the public's confidence in our discipline and complaints process is the foundation of our self governance mandate. Our new Director of Professional Regulation, Zeynep Onen, has now been at the Law Society 12 months and has now completed a comprehensive evaluation of the staffing and structure of the division.

40. A new quarterly report has been introduced, the first of which was presented to Convocation and the Professional Regulation Committee in April. This report will enable the public, benchers and the profession to monitor the Law Society's performance of its regulatory mandate.

41. In May 2003, we reorganized our management structure and work flow in this division. In order to staff these new units and address other management needs in the rest of the division, we have existing positions and transferred staff. Our recruitment for the head of Investigations is almost complete and an announcement will be forthcoming in the near future.

42. As part of this undertaking, we have created two new units. The Intake Unit will be the primary driver of case management. It will receive and assess complaints from the Client Service Centre and elsewhere and will stream them appropriately. Our new Enforcement Unit will be devoted to monitoring and enforcing Law Society orders and undertakings.

43. The Director of Professional Regulation and myself are very focused on improving the management of the professional regulation process. While we have made a number of changes to staff and structure, we are still in the midst of a redesign process as we develop a case management system. There will be opportunities to improve the timeliness of the process. As these opportunities are identified, we will bring them to Convocation, where necessary, for consideration. We are mindful of the developments at other professional regulatory organizations and the importance of these issues to self regulation.

Complaints Resolution

44. The new Manager of Complaints Resolution, Deena Baltman, has now started with the Law Society and will be responsible for a staff of 20. Deena has extensive experience as an arbitrator, litigator and mediator in both the public and private sectors. She also has significant experience as a team leader and administrator. Deena was formerly an arbitrator at the Financial Services Commission of Ontario and

Vice-Chair at the Workplace Safety & Insurance Appeals Tribunal. She is an adjunct professor at Osgoode Hall Law School in administrative law. She has also taught on such topics as decision writing, expert evidence and conduct of a hearing.

45. Deena is working on strategies to improve time lines so that we can respond to complaints more quickly and complete files faster. She is also focused on improving quality of service which includes preparing, procedures and templates to guide staff and improving our written communications to stakeholders. Additionally, she is examining the department's mandate with a view to enhancing our investigative and adjudicative functions.

46. At the end of this first quarter of 2003, Complaints Resolution took in approximately 1,000 files. During the same period, staff either closed or transferred out slightly under the number of intake files. The active inventory of files as of March 31, 2003, stood at nearly 1,400.

Investigations

47. Matters that require an intensive investigation are transferred to Investigations. Investigations' primary responsibility is to investigate allegations which may amount to professional misconduct or conduct unbecoming in light of the Law Society Act, the bylaws or the Rules of Professional Conduct.

48. In the first quarter of 2003, Investigations took in over 300 files. During the same period, staff either closed or transferred out more than 200 files. The majority of investigations that began in this quarter were either financial or client and civility issues. Investigations is also responsible for a number of other types of investigations under the Act. Among these is the prosecution of unauthorized practice where a person holds himself/herself out as a barrister or solicitor without proper Law Society membership.

49. In the first quarter of 2003, Investigations opened nearly 40 unauthorized practice files and closed almost 30 files.

Discipline

50. Discipline is responsible for the prosecution of a variety of matters including those concerning lawyer conduct, capacity, applications for admission to the Society and applications for reinstatement or readmission. The majority of prosecutions concern issues of member conduct based on infractions of the Rules of Professional Conduct. Our discipline counsel review and disclose the evidence and present the case to the Hearing Panel.

51. In the first quarter, Discipline took in 16 files and issued 45 applications. In 40 % of the files, more than one year has elapsed between the time the application was issued and the hearing date.

Moving forward in Professional Regulation

52. The Division is continuing to focus its efforts on timeliness, transparency and fairness of the regulatory process. In addition, work is being done to apply guidelines, standards, procedures and policies consistently and to improve access to information and services.

53. Strategies are being developed and implemented to increase the "interface" between the various areas in regulation to increase effectiveness and efficiency. New targets for timeliness are being identified and a new intake unit and enforcement unit has been created. Staff are also looking at alternative methods of resolving disputes.

54. Another major project underway is improving our case management. The case process is currently driven by complaints considerations and we are looking at how to rebalance the focus on our regulatory mandate.

This includes better management of complaint expectations and a redefinition of the role of the complainant within the process as an informant/witness rather than a party.

55. We are working with a consultant on the specifications for a case management system. A case managed process will require standard identification of case types, agreement as to the applicable legal principles on key issues, an effective data model, and standardized guidelines and other supports for decision making at critical points. Our goal is to have specifications by September 2003 so that programming by IS can begin.

Tribunals

56. In April this year the Law Society brought on board Linda Gehrke to work as Project Counsel on a contract. On leave from her position as Vice-Chair of the Workplace Safety and Insurance Appeals Tribunal, she has taken on the assignment of reviewing our processes and procedures around our discipline tribunals.

57. She is also preparing education programs and materials for benchers, to assist them in their role as members of the Law Society's Hearing and Appeal Panels.

58. The first of a series of education sessions for benchers was held June 11, with a list of speakers including The Hon. Mr. Justice Stephen Goudge of the Court of Appeal for Ontario; The Hon. Dennis R. O'Connor, Associate Chief Justice for Ontario; Prof. David Mullan, Professor of Constitutional and Administrative Law at Queen's University Faculty of Law; benchers Gavin MacKenzie, Carole Curtis, Paul Copeland, and Neil Finkelstein; and Zeynep Onen, Director of Professional Regulation. Larry Banack, Chair of the Law Society's Hearing Panel, chaired the session. Further sessions are being planned for the Fall.

59. Linda is also working on a plan for the publication of decisions of Hearing and Appeal Panels, to further ensure the decisions are accessible to Law Society members and to the public. The project will include the publication of decisions of the Law Society's Hearing and Appeal Panels from 1998 to the present, as well as all future decisions.

60. In addition, Linda will be performing a needs assessment of tribunals processes and procedures to ensure the hearing and decision making processes of the Law Society's tribunals exhibit the characteristics of high quality, expertise, fairness, timeliness, courtesy, transparency, consistency and accessibility. She will be assessing the processes, structure and staffing of the Tribunals Unit and the Rules of Practice and Procedure of the Law Society.

EQUITY AND DIVERSITY

61. As reported in the 2002 Annual Report, the Law Society has developed and now offers a number of programs, services and policies in support of its mandate to govern the profession in the public interest and to facilitate access to justice.

62. Much of the focus in 2003 has been to promote these initiatives as they pertain to encouraging greater equity and diversity within the profession and access to legal services for all.

63. Another key focus this year is to embed equity and diversity principles within all operational departments of the Law Society and the programs, products and services they provide to members, students, the public and employees.

64. The Law Society successfully recruited Rudy Ticzon to the position of Community and Policy Advisor. He brings a wide array of expertise in working with equity-seeking groups as a former Advisor to various Ontario Cabinet Ministers. While working for the Minister of Citizenship, Rudy worked extensively on initiatives that promoted equity, diversity, human rights, disability rights and seniors' issues and oversaw many of the community consultations working closely with various equity-seeking groups.

65. Rudy also has extensive community relations experience from his work as Community Investment and Philanthropic Manager at GlaxoSmithKline Inc., an international pharmaceutical company and worked at the Ontario College of Teachers, another regulatory organization.

66. Since joining in March 2003, Rudy's primary focus has been to begin developing relationships with various equity-seeking community groups and to promote and participate in public education and awareness events such as Law Week and South Asian Heritage Month. Planning is currently underway to host a public education forum in celebration of PRIDE Week in partnership with the Sexual Orientation and Gender Identity Conference (SOGIC) of the Ontario Bar Association. The forum will include discussion on recent court rulings and feature The Hon. Claire L'Heureux-Dubé, former Supreme Court Justice of Canada as keynote speaker. Significant outreach has been made to the community to ensure a broad participation including several Toronto mayoral candidates.

67. Rudy is also overseeing the Law Society Mentorship Program and has in his short time visited three high schools in the GTA to promote our programs. He is working collaboratively with staff that are responsible for similar programs in Education Support Services to provide a comprehensive and consistent approach to our policies on mentoring.

68. Our Aboriginal Issues Coordinator has also been active in promoting the many National Aboriginal Day activities that we are hosting together with our various community partners. Early in June, we featured "Neekawnisidok" - a fine art exhibit and on June 12 we hosted a panel discussion about the Gladue (Aboriginal Persons) Court. This event was extremely well received with many members of the Aboriginal community participating and adding their perspectives to the dialogue.

69. Training and education also is a key activity area in promoting equity and diversity. The Law Society designs and delivers training and education to large, medium and small law firms, as well as to sole practitioners. The workshops are custom-designed to the specific needs of the law firm and/or practitioner. In 2003, Law Society staff have conducted 15 – 20 such training sessions with over 350 lawyers participating.

70. Working with a highly respected recruitment firm and a community advisor, we are continuing to aggressively search for appropriate candidates for the important role of Equity Advisor. We have made significant efforts to reach out to equity-seeking groups to identify potential candidates. As of the time this report is delivered to Convocation, the short list of candidates will have been interviewed.

Access to Justice

71. Access to Law Society services, programs and information is an important component of access to justice. More members of the profession and public rely on technology to get information.

72. To make our web site more accessible to the blind, the Law Society earlier this year completed an audit, working with an outside supplier recommended by the Canadian Institute for the Blind (CNIB), to develop and implement technical changes to achieve a higher level of accessibility. Overall, through this process, we have significantly increased our compliance with standards for web technology for blind persons.

73. In May 2003, the Law Society of Upper Canada and the Law Foundation of Ontario hosted an important full-day symposium and awards dinner entitled, Access to Justice for a New Century: The Way Forward.

74. The symposium featured stimulating and dynamic speakers who discussed and debated critical issues respecting access to justice, including differing views on the meaning of access to justice; ways to make legal services more accessible; litigation and social justice; and the role of the lawyer in society.

75. Over 370 participants that included members, students, community clinic staff, community groups and food bank representatives as well as media, heard from provocative, internationally renowned speakers from

Canada, the United States, the United Kingdom and South Africa focusing on core Canadian issues and drawing on their international perspectives. They also examined a variety of legal service delivery models, with panels contributing to the discussion of a strategy for the future. A report will be delivered summarizing the outcomes of the conference and subsequent meetings of invited participants.

FINANCE

76. Prudent financial management continues to be the focus of our approach to our finances. We ended 2002 in a healthy state with a working capital reserve of approximately $8 million, which equates to two months of operating expenses.

77. Our first quarter results show that we are on track with our projected 2003 revenues and expenses. Revenues are slightly lower at $11.5 million in comparison to the same period in 2002 when we stood at $12 million. Expenses are almost virtually the same year over year coming in at approximately $11 million in the first quarter of 2003. This gave us an operating surplus of $430,000 as of March 31, 2003.

78. The Lawyers Fund for Client Compensation is also tracking similarly to last year coming in with a fund balance of nearly $16 million as of March 31, 2003.

79. Beginning in late 2002 and carrying forward into 2003, the department has engaged our external auditors to review internal controls on all of our financial operations. The first phase of this process involved a review of human resource and payroll processes. The review concluded that the Society's controls in relation to this critical function were strong.

80. The department has begun a major upgrade of its financial management systems. The first phase involved the implementation of financial reporting software that allows for electronic distribution of financial reports to managers. This phase was implemented in May of 2003. The project continues with the department implementing an integrated purchasing system intended to provide increased control over Society expenditures and improved monitoring of commitments made against the approved budget.

81. The second half of 2003 will be focused on our budget and priority planning process for 2004. As well, we are continuing our operational reviews with Professional Development and Competence and Communications and Public Affairs undergoing reviews as part of the 2004 budget process.

Facilities

82. Earlier this year, we retained architects and completed space and floor planning for the North Wing renovation. This will convert classroom space, currently unoccupied most of the year, into valuable office space enabling us to return staff currently working off site in other leased locations to Osgoode Hall.

83. Originally Convocation approved $4.6 million, including contingencies, for the renovation of the 2nd, 3rd, and 4th floors. Cost consultants have completed their detailed analysis and identified a cost of approximately $3.9 million, including contingencies, to accomplish this work.

84. Upon further consideration of the space in the North Wing, it has been determined that additional renovations are needed to improve working conditions and access to the 6th floor. Our consultant has also estimated the additional cost of renovating about half of the 5th floor, all of the 6th floor and extending the operation of the two North Wing elevators to the 6th floor at $2.3 million.

85. Once all architect design fees and construction contingencies are included, it is now estimated that all of this work could be completed at a cost between approximately $5.4 million and $6.2 million, depending on the competitiveness of the construction industry at the time of tendering.

86. Additionally, we are considering renovations to the 1st floor Lamont Lecture Hall and are currently costing out this project to make better use of this facility for multiple purposes. A detailed and comprehensive cost analysis and recommendations will be brought to Convocation in September with a goal to begin construction early in 2004.

87. Completed projects in 2003 include renovation of the main reception and public hallways, including the Honours Room and Exhibition Hall. Exhibition Hall is the Law Society's reopened museum situated by the Reception area elevators in Osgoode Hall and accessible through both main entrances of the building. As well the Society has embarked on several accessibility projects including the upgrade of the Main Reception elevator and improved internal signage.

INFORMATION SYSTEMS

88. At the heart of many Law Society initiatives and improvements launched last year was a continued emphasis on maximizing technology. To this end, Information Systems continues to develop timely, secure and cost-effective technology solutions to meet both corporate and departmental needs.

89. As a result of the extensive work done by our IS department, we now have a significantly improved infrastructure that has been updated, is more reliable and secure. This infrastructure includes our network, servers, web sites, desktops/laptops, software and our AS400.

90. In addition to day-to-day operational guidance and support, a major effort by the IS Department has been made to upgrade and streamline our DB2 database wherein all our core information lies. We have migrated student information into this database and are working to include tribunal information as well. As we move further into an electronic work environment, we are developing systems that will enable us to integrate other key member information into this database. Our goal is to have an integrated database that contains all relevant information. Our mantra has become, "if information does not exist in the AS400, it does not exist."

91. By doing so, our front-line staff will have immediate access to member information that is public that can be shared with members of the public and profession rather than relying on other departments. This will also be extremely valuable when we participate in the national database that is required for the National Mobility Agreement.

92. We are also currently in the midst of converting our Novell system into Lotus Notes. This will bring us in line with our stakeholders such as LawPRO and provide us with greater capabilities. The conversion is well on track and should be completed over the summer.

93. Much of the work that is being done on updating our databases and the information contained is an important component of our overall Business Continuity Plan. Since 9/11, we have been reviewing our contingency and disaster recovery plans and working with outside consultants to develop a corporate strategy. This strategy looks at everything from securing outside premises in the event of a disaster, to contingencies for backing up critical Law Society files and information, much of which relies on technology.

CLIENT SERVICE CENTRE

94. The Client Service Centre (CSC) provides a variety of cost-effective services related to the incoming and outgoing 'traffic' at the Law Society through its four business units: Call Centre, Membership Services, Complaints Services and Administrative Compliance Processes.

95. The department handles a wide range of transactions from general membership inquiries, complaints about lawyers and requests for lawyer referrals, to adjusted billings and refunds and contacts regarding administrative compliance for members.

Call Centre

96. The Call Centre continues to be the intake point for calls on its four main sets of lines – Reception, Complaints Reception, Lawyer Referral Service and General Membership Inquiry. In 2003 the Centre added a fifth set of lines for Continuing Legal Education registrations.

97. The Call Centre continues to maintain a response rate of answering 96% of calls within 20 seconds. During the first five months of 2003, the Call Centre fielded over 132,000 calls.

Lawyer Referral Service

98. The Lawyer Referral Service (LRS) continues to fill an important public need by connecting people to appropriate legal counsel. It is one of the most successful and popular programs available for Ontarians who may need a lawyer or for those wanting to learn more about their legal options and rights. For the lawyers who are members of the LRS, it can be an effective way to attract new clients.

99. In the first five months of 2003, the LRS assisted more than 10,000 people needing assistance on the toll-free crisis line and another 21,000 callers who contacted us on our 1-900 number. There are currently more than 1,600 lawyers who are subscribers to the service. To further increase awareness and use of the service, our 2003 marketing plan uses a more targeted approach with direct marketing mailing, community and web-based advertising.

100. Work is currently underway to expand geographical representation to smaller centers and remote areas of the province historically under-represented. There are also plans to expand the LRS crisis line to include those seeking a lawyer specializing in children's protection issues.

Membership Services

101. Membership Services provides 35 different types of member-related transactions which include changes to member contact information to processing adjusted billings. In addition to this work, staff also processed almost 1,700 Member Photo Identification Cards to accommodate members who will now be subject to increased security measures introduced by the province on the Courts side of Osgoode Hall.

102. In 2003, we also migrated the handling of transactions for lawyers who wish to register for a CLE course or to purchase related materials in person. By conducting this transaction through membership services, members can access what they need from one point in the Law Society.

Complaints Services

103. Complaints Services continues to be the first point of contact for members of the public or profession who have a concern about a lawyer. This area works closely with Professional Regulation staff to ensure that complaints are streamed appropriately, with the assistance of its own full time Counsel Manager. The primary focus for 2003 is to enhance both the quality and consistency of responses to complainants.

104. During the first five months of 2003, we received and acknowledged receipt of 2,836 potential complaints.

Administrative Compliance Processes (ACP)

105. A significant achievement for this department in 2003 is the development and collection of the Member's Annual Report (MAR). More than six times as many members have used the convenient "e-filing" option for their MAR than in 2002 (almost 9,500 e-filings as of June 1, compared to 1,533 for all of last year). In addition, the MAR was re-designed and reduced to eight pages from its previous 12-page format.

106. As of June 18, 2003, the Law Society received 31,399 completed MARs, compared to 26,006 at the same time last year.

107. Other successes in 2003 include successful migration of the Specialist Certification and Transfer Candidate processes, and the introduction of a new database tracking mechanism. AS400 databases have also been developed for Foreign Legal Consultants, Multi-Discipline Practices and Professional Affiliations.

Member Database

108. In December 2002, Ontario joined other provinces to sign the historic National Mobility Agreement that will allow for greater inter-jurisdiction mobility for the profession.

109. We are currently on the cusp of change with the National Mobility Agreement being implemented by most Canadian law societies. This will allow for occasional appearances of lawyers to other jurisdictions for up to one hundred days per year. If they want to appear beyond this period, or if an economic nexus is established in the second province, they will be obliged to become members and pay fees in that province.

110. Starting in July, lawyers from other jurisdictions where there is reciprocity will have increased access to the Ontario market and vice versa --- that is, both provinces' law societies have to have implemented the Agreement by changing their by-laws and rules.

111. The Law Society of British Columbia has agreed to develop and host a secure internet-based search facility to permit the Inter-jurisdictional Database Participants to identify lawyers qualified to practise law in other Canadian jurisdictions (the Inter-jurisdictional Practice Registry). Each province will be responsible for providing to the National Registry the current and accurate information about lawyers entitled to practise law.

112. The required information includes:
Given and surname
Firm or business name
Date of Call to the Bar
Insurance Status
Mobility Status

113. In preparation in Ontario, Law Society staff have been working diligently to fine-tune our member database so that all relevant information can be easily accessible as part of the national database.

HUMAN RESOURCES

114. As a service-focused organization, the Law Society relies on a strong and qualified workforce committed to serving our members and the public.

115. Currently, the Law Society's workforce stands at 388 employees. Since January 2003, 23 employees have left the Law Society and we have successfully recruited 40 new employees as well as 22 summer students. As of mid June, we had only 14 outstanding vacancies.

116. As you know, we strive to reflect the population by encouraging applications from persons representing the diversity of our profession and community. Our current demographics show that about 66 % of our workforce consists of women. 60% of the Law Society's management positions are held by women. As well, over 30 positions at the Law Society are designated bilingual in French and English and we have staff who can communicate in a wide range of languages such as Mandarin, Cantonese, Spanish, Portuguese, German and Italian to name a few.

117. For employees to provide the highest level of service, they must be knowledgeable and informed about new and continuing initiatives. To improve communication and information sharing, the CEO holds quarterly town hall meetings and bi-weekly breakfasts with staff. So far in 2003, we have held one town hall meeting and 15 breakfasts with over 150 employees.

118. To complement our internal communications efforts that included the launching of our first-ever Employee Guidebook in 2002, we have developed an Orientation Program for all new employees. The first session took place in May 2003 and will continue on a monthly basis.

119. HR staff have also been busy providing support to the reorganization of the Professional Regulation Department and assisting in the redeployment and recruitment of staff to improve our complaints, investigations and discipline processes.

120. We have also hired an Information Systems trainer to assist staff in working more effectively with our various software programs and to conduct in-house training.

121. Last year, the Law Society conducted its first-ever Employee Satisfaction Survey and found that we have a high level of loyalty and pride. Earlier this year, each department reviewed their own results and have been developing and implementing action plans to address areas of development such as performance management and cross-divisional dialogue.

COMMUNICATIONS AND PUBLIC AFFAIRS

122. The Communications and Public Affairs department continues to focus its efforts on implementing its proactive strategy to communicate and build relationships with its stakeholders to:
- increase awareness of the programs and services the Law Society provides to members of the profession and the public
- enhance the reputation of the organization in the eyes of members and the reputation of lawyers in the eyes of the public.

123. As part of this strategic role, the department works closely with core areas of the Law Society to provide promotional support for PD&C initiatives, issues management support for Professional Regulation and government relations issues, as well as to promote and cover events and issues relevant to the profession (i.e. money laundering legislation changes).

124. To this end, the department employs an integrated mix of media relations, publications and web-based technology.

Media Relations

125. The department continues to focus on proactive media relations and establishing closer relationships with key reporters to increase public awareness and enhance the profile of the Law Society.

Media Relations Activity	Jan – May 2003
Number of news releases distributed	39 -22 English -15 French -2 Chinese
Number of media requests (for interview and photo opportunities and background information)	254
Number of news reports where Law Society was mentioned directly (not including the Law Times, Lawyers Weekly and community media)	120

126. In 2002, Communications staff focused its primary media relations attention on the major media and legal publications. In 2003, we have significantly expanded our efforts to include the community press and to reach out to the ethnic media.

127. Our efforts have been successful, particularly with the Chinese and Aboriginal press, as well as with Share, the largest newspaper serving the black community in the Toronto and GTA area.

128. Examples of our success include our efforts to promote the honourary degree ceremony for the Governor General in February 2003. In developing relationships with the Chinese press, we succeeded in having 21 media outlets attend our event, including every Chinese print and electronic outlet from Toronto and Ottawa.

129. We have also established strong working relationships with members of the Aboriginal press throughout Ontario and nationally. For example, newspapers such as Tansi and the Aboriginal Times are just two newspapers that are beginning to cover Law Society news and events and promoted the 2003 Bencher Election.

130. Other proactive media pitching of timely issues and programs has resulted in extensive broad news coverage, including:
- Treasurer's letter to the editor highlighting our equity initiatives – appeared in the Toronto Star, as well as community press
- Significant interest in the SARS CLE program which included a live interview with the CEO on Report on Business Television (ROBTV)
- Bencher Election promotions and coverage in legal and community press
- Access to Justice Symposium and Law Society Medals

Annual Report

131. For the first time, the Law Society developed an Annual Report that effectively positions the Law Society's activities in 2002 to:
- market our performance in our core areas
- make the organization more transparent by providing our stakeholders with a better understanding of how the Law Society is structured, how we govern the legal profession and the services we provide
- enhance the profile and image of the Law Society

132. This publication was developed entirely in house from concept, to writing, to design – only the printing was outsourced.

Member Communications

133. Communications and Public Affairs continues to enhance the Ontario Lawyers Gazette to provide timely and relevant information and news to the legal profession. Three issues have been produced to date in 2003 and were well received by the profession. For example, Win Wahrer wrote on behalf of Association in Defence of the Wrongly Convicted (AIDWYC):

"The Ontario Lawyers Gazette article was so very helpful in getting volunteer lawyers to come aboard. We received e-mails, letters and phone calls from lawyers, articling students and retired lawyers offering to review cases, answer letters and basically do anything they can to help. We now have 35 new volunteers. Some of them have already picked up a case and are busily reviewing… Thanks ever so much for profiling AIDWYC and being a big part of focusing on the great need there is to assist in helping to bring justice to the wrongly convicted."

134. The department updated and distributed the popular Quick Reference Card for members in the Spring 2003 Gazette, along with materials for the Access to Justice Symposium and Lawyers' Assistance Program (LINK).

135. As part of outreach efforts, the department continued to produce and update fact sheets and materials that can be distributed to legal organizations and members. These include:
- What we are doing in Professional Development and Competence
- What we are doing to promote Equity and Diversity
- The changing face of the legal profession
- Our financial picture and what it means to members

Web-Based Communications

136. Our corporate web site has now become recognized as the "go to site" for reliable, relevant and timely news and information. When stakeholders need information they know they can get it quickly and easily from our web site. Our philosophy is that if it is not on the web site, chances are it has not happened.

137. The results speak for themselves. Earlier this year, we broke the 7 million hits per month mark for the first time. In comparison, 2002 began at roughly 3 million hits per month and showed a continual climb throughout the year.

138. We have maintained the 7 million hits per month on average throughout 2003 and approached 8 million hits in May.

139. Moving forward, the department is focusing on working with IS to implement a new search engine that will be far more effective in helping visitors to our site find what they need quickly. The new search function will be in place by the Fall.

140. Work also began in early 2003 to develop a bencher-only site that will allow members of Convocation to access internal documents more conveniently and efficiently. The launch date is scheduled for the end of the year.

Moving Forward

141. For the remainder of 2003 and beyond the department will continue to provide comprehensive, strategic communications leadership, advice and support to all departments of the Law Society, with a particular focus on our four strategic areas. Enhancing the web site's capabilities and increasing media relations activities will remain priorities. The department will look at identifying further opportunities similar to the Annual Report, to enhance the Law Society's profile and image. We will do so by reporting results with an increased focus on branding and marketing to complement communications efforts.

MOTION - DRAFT MINUTES OF CONVOCATION

It was moved by Ms. Curtis, seconded by Mr. Finkelstein that the Draft Minutes of Convocation of May 22, 2003 be confirmed.

Carried

MOTION – APPOINTMENT TO THE COMPLAINTS RESOLUTION COMMISSIONER SELECTION COMMITTEE

It was moved by Ms. Curtis, seconded by Mr. Finkelstein THAT:

Abdul Chahbar be appointed to the Complaints Resolution Commissioner Selection Committee established under Ontario Regulation 31/99.

Carried

MOTION – BY-LAW 38 – SPECIALIST CERTIFICATION (French Version)

It was moved by Mr. Finkelstein, seconded by Mr. Wright THAT:

By-Law 38 [Specialist Certification], made by Convocation on April 25, 2003, be amended as follows:

1. The By-Law is amended by adding the following French version:

RÈGLEMENT ADMINISTRATIF N^{o} 38

AGRÉMENT DES SPÉCIALISTES

PARTIE I
DISPOSITIONS GÉNÉRALES

Définitions
1. Les définitions qui suivent s'appliquent au présent règlement administratif.

«Comité» Le Comité permanent du Conseil chargé des questions liées à la compétence. («Committee»)

«Conseil d'agrément» Le Conseil d'agrément des spécialistes. («Board»)

«personnel de l'agrément» Les employés et employées du Barreau que le directeur général ou la directrice générale charge de soutenir les travaux du Conseil d'agrément et des comités de spécialisation. («certification staff»)

Exercice de ses pouvoirs par le comité
2. L'exercice des pouvoirs et des fonctions que le présent règlement administratif attribue au Comité n'est pas assujetti à l'approbation du Conseil.

PARTIE II
CONSEIL D'AGRÉMENT DES SPÉCIALISTES

Constitution du Conseil d'agrément

3. (1) Est constitué le Conseil d'agrément des spécialistes.

Composition du Conseil d'agrément

(2) Le Conseil d'agrément est composé de sept personnes nommées par le Comité de la manière suivante :

1. Quatre conseillers ou conseillères qui ne sont pas des conseillers ou des conseillères non juristes.

2. Un conseiller ou une conseillère non juriste.

3. Deux personnes qui sont des spécialistes agréés, mais non des conseillers ou des conseillères.

Mandat

(3) Sous réserve du paragraphe (4), les personnes nommées au Conseil d'agrément exercent leurs fonctions pour un mandat renouvelable d'au plus trois ans.

Amovibilité

(4) Les membres du Conseil d'agrément exercent leurs fonctions à titre amovible.

Présidence

4. (1) Le Comité nomme un membre du Conseil d'agrément à la présidence.

Mandat

(2) Sous réserve du paragraphe (3), le président ou la présidente exerce ses fonctions pour un mandat renouvelable d'au plus trois ans.

Amovibilité

(3) Le président ou la présidente exerce ses fonctions à titre amovible.

Fonctions du Conseil

5. Les fonctions du Conseil d'agrément sont les suivantes :

a) constituer les comités de spécialisation;

b) encadrer les travaux des comités de spécialisation;

c) sous réserve de l'article 12, établir les normes d'agrément des membres à titre de spécialiste;

d) déterminer les domaines du droit à l'égard desquels les membres peuvent être agréés à titre de spécialiste;

e) sous réserve du présent règlement administratif, adopter les règles de pratique et de procédure relatives à l'étude, par les comités de spécialisation et par le Conseil d'agrément, des demandes présentées en application de l'article 17, à l'étude par le Conseil d'agrément des demandes présentées en vertu de l'article 22, du paragraphe 31 (3), (5) ou (6) ou de l'article 33, et à l'exercice par le Conseil d'agrément du pouvoir discrétionnaire que lui attribue le paragraphe 31 (2) ou 32 (2);

f) élaborer et soumettre à l'approbation du Comité les politiques relatives à l'agrément des membres à titre de spécialiste;

g) recommander au Comité le montant des droits qui sont exigibles des auteurs d'une demande d'agrément à titre de spécialiste et des spécialistes agréés en application du présent règlement administratif;

h) agréer les membres à titre de spécialistes.

Quorum
6. Le quorum pour les affaires courantes du Conseil d'agrément est de quatre conseillers et conseillères.

Réunion
7. (1) Le Conseil d'agrément se réunit sur convocation du président ou de la présidente et, dans tous les cas, au moins deux fois par an.

Réunion par téléconférence
(2) Les réunions du Conseil d'agrément peuvent avoir lieu par téléconférence ou par d'autres moyens de communication, notamment électroniques, afin que toutes les personnes y participant puissent communiquer les unes avec les autres instantanément et simultanément.

Rapport annuel
8. Au plus tard le 31 mars de chaque année, le Conseil d'agrément remet au Comité un rapport sur les activités qu'il a exercées au cours de l'année précédente.

Confidentialité
9. (1) Les membres du Conseil d'agrément ne doivent divulguer aucun renseignement qui vient à leur connaissance par suite de l'exercice des fonctions que leur attribue le présent règlement administratif.

Exceptions
a) Le paragraphe (1) n'a pas pour effet d'interdire ce qui suit :

a. la divulgation de renseignements exigée dans le cadre de l'application de la Loi, des règlements ou des règlements administratifs;

b. la divulgation de renseignements à laquelle un membre du Conseil d'agrément est tenu en application du *Code de déontologie*;

c. la divulgation de renseignements qui sont du domaine public;

d. la divulgation de renseignements avec le consentement écrit de toutes les personnes dont il est raisonnable de croire que les intérêts seront touchés par la divulgation.

PARTIE III
COMITÉS DE SPÉCIALISATION

Constitution de comités par le Conseil d'agrément
10. (1) Le Conseil d'agrément constitue un comité de spécialisation pour chaque domaine du droit à l'égard duquel un membre peut être agréé à titre de spécialiste.

Composition des comités de spécialisation
(2) Chaque comité de spécialisation est composé de cinq à neuf membres nommés par le Conseil d'agrément.

Qualités requises des membres
(3) Seuls les membres suivants peuvent être nommés à un comité de spécialisation :

1. Les membres agréés à titre de spécialiste dans le domaine du droit à l'égard duquel a été constitué un comité de spécialisation, s'il existe de tels membres.

2. Les membres qui exercent le droit dans le domaine à l'égard duquel a été constitué un comité de spécialisation et qui s'engagent à obtenir leur agrément à titre de spécialiste de ce domaine dans les trois ans qui suivent la création de cet agrément, s'il n'existe pas de membres agréés à titre de spécialiste dans ce domaine.

Mandat

(4) Sous réserve du paragraphe (5), les personnes nommées à un comité de spécialisation exercent leurs fonctions pour un mandat renouvelable d'au moins trois ans.

Amovibilité

(5) Les membres des comités de spécialisation occupent leurs fonctions à titre amovible.

Présidence et vice-présidence

11. (1) Le Conseil d'agrément nomme, dans chaque comité de spécialisation :

a) un membre à la présidence;

b) un membre à la vice-présidence.

Mandat

(2) Sous réserve du paragraphe (3), les personnes assumant la présidence et la vice-présidence occupent leurs fonctions pour un mandat renouvelable d'au moins trois ans.

Amovibilité

(3) Les personnes assumant la présidence et la vice-présidence occupent leurs fonctions à titre amovible.

Fonctions des comités de spécialisation

12. Les comités de spécialisation ont les fonctions suivantes :

a) élaborer les normes d'approbation du Conseil d'agrément aux fins de l'agrément des membres à titre de spécialistes;

b) examiner et agréer les programmes de formation professionnelle pour l'application des articles 16 et 29;

c) préciser le nombre d'heures d'étude autonome et de programmes de formation professionnelle agréés que doivent effectuer les auteurs d'une demande d'agrément et les spécialistes agréés;

d) étudier les demandes d'agrément à titre de spécialiste présentées par les membres;

e) recommander au Conseil d'agrément les membres à agréer à titre de spécialistes.

Quorum

13. Le quorum pour les affaires courantes des comités de spécialisation est constitué de la majorité de leurs membres.

Réunion

14. (1) Les comités de spécialisation se réunissent sur convocation de leur président ou de leur présidente et, dans tous les cas, au moins deux fois par an.

Réunion par téléconférence

(2) Les réunions des comités de spécialisation peuvent avoir lieu par téléconférence ou par d'autres moyens de communication, notamment électroniques, afin que toutes les personnes y participant puissent communiquer les unes avec les autres instantanément et simultanément.

Confidentialité

15. (1) Les membres des comités de spécialisation ne doivent divulguer aucun renseignement qui vient à leur connaissance par suite de l'exercice des fonctions que leur attribue le présent règlement administratif.

Exceptions

(2) Le paragraphe (1) n'a pas pour effet d'interdire ce qui suit :

a) la divulgation de renseignements exigée dans le cadre de l'application de la Loi, des règlements ou des règlements administratifs;

b) la divulgation de renseignements à laquelle un membre d'un comité de spécialisation est tenu en application du *Code de déontologie*;

c) la divulgation de renseignements qui sont du domaine public;

d) la divulgation de renseignements avec le consentement écrit des personnes dont il est raisonnable de croire que les intérêts seront touchés par la divulgation.

PARTIE IV
AGRÉMENT DES SPÉCIALISTES

Exigences relatives à l'agrément

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

1. Il exerce le droit depuis au moins sept ans avant de présenter sa demande d'agrément.

2. Il a exercé dans le domaine du droit de la manière qui suit pendant au moins cinq des sept années visées à la disposition 1 :

   i. Pendant les deux années qui précèdent immédiatement le jour de la présentation de sa demande d'agrément.

   ii. Pendant n'importe quelle autre période de trois ans.

3. Il connaît de façon approfondie le droit de fond ainsi que la pratique et les procédures du domaine du droit.

4. Au cours de chacune des cinq années pendant lesquelles il a exercé le droit dans le domaine, il a, dans ce domaine :

   i. d'une part, effectué le nombre d'heures d'étude autonome que précise le comité de spécialisation constitué à l'égard du domaine,

   ii. d'autre part, effectué le nombre d'heures de programmes de formation professionnelle agréés que précise le comité de spécialisation constitué à l'égard du domaine.

5. Il n'est pas ni n'a été, selon son dossier, au cours des cinq ans qui précèdent immédiatement le jour de la présentation de sa demande d'agrément, visé par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique de n'importe quel ressort a rendue à son encontre.

6. Son autorisation d'exercer le droit dans un ressort où il est habilité à exercer le droit n'est pas ni n'a jamais été, au cours des cinq ans qui précèdent immédiatement le jour de la présentation de sa demande d'agrément, assortie d'une condition ou d'une restriction.

7. Ses activités ne font, dans aucun ressort où il est habilité à exercer le droit, l'objet d'aucune inspection professionnelle visant à établir s'il respecte les normes de compétence de la profession.

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

Idem

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

Interprétation : exercice dans un domaine du droit

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

Demande d’agrément

17. (1) Le membre qui souhaite être agréé à titre de spécialiste présente une demande en ce sens au personnel de l’agrément.

Formule

(2) La demande présentée en vertu du paragraphe (1) est rédigée selon la formule fournie par le personnel de l’agrément.

Pièces justificatives

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

a) un certificat de membre en règle que chaque organisme de réglementation de la profession juridique d’un ressort dont l’auteur de la demande est ou était membre a délivré au cours des trois mois qui précèdent immédiatement le jour de la présentation de la demande;

b) des références écrites données par quatre membres dont aucun n’est une des personnes quivantes :

i. une personne dont la qualité de membre est en suspens en application du paragraphe 31 (1) de la Loi,

ii. un associé, un collègue, un employeur ou un employé de l’auteur de la demande,

iii. un parent de l’auteur de la demande,

iv. un membre du comité de spécialisation constitué à l’égard du domaine du droit dans lequel l’auteur de la demande souhaite être agréé à titre de spécialiste,

v. un membre du Conseil d’agrément,

vi. un conseiller ou une conseillère,

vii. un employé ou une employée du Barreau;

c) les droits fixés par le Conseil.

Documents, explications et renonciations

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

a) il fournit au ou à la responsable les documents et les explications qu’exige ce dernier ou cette dernière;

b) il fournit, à la personne désignée nommément par le personnel de l'agrément, les renonciations, directives et consentements nécessaires pour lui permettre de communiquer au personnel de l'agrément les renseignements qu'exige celui-ci.

Étude des demandes par un comité de spécialisation

18. Le comité de spécialisation constitué à l'égard du domaine du droit dans lequel l'auteur d'une demande présentée en application de l'article 17 souhaite être agréé à titre de spécialiste étudie celle-ci, dans la mesure où elle touche aux conditions énoncées aux dispositions 1 à 4 du paragraphe 16 (1), et :

a) s'il est convaincu que l'auteur de la demande remplit les conditions énoncées aux dispositions 1 à 4 du paragraphe 16 (1), recommande au Conseil d'agrément de l'agréer à titre de spécialiste;

b) s'il n'est pas convaincu que l'auteur de la demande remplit les conditions énoncées aux dispositions 1 à 4 du paragraphe 16 (1), recommande au Conseil d'agrément de ne pas l'agréer à titre de spécialiste.

Entrevue

19. (1) Le comité de spécialisation peut exiger que l'auteur de la demande passe une entrevue avant de faire une recommandation au Conseil d'agrément.

Idem

(2) L'entrevue prévue au paragraphe (1) est menée :

a) soit par trois membres du comité de spécialisation choisis par le président ou la présidente du comité;

b) soit par trois membres agréés à titre de spécialistes, choisis par le comité de spécialisation.

Rapport

(3) Si l'entrevue est menée par trois membres agréés à titre de spécialistes, ils rédigent un rapport à son égard et le remettent au comité de spécialisation.

Avis

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

a) soit de retirer sa demande;

b) soit de lui présenter des renseignements supplémentaires.

Étude des demandes par le Conseil d'agrément

21. Le Conseil d'agrément étudie chaque demande présentée en application du paragraphe 17 et :

a) soit agrée l'auteur de la demande à titre de spécialiste si les conditions suivantes sont réunies :

(i) le comité de spécialisation recommande qu'il soit agréé à titre de spécialiste,

(ii) le Conseil d'agrément est convaincu qu'il remplit les conditions énoncées aux dispositions 5 à 8 du paragraphe 16 (1),

(iii) le Conseil d'agrément est convaincu :

i. soit que la condition énoncée au paragraphe 16 (2) n'existe pas,

ii. soit qu'il ne serait pas contraire à l'intérêt public de l'agréer à titre de spécialiste;

b) soit n'agrée pas l'auteur de la demande à titre de spécialiste si, selon le cas :

(i) le comité de spécialisation ne recommande pas qu'il soit agréé à titre de spécialiste,

(ii) le Conseil d'agrément n'est pas convaincu qu'il remplit les conditions énoncées aux dispositions 5 à 8 du paragraphe 16 (1),

(iii) le Conseil d'agrément est convaincu :

(A) soit que la condition énoncée au paragraphe 16 (2) existe,

(B) soit qu'il serait contraire à l'intérêt public de l'agréer à titre de spécialiste.

Avis

22. (1) Le Conseil d'agrément avise par écrit l'auteur de la demande de sa décision s'il ne l'agrée pas à titre de spécialiste en application de l'alinéa 21 b).

Réexamen de la demande

(2) Si le Conseil d'agrément n'agrée pas l'auteur de la demande à titre de spécialiste en application de l'alinéa 21 b), ce dernier peut lui demander de décider s'il devrait ou non être agréé à titre de spécialiste.

Délai

(3) L'auteur de la demande prévue au paragraphe (2) la présente en en avisant par écrit le Conseil d'agrément dans les 30 jours qui suivent la réception de la décision de ce dernier de ne pas l'agréer à titre de spécialiste.

Décision

(4) Le Conseil d'agrément étudie la demande présentée en vertu du paragraphe (2) et :

a) soit agrée l'auteur de la demande à titre de spécialiste si les conditions suivantes sont réunies :

(i) il est convaincu qu'il remplit les conditions énoncées au paragraphe 16 (1),

(ii) il est convaincu :

(A) soit que la condition énoncée au paragraphe 16 (2) n'existe pas,

(B) soit qu'il ne serait pas contraire à l'intérêt public de l'agréer à titre de spécialiste;

b) soit n'agrée pas l'auteur de la demande à titre de spécialiste si, selon le cas :

i) il n'est pas convaincu qu'il remplit les conditions énoncées au paragraphe 16 (1),

(ii) il est convaincu :

(A) soit que la condition énoncée au paragraphe 16 (2) existe,

(B) soit qu'il serait contraire à l'intérêt public de l'agréer à titre de spécialiste.

Décision définitive

(5) La décision que le Conseil d'agrément rend à l'égard d'une demande présentée en vertu du

paragraphe (2) est définitive.

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

Maintien de l'agrément
24. Les membres agréés à titre de spécialistes le restent tant qu'ils réunissent les conditions suivantes :

a) ils exercent dans le domaine du droit dans lequel ils ont été agréés à titre de spécialistes, au sens du paragraphe 16 (3);

b) ils continuent de connaître de façon approfondie le droit de fond ainsi que la pratique et les procédures du domaine du droit dans lequel ils ont été agréés à titre de spécialistes;

c) ils ne sont pas ni n'ont été, selon leur dossier, visés par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique de n'importe quel ressort a rendue à leur encontre;

d) leur autorisation d'exercer le droit dans un ressort où ils sont habilités à exercer le droit n'est pas ni n'a été assortie d'aucune condition ni restriction;

e) leurs activités ne font, dans aucun ressort où ils sont habilités à exercer le droit, l'objet d'aucune inspection professionnelle visant à établir s'ils respectent les normes de compétence de la profession;

f) ils n'ont pas ni n'ont eu à se défendre contre des demandes importantes ou contre un nombre important de demandes faites contre eux à titre professionnel ou à l'égard de leurs activités professionnelles dans un ressort où ils sont habilités à exercer le droit;

g) ils satisfont à toutes les exigences du présent règlement administratif.

PARTIE V
SPÉCIALISTES AGRÉÉS

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

«spécialiste agréé» Membre que le Conseil d'agrément a agréé à titre de spécialiste en application de la partie IV.

Titre de spécialiste
26. (1) Les spécialistes agréés peuvent utiliser le titre suivant :

spécialiste agréé ou spécialiste agréée [*domaine du droit dans lequel le membre est agréé à titre de spécialiste*]

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

Obligation d'acquitter des droits annuels
27. (1) Les spécialistes agréés versent tous les ans au Barreau les droits annuels que fixe le Conseil ainsi que les taxes connexes que le Barreau est tenu de percevoir.

Date de paiement

(2) Les droits annuels sont exigibles le 1er janvier de chaque année.

Spécialistes agréés

(3) Le paragraphe (2) ne s'applique qu'aux membres qui sont spécialistes agréés en date du 1er janvier.

Membres agréés après le 1er janvier

(4) Les membres qui sont agréés à titre de spécialistes après le 1er janvier versent, pour l'année durant laquelle ils le deviennent, des droits annuels dont le montant est calculé selon la formule suivante :

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

où :

A représente les droits annuels;

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

Date de paiement

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

Obligation de présenter un rapport annuel

28. (1) Avant le 31 mars de chaque année, les spécialistes agréés présentent au personnel de l'agrément un rapport sur la façon dont ils se sont conformés au présent règlement administratif au cours de l'année précédente.

Formule du rapport

(2) Le rapport exigé au paragraphe (1) est rédigé selon la formule fournie par le personnel de l'agrément.

Formation professionnelle

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

a) le nombre d'heures d'étude autonome que précise le comité de spécialisation constitué à l'égard de ce domaine,

b) le nombre d'heures des programmes de formation professionnelle agréés que précise le comité de spécialisation constitué à l'égard de ce domaine.

Preuve de conformité

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

Présomption

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

Avis

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

Agrément en suspens automatiquement

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

a) leur qualité de membre est en suspens en application du paragraphe 31 (1) de la Loi;

b) leur autorisation d'exercer le droit dans n'importe quel ressort où ils sont habilités à exercer le droit est assortie de conditions ou de restrictions;

c) leurs activités font, dans un ressort où ils sont habilités à exercer le droit, l'objet d'une inspection professionnelle visant à établir s'ils respectent les normes de compétence de la profession;

d) ils ont à se défendre contre des demandes importantes ou contre un nombre important de demandes faites contre eux à titre professionnel ou à l'égard de leurs activités professionnelles dans un ressort où ils sont habilités à exercer le droit.

Pouvoir discrétionnaire du Conseil d'agrément

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

Obligation du Conseil d'agrément

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

Rétablissement

(4) L'agrément à titre de spécialiste des spécialistes agréés est rétabli si les conditions énoncées au paragraphe (1) n'existent plus et qu'il n'a pas été révoqué en application du paragraphe 32 (1) ou (2), dès que le personnel de l'agrément est avisé du changement de conditions.

Idem

(5) Le Conseil d'agrément peut rétablir l'agrément à titre de spécialiste des spécialistes agréés qui le lui demandent si la condition énoncée au paragraphe (2) n'existe plus et qu'il n'a pas été révoqué en application du paragraphe 32 (1) ou (2), si cela n'est pas contraire à l'intérêt public.

Idem

(6) Le Conseil d'agrément rétablit l'agrément à titre de spécialiste des spécialistes agréés qu'il a mis en suspens en application du paragraphe (3) et qui n'a pas été révoqué en application du paragraphe 32 (1) ou (2), à leur demande, si les conditions suivantes sont réunies :

a) aucune des conditions énoncées au paragraphe (1) n'existe;

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

Révocation

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

a) ils cessent d'exercer le droit en Ontario;

b) ils cessent d'exercer le droit dans le domaine à l'égard duquel ils ont été agréés à titre de spécialistes, au sens du paragraphe 16 (3);

c) ils sont visés par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique de n'importe quel ressort a rendue à leur encontre;

d) ils ne paient pas leurs droits annuels ou ne présentent pas leur rapport annuel;

e) ils ne respectent pas les exigences énoncées à l'article 29;

f) leur agrément est en suspens depuis plus de 12 mois.

Idem

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

Demande d'agrément après la révocation

(3) Les spécialistes agréés dont l'agrément à titre de spécialiste a été révoqué ne peuvent présenter une demande d'agrément à titre de spécialiste en application de l'article 17 que 12 mois après le jour de la révocation.

Remise de l'agrément

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

Idem

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

PARTIE VI
DISPOSITIONS TRANSITOIRES

Spécialistes agréés actuels

34. (1) Malgré les articles 16 et 17, les membres qui sont agréés à titre de spécialistes par le Barreau immédiatement avant le jour de l'entrée en vigueur du présent règlement administratif sont réputés l'être ce jour-là en application de ce règlement administratif.

Droits annuels

(2) Malgré l'article 27, les droits annuels exigibles d'un membre visé au paragraphe (1) pour 2003 sont de 200 $, les taxes connexes que le Barreau est tenu de percevoir en sus, déduction faite des droits de renouvellement annuels qu'il a acquittés pour 2003 en application des politiques et des règles relatives à l'agrément des spécialistes en vigueur avant l'entrée en vigueur du présent règlement administratif.

Échéance : 2003

(3) Malgré l'article 27, les droits annuels exigibles d'un membre visé au paragraphe (1) pour 2003 sont exigibles le jour de 2003 auquel il serait tenu d'acquitter les droits de renouvellement annuels prévus par les politiques et les règles relatives à l'agrément des spécialistes en vigueur avant l'entrée en vigueur du présent règlement administratif.

Auteurs d'une demande à l'étude

35. (1) Si un membre a demandé au Barreau de l'agréer à titre de spécialiste avant l'entrée en vigueur du présent règlement administratif, sa demande est étudiée conformément aux politiques et aux règles relatives à l'agrément des spécialistes en vigueur avant l'entrée en vigueur du présent règlement administratif.

Agrément des auteurs d'une demande à l'étude

(2) Les membres visés au paragraphe (1) qui sont agréés à titre de spécialistes sont réputés l'être par le Conseil d'agrément en application du présent règlement administratif.

Carried

MOTION – BY-LAW 37 – COMPLAINTS RESOLUTION COMMISSIONER (French Version)

It was moved by Mr. Finkelstein, seconded by Mr. Wright THAT:

By-Law 37 [Complaints Resolution Commissioner], made by Convocation on April 25, 2003, be amended as follows:

1. The By-Law is amended by adding the following French version:

RÈGLEMENT ADMINISTRATIF N^{O} 37

COMMISSAIRE AU RÈGLEMENT DES PLAINTES

PARTIE I
DISPOSITIONS GÉNÉRALES

Définitions

1. Les définitions qui suivent s'appliquent au présent règlement administratif.

«auteur de la plainte» Personne qui présente une plainte. («complainant»)

«commissaire» Le ou la commissaire au règlement des plaintes nommé en application de l'article 49.14 de la Loi. («Commissioner»)

«plainte» Plainte présentée au Barreau à l'égard de la conduite d'un membre ou d'un membre étudiant. («complaint»)

«plainte susceptible d'examen» Plainte que le ou la commissaire peut examiner en vertu du paragraphe 6 (1).

Affectation de fonds par le Barreau

2. (1) Les sommes requises aux fins de l'application du présent règlement administratif et des articles 49.15 à 49.18 de la Loi sont prélevées sur celles affectées à cette fin par le Conseil dans les prévisions budgétaires.

Restriction des dépenses

(2) Le ou la commissaire ne doit pas, au cours d'une année donnée, affecter à l'application du présent règlement administratif et des articles 49.15 à 49.18 de la Loi des sommes supérieures à celles affectées à cette fin par le Conseil dans les prévisions budgétaires.

Rapport annuel

3. Au plus tard le 31 mars de chaque année, le ou la commissaire présente un rapport sur les activités que son bureau a exercées au cours de l'année précédente au Comité permanent du Conseil chargé des questions liées à la réglementation professionnelle. Le comité dépose le rapport devant le Conseil au plus tard à sa réunion ordinaire de juin.

Délégation des pouvoirs et fonctions du secrétaire : avocat du service de la réglementation professionnelle

4. En cas d'empêchement du ou de la secrétaire, l'employé ou l'employée du Barreau qui occupe le poste d'avocat ou d'avocate du service de la réglementation professionnelle peut exercer les pouvoirs et les fonctions que lui attribue le présent règlement administratif.

Plaintes portées contre des conseillers ou des employés du Barreau

5. Les mentions du ou de la secrétaire aux parties II et III valent mention du trésorier ou de la trésorière à l'égard des plaintes qui concernent la conduite d'un conseiller ou d'une conseillère ou d'un employé ou d'une employée du Barreau.

PARTIE II
EXAMEN DES PLAINTES

Plaintes susceptibles d'examen
6. (1) Le commissaire peut examiner une plainte si les conditions suivantes sont réunies :

a) le Barreau en a étudié le bien-fondé;

b) ni le Comité d'autorisation des instances, ni le Comité d'audition ni le Comité d'appel n'a pris de décision à son égard;

c) le commissaire ne l'a pas examinée antérieurement;

d) le Barreau a avisé l'auteur de la plainte qu'il ne prendra pas d'autres mesures à l'égard de celle-ci.

Idem
(2) Le commissaire peut ne pas examiner une plainte dans la mesure où, à son avis, elle ne concerne que les questions suivantes :

1. Le montant des honoraires ou des débours qu'un membre exige de l'auteur de la plainte.

2. Les exigences que le règlement administratif n^{o} 17 [Déclarations obligatoires] ou n^{o} 19 [Opérations touchant des fonds ou d'autres biens] impose à un membre.

3. La négligence d'un membre ou d'un membre étudiant.

Interprétation : «examiné antérieurement»
(3) Pour l'application du présent article, la plainte qui a été renvoyée au Barreau pour étude plus approfondie en application du paragraphe 9 (1) ne doit pas être considérée comme ayant été examinée antérieurement par le ou la commissaire.

Droit de demander un renvoi
7. (1) L'auteur d'une plainte susceptible d'examen peut demander au ou à la secrétaire de la renvoyer au ou à la commissaire pour examen.

Demande écrite
(2) La demande de renvoi d'une plainte susceptible d'examen au ou à la commissaire pour examen se fait par écrit.

Délai de présentation
(3) La demande de renvoi d'une plainte susceptible d'examen au ou à la commissaire pour examen est présentée dans les 60 jours qui suivent celui où le Barreau avise son auteur qu'il ne prendra pas d'autres mesures à son égard.

Moment de la remise de l'avis
(4) Pour l'application du paragraphe (3), le Barreau est réputé avoir avisé l'auteur de la plainte qu'il ne prendra pas d'autres mesures à l'égard de celle-ci :

a) dans le cas d'un avis donné oralement, le jour où il a avisé l'auteur;

b) dans le cas d'un avis donné par écrit :

(i) le cinquième jour qui suit son envoi par la poste, s'il a été envoyé par courrier ordinaire,

(ii) le premier jour qui suit son envoi par télécopieur, s'il a été envoyé ainsi.

Renvoi des plaintes
8. (1) Le ou la secrétaire renvoie au ou à la commissaire pour examen chaque plainte susceptible d'examen dont l'auteur a présenté une demande en vertu de l'article 7 et conformément à celui-ci.

Avis
(2)Le ou la secrétaire avise par écrit le membre ou le membre étudiant visé par une plainte dont l'auteur a présenté une demande en vertu de l'article 7 et conformément à celui-ci qu'elle a été renvoyée au ou à la commissaire pour examen.

Nouveaux éléments de preuve
9. (1) Dans le cadre de l'examen d'une plainte qui lui a été renvoyée pour examen, s'il ou si elle reçoit ou obtient des renseignements sur la conduite du membre ou du membre étudiant visé par la plainte qui, à son avis, sont importants et que le Barreau n'a ni reçus ni obtenus par suite ou dans le cadre de l'étude du bien-fondé de la plainte, le ou la commissaire renvoie la plainte et les renseignements au Barreau pour étude plus approfondie.

Décision concernant une plainte renvoyée pour examen
(2) Après avoir examiné une plainte qui lui a été renvoyée pour examen, le ou la commissaire fait ce qui suit :

a) s'il ou si elle est convaincu que l'étude de la plainte par le Barreau et sa décision de ne pas prendre d'autres mesures à l'égard de celle-ci sont raisonnables, il ou elle en avise par écrit l'auteur de la plainte et le Barreau;

b) s'il ou si elle n'est pas convaincu que l'étude de la plainte par le Barreau et sa décision de ne pas prendre d'autres mesures à l'égard de celle-ci sont raisonnables, il ou elle renvoie la plainte au ou à la secrétaire en recommandant que le Barreau prenne d'autres mesures à son égard ou à celui du membre ou du membre étudiant qu'elle vise, et en avise par écrit l'auteur de la plainte.

Décision concernant une plainte renvoyée pour examen : avis
(3) Le ou la secrétaire avise par écrit le membre ou le membre étudiant visé par une plainte qu'examine le ou la commissaire de la décision que celui-ci ou celle-ci a prise à son égard.

Renvoi au Barreau : avis
(4) Si le ou la commissaire renvoie une plainte au ou à la secrétaire en recommandant que le Barreau prenne d'autres mesures à son égard ou à celui du membre ou du membre étudiant qu'elle vise, le ou la secrétaire étudie la recommandation et avise par écrit le ou la commissaire, l'auteur de la plainte et le membre ou le membre étudiant qu'elle vise de sa décision de donner suite ou non à la recommandation.

Idem
(5) Si le ou la commissaire renvoie une plainte au ou à la secrétaire en recommandant que le Barreau prenne d'autres mesures à son égard ou à celui du membre ou du membre étudiant qu'elle vise, le ou la secrétaire donne par écrit au ou à la commissaire, à l'auteur de la plainte et au membre ou au membre étudiant qu'elle vise les motifs de sa décision de ne pas donner suite à la recommandation, le cas échéant.

Marche à suivre
10. (1) Sous réserve de la présente partie, le ou la commissaire établit la marche à suivre lors de l'examen des plaintes qui lui sont renvoyées.

Réunion
(2) Le ou la commissaire doit rencontrer, si cela est possible, l'auteur de chaque plainte qui lui a été renvoyée pour examen. Il peut le faire par téléconférence ou par d'autres moyens de communication, notamment électroniques, afin que toutes les personnes y participant puissent communiquer les unes avec les autres instantanément et simultanément.

Participation à l'examen : Barreau

(3) Le Barreau ne doit pas participer à l'examen d'une plainte par le ou la commissaire, si ce n'est de la manière prévue aux paragraphes (5) et (6) et sans la permission expresse de ce dernier ou de cette dernière.

Participation à l'examen : membre ou membre étudiant

(4) Le membre ou le membre étudiant visé par une plainte qui a été renvoyée au ou à la commissaire pour examen ne doit pas participer à son examen par ce dernier ou cette dernière.

Description de l'étude

(5) Au moment où le ou la secrétaire renvoie une plainte au ou à la commissaire pour examen, le Barreau a le droit de lui fournir la description de l'étude qu'il a faite de la plainte et les motifs de sa décision de ne pas prendre d'autres mesures à son égard.

Obligation de répondre aux questions

(6) Le ou la commissaire peut exiger que le Barreau fournisse des renseignements sur l'étude qu'il a faite de la plainte qui lui a été renvoyée pour examen et sur sa décision de ne pas prendre d'autres mesures à l'égard de celle-ci, et le Barreau obtempère.

PARTIE III
RÈGLEMENT

Pouvoir discrétionnaire de renvoyer des plaintes

11. (1) Le ou la secrétaire peut renvoyer une plainte au ou à la commissaire pour règlement si les conditions suivantes sont réunies :

a) le Barreau a la compétence voulue pour faire enquête à son égard;

b) ni le Comité d'autorisation des instances, ni le Comité d'audition ni le Comité d'appel n'a pris de décision à son égard;

c) elle n'a pas été renvoyée au Comité d'autorisation des instances;

d) le Barreau n'a pas tenté de la régler;

e) son auteur et le membre ou le membre étudiant qu'elle vise consentent à ce qu'elle soit renvoyée au ou à la commissaire pour règlement.

Parties

12. Sont parties au règlement d'une plainte par le ou la commissaire l'auteur de la plainte, le membre ou le membre étudiant qu'elle vise et le Barreau.

Résultat du règlement

13. (1) Le ou la commissaire n'a pas réglé une plainte tant que toutes les parties n'ont pas signé l'entente faisant état du règlement.

Absence de résolution

(2) Le ou la commissaire avise les parties s'il ne règle pas une plainte et la renvoie au ou à la secrétaire.

Exécution du règlement

(3) Le Barreau fait respecter le règlement d'une plainte par le ou la commissaire.

Confidentialité : commissaire

14. (1) Sous réserve du paragraphe (2), le ou la commissaire ne doit divulguer aucun renseignement qui vient à sa connaissance au cours du règlement d'une plainte.

Exceptions

(2) Le paragraphe (1) n'a pas pour effet d'interdire la divulgation à laquelle le ou la commissaire est tenu en application du *Code de déontologie* du Barreau.

Réserve

(3) Toutes les communications qui ont lieu au cours du règlement d'une plainte par le ou la commissaire, ses notes et son dossier du règlement sont réputés ne pas porter atteinte aux droits des parties.

Marche à suivre

15. Sous réserve de la présente partie, le ou la commissaire établit la marche à suivre lors du règlement des plaintes qui lui sont renvoyées.

Carried

ONTARIO LAW SCHOOLS ACCESSIBILITY STUDY

MEMORANDUM

To: Convocation

From: Josée Bouchard, Acting Equity Advisor

Date: June 17, 2003

Re: Ontario Law Schools Accessibility Study

Purpose

1. The purpose of this memorandum is to provide Convocation with further information to enable it to make a final decision about the payment of $100,000 to the Law Deans' Group for the purpose of undertaking the Ontario Law School Accessibility Study.

Summary of the Issue

2. In 2002, the Ontario Law Deans (all Ontario Law Deans but the University of Toronto Law Dean) decided to commission an independent professional study on the question of the impact of tuition increases on access to legal education.

3. The Law Deans retained Dr. Allan King of Queen's University to undertake the study and requested that the Law Society and the Law Foundation of Ontario provide funding for the study.

4. Convocation approved the expenditure of $100,000 on the understanding that after consultation with the Law Deans, further refinements in the tuition fee accessibility study would be brought directly to Convocation for approval before the money is spent.

5. The Law Society made submissions to the Law Deans about ways to improve the study.

6. The Law Deans have indicated that the Law Society will contribute to the decision-making process of the study as a member of the Project Advisory Committee. In light of the Law Society's submissions, the study has been clarified and refined. Changing the scope of the study to consider more thoroughly the decision-making process of potential law school students in accessing law programs and the effect of increases in tuition fees on career choices could be costly.

ONTARIO LAW SCHOOLS ACCESSIBILITY STUDY

Background

7. In 2002, Dean Elman of the University of Windsor, Dean Holloway of the University of Western Ontario, Dean Hogg of Osgoode Hall Law School, Dean Harvison Young of Queen's University and Dean Feldthusen of the University of Ottawa decided to commission an independent professional study on the question of the impact of tuition increases on access to legal education. On November 12, 2002, the five Law Deans invited the Treasurer to represent the Law Society on the Steering Committee of the independent study. The Treasurer accepted the invitation.

8. The Law Society received a letter from Dean Harvison Young, dated March 26, 2003, indicating that Dr. Allan King, of Queen's University, had agreed to undertake the Ontario Law Schools Accessibility Study (OLSAS) (Appendix 1) with an estimated completion date of May 31, 2004. The Law Schools have estimated the costs of the OLSAS to be approximately $200,000 and requested funds from the Law Society and the Law Foundation of Ontario to pay for the study. The law schools are each contributing 125 hours of technical advisor time to the study.

9. The Finance Committee of the Law Society of Upper Canada considered the request for funding and indicated in its report to Convocation that: "The Law Society intends to meet with the participant law schools to finalize details of the study and to improve it, if that seems feasible, in consultation with the Law Deans group."

10. Dean Feldthusen attended Convocation on April 25, 2003 to represent the Law Deans and address issues relating to the OLSAS.

11. Paul Copeland, Chair of the Equity and Aboriginal Issues Committee, informed Convocation that the Law Society would be consulting with an independent expert to provide recommendations, if feasible, to improve the study.

12. Convocation approved the expenditure of $100,000 for the study on the understanding that after consultation with the Law Deans Group further refinements in the tuition fee accessibility study would be brought directly to Convocation for approval before the money is spent.

13. Convocation further required that the terms of the study be brought back to Convocation before the funds are disbursed.

14. The Law Society retained Dr. Michalski, Assistant Professor at Brock University, to advise the Law Society on the OLSAS methodology and to assist it in determining whether the OLSAS methodology should be refined.

15. Following meetings with the Chair of the Committee and representatives of the Equity Advisory Group and Rotiio> taties, Dr. Michalski produced a report entitled "The Ontario Law Schools Accessibility Study: A Contextual Evaluation" (Appendix 2).

16. On June 9, 2003, the Law Deans invited the Law Society of Upper Canada to participate in the meeting of the Study Advisory Committee. Treasurer Krishna, Paul Copeland, Chair of the Equity and Aboriginal Issues Committee, Josée Bouchard, Acting Equity Advisor and Dr. Michalski attended the meeting and made submissions to Dr. King.

17. Dr. Michalski's proposal and a list of suggested key issues (Appendix 3) were presented to the Law Deans and Dr. King for their consideration. Dr. King responded to the suggested key issues by clarifying the methodology and outlining the issues that will not be addressed by the OLSAS (Appendix 4).

The Ontario Law Schools Accessibility Study

18. The overall purpose of the OLSAS is:
    a. to determine the characteristics of law school students; and
    b. to determine whether there have been changes in their characteristics associated with increased tuition costs.

19. The questions that will be addressed by the research are:
    a. What are the socioeconomic characteristics of students who applied to and are enrolled in Ontario law school programs from 1995 to 2003?
    b. What are the changes in characteristics and to what extent are they associated with increased law school tuition costs?
    c. Have increases in tuition costs over the past five years caused more student debt at graduation and what is the magnitude of the change?
    d. Have university-based and government-based financial aid increased proportionally to law school tuition increases?
    e. Have increases in tuition costs restricted student choice of articling positions?
    f. Are there financial aid incentives that would make candidates for Ontario law schools more representative of Canadian society?

20. The research methodology will involve:
    a. A survey of all current students in the five Ontario law schools;
    b. A survey of all graduates from the five Ontario law schools from the past four years;
    c. Focus groups with small groups of current students from each year in all five faculties;
    d. The analysis of information related to OSAP loans, applications to Ontario Law School Application Services, school program records, fee structures and student financial supports.

21. The data sources will include:
    a. Applications for OSAP loans and other financial aid since 1995;
    b. Applications to Ontario law schools since 1995[1];
    c. Information, from the five law schools, relating to fee structures and ancillary student costs for the past ten years; student financial awards, bursaries and other financial supports for the past ten years; and acceptances, refusals, deferrals, registrations, attrition and graduation data since 1995;
    d. Questionnaire survey of law students, to be developed in consultation with the Project Advisory Committee, addressing student characteristics[2], undergraduate programs, future career plans[3], financial issues[4] and other current issues[5];
    e. Focus group sessions with students;
    f. Questionnaire survey of all graduates from four previous years including information on characteristics[6], secondary school and post-secondary education, undergraduate programs, current employment and career plans[7]; financial issues[8] and other current issues[9]; and
    g. Program attrition.

22. In his response to Dr. Michalski's recommendations[10], Dr. King indicates that the OLSAS will address the following:
    a. The main thrust of the study is to focus on changes over time to socio-economic status and selected demographic characteristics of law school applicants, including equity-seeking

[1] The study will consider applicant characteristics such as gender, marital status, LSAT scores and school attended.
[2] Such as place of birth, place of parents' birth, ethno-cultural background, parents' occupations, age, gender, secondary school and post-secondary education.
[3] Including type of work and region.
[4] Such as debt load and part-time work.
[5] Such as the role of cost in articling placement decisions and strategies to relieve debt load.
[6] Such as place of birth, place of parents' birth, ethno-cultural background, parents' occupations, age, gender.
[7] Such as type of work and region.
[8] Such as debt load and part-time work.
[9] Including the role of cost in articling placement decisions and strategies to relieve debt load
[10] See Appendix 4.

communities and those under-represented in the profession, especially as these factors relate to tuition increases and student financial aid levels.

b. The study's research methodology is designed to address the extent and ways in which tuition fee increases and/or student debt affects the type of employment that law school graduates pursue or their subsequent career path.
c. The study's research methodology is designed to address the extent and ways in which tuition fee increases and student debt affects the region of practice among law school graduates.
d. The study incorporates factors such as language, immigrant status, province/region, and urban versus rural location.
e. The study's research methodology is designed to incorporate a special analysis of Aboriginal students and graduates.
f. It will be possible to incorporate information from the Law Society of Upper Canada's administrative records for members as far back as 1990. (Convocation would have to approve the use of Law Society information in the study.)
g. The graduate survey strategy has been amended to ensure maximum participation of graduates (Appendix 5).
h. Focus group topics and procedures have been expanded to provide further clarification and may be amended as input is received from Project Advisory Committee members (Appendix 6).
i. The study will examine relevant research studies conducted by other Canadian law schools. However, the data of the studies will not be included into the OLSAS analysis.

23. In his report entitled "The Ontario Law Schools Accessibility Study: A Contextual Evaluation"[11], Dr. Michalski indicates that the central research questions of the OLSAS will not thoroughly address the following issues:
    a. the decision-making process of potential law school students in accessing law programs; and
    b. the effect of increases in tuition fees on career choices.

24. Dr. Michalski suggests that a shift in the methodological approach would be required to address these issues. He recommends methodology approaches that might address the broader research questions[12].

25. Dr. King acknowledges[13] that the OLSAS will not address all of Dr. Michalski's recommendations for the following reasons:
    a. No effort will be made to determine the role of tuition increases in the decision of prospective applicants to law schools. Expanding the OLSAS to include such an analysis would significantly increase the cost of the study. Dr. King will partially address this issue by conducting an analysis of application versus acceptance and registration data as well as retrospective analysis of decisions in applying to law schools by current students and graduates.
    b. A study of the intersection of key factors, such as the interaction of demographic factors and socioeconomic factors, is beyond the study's parameters.
    c. The study was designed to respond to five Ontario law schools in relation to circumstances faced by their current and prospective students and it would not be appropriate to change the study to include a survey of Law Society members.
    d. The number of potential respondents is not large enough to permit a random sample of cohorts across years. This approach would not yield adequate cell sizes for analyses of socio demographic variables. Although it is not planned, it would be possible to survey additional cohorts of graduates from years prior to 2000 at minimal extra costs.
    e. An analysis of career patterns or trajectories will not be linked to Law Society records. The five Ontario Law Deans have agreed that files related to each data source be independent in order to protect confidentiality. The merging of data files would violate university ethics principles.

26. Dr. Michalski also recommended that the Law Society approve the research instruments. Dr. King notes that the OLSAS is a study commissioned by the five Ontario Law Deans who have final decision-making

[11] See Appendix 2.
[12] See Appendix 2.
[13] See Appendix 4.

power. The Law Society may contribute to the decision-making process as a member of the Project Advisory Committee. Also, ownership of the data and the research findings specific to each law school rests with each of the law schools.

27. As noted above, Convocation approved the expenditure of $100,000 on the understanding that after consultation with the Law Deans Group, further refinements in the tuition fee accessibility study may be brought directly to Convocation for approval before the money is spent.

28. The Law Society is a member of the Project Advisory Committee and will contribute to the decision-making process of the OLSAS. The Law Society has consulted with the Law Deans by making submissions on key issues to be addressed in the OLSAS. In light of the Law Society's submissions, Dr. King made some refinements to the study and provided clarifications regarding the scope of the OLSAS. Changing the scope of the study to consider more thoroughly the decision-making process of potential law school students in accessing law programs and the effect of increases in tuition fees on career choices could be costly.

APPENDIX 1
(Attachment)

Ontario Law Schools Accessibility Study: A Research Proposal

University administrators, members of the law profession, student groups, and the general public are concerned that access to a legal education by potential candidates from lower income backgrounds, particular ethnocultural groups and aboriginal community candidates may be limited because of tuition increases at Ontario Law Schools. In fact, there has not been a definitive study on who goes to Ontario Law Schools and what factors influence their decisions.

This fall, Ann Tierney, Assistant Dean of the Faculty of Law at Queen's University, prepared a draft proposal for a study on accessibility to the law profession for consideration by the Ontario Deans of Law. They supported the general purpose of such a study and the approach suggested in the proposal. The following document represents a detailed elaboration of the proposal, including the research methodology, timelines and a budget.

PURPOSE OF THE STUDY

The overall purpose of the study is twofold: (1) to determine the characteristics of law school students; and (2) to determine whether there have been changes in their characteristics associated with increased tuition costs.

More specifically, the questions to be addressed by the research are as follows:

1. What are the socioeconomic characteristics of students who applied to and are enrolled in Ontario law school programs from 1995 to 2003? If there have been changes in these characteristics, what are they and to what extent are they associated with increased law school tuition costs?

2. Have increases in law school tuition costs over the past five years caused more student debt at graduation and, if so, what is the magnitude of the change?

3. Has university-based financial aid increased proportionally to law school tuition increases?

4. Has government-based financial aid increased proportionally to law school tuition increases?

5. Have increases in law school tuition costs restricted student choice of articling positions?

6. Are there financial aid incentives that would make candidates for Ontario law schools more representative of Canadian society at large?

STUDY STRUCTURE

In this section, we suggest a structure for the advisory bodies and the research team that would be responsible for conducting the study, and briefly outline their responsibilities.

Project Advisory Committee
The study would have an overall Advisory Committee. The committee would be comprised of 14 members; membership would include the five Law Deans, a faculty representative from each law school, two student representatives, and one representative from each of the Ontario Bar Association and the Law Society of Upper Canada. The role of the Project Advisory Committee would be to assist in refining the methodologies, ensure that various stakeholders support the study and participate as planned, suggest questionnaire items and focus group topics/issues, review the research instruments, help interpret the findings and develop a communication plan for the study findings.

The Project Advisory Committee would meet twice throughout the course of the study as well as be available on an individual basis to review drafts of the research instruments and procedures. The first meeting would be held to review project goals, research instruments, data collection procedures and plans for analysis, report preparation and communication about findings (e.g. target audience, confidentiality). The second meeting would be held to review the first draft of the findings and finalize strategies for study dissemination. Advisory Committee members may be asked to facilitate communication with participating law schools for the review of the questionnaire(s) and focus group topics prior to implementation.

Individual Law School Advisory Committees
Each university's Law program would have its own internal Advisory Committee for the project with appropriate membership from the student body and faculty. They would be involved in laying the groundwork for the study in their school, suggesting program specific items on the questionnaire and focus group topics, monitoring the study6's administration and disseminating the reports of study findings.

Technical Advisors
In order to ensure that the study incorporates the necessary understandings (e.g. of admission procedures) and appropriate language, two technical advisors from Anglophone faculties and one from l'Universit9 d'Ottawa would provide information to the research team at the design and analysis stages of the study. Ann Tierney would coordinate communication with the technical advisors.

Research Team
The principal investigator would be responsible for overall project supervision, development of research instruments and procedures, data analyses and report(s) preparation.

The co-investigator would manage the project, communicate with advisors, OLSAS and other key sources, conduct the literature review, contribute to the preparation of instruments and procedures, orient the research assistant(s), be responsible for preparing for the ethics review, supervise the questionnaire administration at participating law schools, arrange for and carry out visits to schools for focus group discussions, summarize focus group data, coordinate data collection and analyses, and contribute to the report writing.

The computer analyst/research associate would contribute to and pilot test (if necessary) the research instruments, access and review the databases, summarize statistical reports from them, supervise research assistant(s) handling the data and preparing tables and figures for the report. He would also prepare the data sets for the analysis and contribute to report preparation.

The research assistant(s) may be involved in questionnaire administration, would summarize data for tables and figures, conduct content analyses of open-ended questions and focus group discussions, and prepare tables and figures of findings for the reports (and presentations, if required).

METHODOLOGY
The research would involve a survey of all current students and graduates from the past four years, focus groups with small groups of current students from each year in all five faculties (plus Universit9 d'Ottawa's Common Law

Program), and the analysis of information related to OSAP loans, OLSAS applications, school program records, fee structures and student financial supports. The survey and focus group instruments would be translated into French for the law students at l'Universitϑ d'Ottawa taking the basic Ontario Common Law program.

Data Sources

The following are the proposed data source: (Table A in Appendix A outlines the sources and types of data to be sought.)

1. Applications for OSAP loans, other financial aid (including awards, bursaries and scholarships) since 1995:

    a. from 1995 to 2003, numbers of students applying for each category of financial assistance and actual amounts of funds granted; and
    b. characteristics of OSAP and other financial assistance applicants over the same period of time.

2. Applications to Ontario law schools since 1995:
    a. numbers of students applying to the Ontario Law School Application Service (OLSAS) by program; and,
    b. applicant characteristics (e.g., gender, marital status, LSAT scores, school attended).

3. From each law school:
    a. fee structures and ancillary student costs for the past ten years.
    b. student financial awards, bursaries and other financial supports for the past ten years; and,
    c. acceptances, refusals, deferrals, registrations, attrition and graduation data since 1995.

4. Questionnaire survey of all students currently enrolled in law programs. The questionnaires would be developed in consultation with the Project Advisory Committee and through a pilot test with a small group of students across years. Analysis of pilot results will help in refining questions/items so that response choices can be as structured or closed as much as possible. The number of open-ended items will be minimized; but, a few will allow students to express their views as they wish.

    Questionnaire themes addressed would be as follows:
    a. student characteristics such as place of birth, place of parents' birth, ethnocultural background, parents' occupations, age, gender, secondary school and post-secondary education, undergraduate program;
    b. future career plans (e.g. type of work, region):
    c. financial issues (e.g., debt load, part-time work); and,
    d. other current issues (e.g. the role of cost in articling placement decisions and each program's strategies to relieve debt load).

5. Focus group sessions with each year's students in participating law programs will provide the opportunity to clarify, elaborate on and validate issues addressed on the questionnaire:
    a. two focus groups of six to eight students from each of the three years (i.e., six focus group sessions in total per program); and,
    b. focus group topics will include, for example, factors that influenced students in choosing their program, debt load, factors that influenced them in selecting articling placements, other factors and views about accessibility to the program and the law school's financial aid initiatives.

6. Questionnaire survey of all graduates from four previous years (surveys would be mailed with covering letters from each student's alumni association, the Law Society and the Law Dean from

his/her faculty or school. The aim for returns from the mailed questionnaires would be at least 60 percent.)[1]

a. law graduates' characteristics such as place of birth, place of parents' birth, ethnocultural background, parents' occupations, age, gender, secondary school and post-secondary education, undergraduate program; and,
b. current employment; career plans (e.g., type of work, region);
c. financial issues (e.g. debt load, part-time work); and,
d. other current issues (e.g., the role of cost in articling placement decisions and each program's strategies to relieve debt load).

7. Program attrition
   a. attrition rates/transfer rates; and
   b. early leavers' characteristics through records (e.g., age, gender, ethnocultural background, secondary school and post-secondary education, undergraduate program and achievement).

Analysis and Data Presentation

The basic analysis would involve the comparison of law school enrollees over time in terms of socioeconomic and other characteristics and funding applications in light of changes in tuition fees. Four years of graduates and year 2003-04 first, second and third year students would be surveyed. This information would be tabulated and presented by program (not identified) and in aggregate form. Analysis of applications to law schools over time would also be presented in tabular form in terms of applicant characteristics. An example of a way that the data could be summarized for applicants and enrollees can be seen in Table B, Appendix A. Similarly, applications for funding over time would be analyzed by number of candidates, characteristics of candidates, amounts sought and amounts granted.

Qualitative data from the open-ended questions and from focus groups would be content analyzed by broad themes, for example, the impact of overall program costs on articling decisions. Pertinent, representative comments would be threaded through the main report in much the same way as in the recent US report by Equal Justice Works partners, *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service.*

REPORTS

Each law program's findings in comparison with aggregated data from all five programs would be prepared as a brief summary report (between 10 and 15 pages for each). The major report would employ aggregated data from all Ontario university law programs as well as non-identified analyses of each program. The report of findings for French law students at l'Universitθ d'Ottawa taking the basic Ontario Common Law Program would be produced in English only. The major report would include policy implications of the findings and recommendations from the Project Advisory Committee regarding action. It is conceivable that articles for peer-reviewed journals might be developed from the findings, but that would not be the intent of the study.

SCHEDULE

The study would commence in late winter of 2003 and terminate in late spring of 2004. Timeline details are recommended as follows:

Early Spring – Project Advisory Committee meeting to discuss methodology, process for instrument design, and data collection procedures within each institution.

Spring 2003- Data collected from OLSAS, OSAP and from law schools re their student financial aid initiatives; literature reviewed

[1] By contrast, it is well known that returns from Internet surveys are considerably lower than from mailed questionnaire surveys (e.g., the return rate from third year graduating law students appeared to be 4% from a weblink procedure used by the 2002 Equal Justice Works and partners' survey in the US).

May-Aug 2003- Review by Technical Advisors of questionnaire items, focus group topics, data collection procedures, questions re preliminary hard data findings

Oct-Dec 2003- Questionnaires administered to all law students (in five Ontario universities) and graduates from previous four years; focus groups in the five law schools conducted; student records data in five law schools collected

Jan-Feb 2004- Data analysis & report preparation

Feb or Mar 2004- Project Advisory Committee meeting for presentation and interpretation of findings, draft of recommendations and development of communication plan

May 2004- Report (main and individual program reports) completed Project terminated

BUDGET

The proposed budget amount is $176,960. The details are provided in the two-page budget document that follows in Appendix B.

A.J.C. King, EdD
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February 21, 2003

APPENDIX 2

The Ontario Law Schools Accessibility Study: A Contextual Evaluation

Introduction

By 2005, the Faculty of Law at the University of Toronto has proposed an increase in their tuition to $22,000 annually, while other law schools in the province have indicated a willingness to increase their fees substantially as well. The Law Society of Upper Canada (LSUC) has been invited to support a study, the Ontario Law Schools Accessibility Study, that will examine the impact of tuition fee increases on access to legal education. The study, hereafter referred to as OLSAS, proposes to examine the social and demographic characteristics of law school students and to determine whether there have been changes in these characteristics associated with recent increases in tuition costs (1995-2003). The research proposal outlines several specific research questions and the methodology for investigating these questions. As a key stakeholder supporting the research, LSUC representatives have requested that an independent review of the proposal be undertaken to determine whether or not the OLSAS will address key issues raised by their constituents, as well as what modifications might be proposed to more effectively evaluate these issues.

Background

Over the past decade, there has been considerable discussion both in North America and abroad about the impact of spiraling tuition costs on access to higher education in general and the professions such as law and medicine in particular (cf. Haivas, 2003; Kwong et al., 2002). In 1994, for example, the New York University School of Law proposed a plan of free tuition for students of legal schools who committed themselves to public service upon graduation (Celis, 1994). The concerns about a dwindling supply of public interest lawyers were raised during the mid-1990s period of government retrenchment and belt-tightening, which some have argued served as a primary impetus to increases in tuition at both public and private institutions of higher learning (*Career World,* 1996;

Ocampo, 1995). The reports of hiring cutbacks within the profession coupled with increased debt loads contributed to a decline in law school applications (Novack, 1996), as well as increased rates of defaults on student loans (Geraghty, 1996). Consequently, tuition debt relief programs such as that proposed by the New York State Bar Foundation have been developed to help offset the enormous debts that allegedly have forced "more and more lawyers to choose private firm employment over public interest law" (New York Law Journal, 2003).

The academic research examining these issues has not been extensive, as Stager (2002) reports in his literature review summarizing the current state of knowledge on the effects of tuition fee increases on accessibility to law school and the effect of debt load on choices for areas of practice. With respect to the impact of tuition increases on law school accessibility, the research simply does not exist, thus confirming the importance and timelessness of the OLSAS. The evidence regarding post-secondary education access in general points to the importance of factors such as parental education, parental socioeconomic background, academic ability, and the differential impact of rising education costs (including tuition and other related expenses) on specific groups such as those with disabilities, single parents, or from remote regions (Looker and Lowe, 2001). While the data clearly indicate that those from more privileged socioeconomic backgrounds tend to have much greater access to post-secondary and graduate education, the degree to which increased tuition costs might skew the distribution further remains essentially unknown (cf. Baker and V9lez, 1996; Stager, 2002).

In November 2002, a consortium of organizations released a report entitled *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service* through Equal Justice Works (formerly The National Association for Public Interest Law). The report presents evidence based on the responses to an internet survey of third-year law students in the United States that large law school debts have discouraged the majority from even considering public interest or government jobs. The fact that the salaries of attorneys in private practice far exceed those with similar experience in public interest or government jobs provides a strong incentive for fledgling lawyers to restrict their job searches to the more lucrative positions. The report strongly recommends enhancing loan repayment assistance, since the clear majority of students reported being more interested in public service and especially federal government jobs even if loan repayments required a three-year commitment. Despite some obvious concerns about the methodology (see below), the *Paper Chase* report presents some rather provocative evidence that appears to link increased law school tuition and debt loads with a retreat from public service in the legal profession in the United States.[1]

A recently released report from the Provost at the University of Toronto examines the short-term impact of tuition increases in accessibility to their Faculty of Law and possible career distortions resulting from tuition increases in earlier years (Neuman, 2003). Drawing upon their administrative records, the study concludes that tuition fees have not adversely affected the proportion of students from lower-income backgrounds, women, or visible minority groups. The information regarding possible links between tuition increases and career choices proved far more inconclusive, suggesting that there were no statistically significant differences in comparing trends in articling positions between the University of Toronto Faculty of Law and other Ontario schools. By the same token, the Provost's study did not measure public interest law or otherwise adequately examine whether recent graduates were more or less likely to be providing legal aid as their career choice.

Hence the proposed OLSAS affords an excellent opportunity to study the possible impacts of tuition increases and rising student debt loads on access to the legal profession and subsequent career choices among Canadian law students in Ontario. The following paper has been developed to raise key analytic and methodological issues that need to be considered to ensure that the research produces the most substantively conclusive results. The analysis has been organized by considering first the research questions posed and the arguments for broadening the focus for the proposed study. The follow-up section then considers the methodological issues that need to be evaluated in light of any proposed changes to the study questions, and offers recommendations for alternative research strategies to address these questions.

[1] Indeed, the report notes that more than two-thirds of public interest employers reported difficulties in recruiting needed attorneys (Equal justice Works, 2002).

Research Questions

The central research question posed provides the substantive focus of any investigation and arguably represents the single most important determinant of a study's methodological design. The OLSAS has been proposed in response to concerns about the impact of increased tuition fees on accessibility to the legal profession in Ontario. The central research question gleaned from the proposal can be stated as follows: *To what extent have there been changes in the socioeconomic characteristics associated with increased tuition costs for law schools in Ontario?*

The OLSAS has identified several specific research questions, which necessitates a multi-method approach. The questions posed deal with the degree to which social and demographic characteristics of law students have changed in response to rising tuition fees over the past decade, as well as the sources of financial support available. These issues can be addressed largely through a review of administrative database information gathered by the five law school programs in Ontario under study and from OSAP data. The OLSAS proposes as well as survey of current and recently enrolled students from the law programs to assess a variety of issues such as student characteristics, financial issues, and career plans. Finally, the OLSAS proposes several focus groups to supplement the main survey results in an effort to explore more in greater detail the rationales influencing law student decisions about attending particular programs, selecting articling placements, and other views regarding access to programs and the financial aid initiatives available. As currently structured, the labour-intensive methodology proposed should provide reasonable answers to the central questions raised.

There are several questions of interest to LSUC and the Equity and Aboriginal Issues Committee, however, that the proposed study does *not* adequately address, including the following:

- How do tuition increases affect decisions about applying to law school?
- How do tuition increases affect decisions about attending law school?
- Which equity-seeking groups are affected most by tuition increases, and in what ways?
- To what extent and in what ways do tuition fee increases and/or student debt affect the type of employment that law school graduates pursue or their subsequent career paths?
- To what extent and in what ways do tuition fee increases and student debt affect the region of practice among law school graduates?

Accessibility Issues

While the OLSAS proposes to examine changes in socioeconomic characteristics of students who applied to and are enrolled in Ontario law programs from 1995-2003, the study does not provide for a systematic assessment of the decision-making processes or the possible impact of the "stIcker shock" associated with purchasing a legal education. The Law Alumni Coalition from the University of Toronto argues that a survey of law school students and/or graduates should examine in what ways tuition increases have affected the decision to attend different law schools. Furthermore, a study of undergraduates could examine whether these costs significantly affect the decision to pursue law as a career, especially among different equity-seeking groups.

The comparisons over time of the possible effect of tuition increases will need to provide a more complex model that includes a range of contingent effects, including awareness of and access to the range of available financial supports by members of economically disadvantaged communities or the various equity-seeking groups. While the Provost's study claims that recent increases in tuition have not adversely affected low-income applicants, that data confirm too that family income continues to be positively associated with attendance at the University of Toronto's Faculty of Law (Neuman, 2003).

Several specific questions can be raised that would shed further light on the experiences of different equity-seeking groups. The proposal, for example, fails to address the specific concerns of Aboriginal Peoples, or the intersecting factors that may affect their access to a legal education and their areas of practice (e.g., gender, group membership, and family status). Ornstein (2001) has demonstrated, for example, that members of most racialized and Aboriginal groups tend to be underrepresented in the legal profession in Ontario. Such results are not surprising in view of recent evidence that financial barriers are a primary factor influencing post-secondary education opportunities and

Aboriginal Peoples continue to lag behind the general population in terms of both income and access (Canadian Millennium Scholarship Foundation, 2002).

Apart from the experiences of Aboriginal Peoples, the proposal similarly fails to address the main concerns raised by persons with disabilities, lone-parent families, or "mature" students who may be either encouraged or discouraged to pursue a legal career. Looker and Lowe (2001, p. 26) argue that a significant knowledge gap remains with respect to how socioeconomic status interacts with gender, ethnicity, Aboriginal status, and disability to influence post-secondary education in general. Other factors that require further investigation include language, immigrant status, province/region, and urban versus rural location. For example, to what extent have those with landed immigrant status with legal training abroad chosen to pursue a legal education in Canada? If discouraged from pursuing their law careers further, what are the most important factors affecting that decision?

Career Distortion

The OLSAS identifies only one research question related to career patterns and possible distortions: *Have increases in law school tuition costs restricted student choice of articling positions?* The proposed methodology mainly addresses that issue through questionnaires directed at current law school students, focus groups with some current students from different programs, and a survey of all graduates from the four previous years. A random sample drawn from a much longer span (for example, from 1980-2003) would provide a more effective method of assessing actual career patterns rather than simply intentions – a key criticism of the *Paper Chase* survey discussed previously. Kay et al. (1996) offer a questionnaire module with several relevant items for studying barriers and opportunities related to actual career patterns that could be adapted readily to a retrospective (or prospective) longitudinal survey design.

The key issue that has not been addressed adequately in any of the research discussed thus far or the OLSAS concerns the relationship between law school tuition and/or student debt and the decision to pursue public service. The study ideally should assess empirically the degree to which rising tuition costs and/or student debt – net of other factors – has influenced career patterns and the willingness to serve broader communities of interest in the forms of government service, community legal clinics, non-profit community or public advocacy organizations. Detailed questions will need to be raised to identify the content of career choices or the area of practice of law graduates over time. The impact of debt loads and other factors affecting the socio-economic well-being of the lawyers and their household units over time must be assessed as well in relation to career trajectories.

Aboriginal Issues

A recent memo by Jeffery Hewitt (2003) raises several methodological concerns from the standpoint of Aboriginal Peoples and their unique relationship with the federal government and in the Canadian context in general. For example, Hewitt (2003, p. 2) observes that "Aboriginal students are frequently mature students, have children, are single parents, and (of) lower economic standing in comparison to their non-Aboriginal colleagues." These are some of the intersecting factors discussed previously that should be considered in an effort to assess impacts upon the population and their career options.

The financial situation for Aboriginal students requires special attention. In particular, their lower socioeconomic status in the aggregate and existing funding constraints to support First Nations and other Aboriginal organizations may exert a disproportionately adverse effect. A more qualitative approach may be helpful to assess the degree to which Aboriginal students may have more limited options (e.g., choosing less expensive programs) than their non-Aboriginal counterparts. Once in a law program, the question of whether or not Aboriginal law students will then choose to work within their communities or on behalf of Aboriginal peoples more generally needs to be examined. The economic pressures may or may not be more pronounced in comparison with non-Aboriginal students, but certainly the limited access to legal education in the past has produced a significant under-representation of Aboriginal People within the legal profession.

Methodological Issues and Recommendations

A shift in substantive focus typically requires a shift in methodological approach. The issue of law school accessibility can be studied in a variety of ways. The OLSAS proposes to gather access data through a variety of

administrative records, including data from the Ontario Law School Application Service, the Ontario Student Assistance Program, and law school program records. These data will be helpful for examining trends over time with respect to demographic characteristics of those seeking financial support and the general composition of applicants. The OLSAS proposes a series of focus groups to obtain views on the accessibility of law programs and factors influencing the selection of specific programs. The strategy will be helpful to assess the views and experiences of current students.

Decision-Making Processes and Access to Law Programs

To address the *decision-making* processes of potential and actual law school students, however, requires a modification to the approach. One strategy would be to expand the range of focus groups to include those from an earlier cohort to assess their experiences and compare their decision-making processes and key factors with the present cohorts. Specific focal questions could be developed and applied across the different groups to evaluate their experiences with issues such as financial and other barriers to accessing law schools, as well as key influences in deciding which program to attend. While there are problems associated with recall for graduates more than a few years out, there needs to be some basis for comparing the experiences of current students to determine whether a reasonable link can be established to the issue of tuition costs. Another similar approach would be to conduct focus groups with samples of students from other provinces or law schools where the tuition fees are significantly less (controlling for available financial support). The purpose once again would be to assess the extent to which similar themes emerge in the decision-making processes that can be linked in any way to tuition costs or other factors affecting access. Finally, separate focus groups could examine the particular experience of Aboriginal students and Metis students in particular.

To further assess the significance of tuition as a factor in the decision-making process to apply and enroll in law school, the planned questionnaires should contain a series of Likert-scale questions (ranging from strongly disagree to strongly agree) aimed at measuring the subjective views and attitudes of study participants. These items could then be subjected to a factor analysis to determine, in combination with socioeconomic and demographic variables, the relative importance of different factors in determining interest in pursuing legal education.

Finally, the OLSAS should further break down admission data to identify applicants from equity-seeking groups and to compare their experiences with the general population. If possible, these data should be linked to LSUC records to provide the basis for more sophisticated analyses and to enhance the capacity of the Law Society to conduct innovative research in the future. The admissions data should be analyzed to determine the full range of correlates over time that predict law school entrance independent of the subjective experiences reported (what might be referred to as a structural analysis). The study should analyze data for any available years prior to the first series of tuition increases for the purpose of establishing a baseline.

Other Approaches to Studying Accessibility

Another approach to studying accessibility involves comparing statistical portraits of cohorts across the various years. The statistical profiles would be restricted by available data, but key demographic and socioeconomic factors could be compared to determine the extent to which access to law schools in Ontario have changed relative to the potential pools of university students from which the cohorts are drawn. The years under observation serve as loose proxies for tuition rates, with the obvious limitation that any differences in student characteristics observed cannot be linked directly to changes in education costs. The logic can be extended to include statistical comparisons with other institutions in different provinces with varying tuition fee structures.

Career Distortions

The proposed OLSAS survey intends to study whether increases in law school tuition costs have an impact on or otherwise limit student choice of articling positions. A number of stakeholders suggest that the key analytic question involves whether or not tuition costs and subsequent debt loads discourage law students from pursuing lower paid career paths involving public service positions. The limited research currently available, such as the *Paper Chase* internet survey cited previously, examines only intentions rather than actual behaviours or career outcomes. The nature of the cross-sectional (one-time only) data collection design precludes a more rigorous examination of career trajectories. The dynamic nature of career development and the complex interplay of factors

that may influence outcomes render problematic the capacity to isolate the relative impact or independent effects of tuition or debt load increases. There are some options, however, that could be considered.

One idea would be to examine the distribution of enrollments across law school courses to assess whether the proportions of those students taking various electives have changed over time. The approach would offer some indication of supply and interest in particular areas, as well as the extent to which some areas may be comparatively devalued. The logic suggests that students will not be as likely to article in particular areas without having completed relevant coursework. The analysis, however, provides only a rough proxy for career intentions and suffers to some degree from the same limitations cited above regarding possible gaps between intentions and actual career outcomes.

A more comprehensive approach would be to conduct a broader survey of law school graduates that compare the career paths of those who completed their education before the tuition increases with more recent graduates. For example, many aspects of the Kay et al (1996) survey of women in the legal profession can be replicated, especially in drawing upon the longitudinal survey design and many of the items included in that survey that assess career paths and transitions (including those who no longer practice law).

The study could design a key outcome variable that identifies the full range of public service positions of interest, which may include community legal clinics, non-profit community or public advocacy organizations, and other forms of public service. The sample could then be split between those who are either in such positions at a given point in time or not. By using the statistical technique of logistic regression, one could then evaluate the odds of being in a public service position or not based on the full range of factors assessed in the survey (e.g., socio-economic status, demographic and related background characteristics, graduation year, debt load measures, etc.). Thus the study would more effectively be able to isolate the relative impact of tuition increases and debt loads on actual career choices, or the distribution of lawyers in public service versus other types of positions. In addition, the same logic and analytic approach could be applied to the study of different areas of practice, assuming that the researchers establish a clear definition and measure to capture such information.

Another interesting feature would be to compare the law school cohorts from different institutions both within and outside of Ontario in terms of their income profiles and career choices. The same survey methodology could be extended to include proportionate samples of graduates from both Ontario institutions and selected other institutions where tuition fees have not increased as much in the past decade. The possibility of regional impacts, or rural versus urban differences, could be addressed more effectively with a broader strategy as well.

A prospective study of career paths could be implemented as well, with samples drawn from different cohorts and surveys conducted at fixed intervals. Such an approach would require a regular or sustained investment of resources, however, and the full range of outcomes would not be known for several years. Yet an increasing body of social science research focuses on life course analyses that require a more intensive and long-term approach to the study of transitions and key events that affect career patterns. While there are practical or policy-related reasons for studying the immediate impacts of tuition fees in terms of accessibility issues, the importance of developing more complex models and engaging in more sustained research that links surveys to the LSUC databases should not be underestimated.

Sampling Issues

The OLSAS proposes a survey of all current students and graduates from the past four years, with a target of a 60 percent response rate. While that figure would certainly be adequate in many research contexts, inevitably there will be concerns about the representativeness of respondents and the possibility of self-selection biases. From a social science standpoint, though, the researchers should recognize that valid and reliable results do not necessarily require that a census of all elements in a population be included. In view of the limited timeframe covered (1999-2003), a more fruitful approach and one that would likely yield higher external validity would be to draw a systematic random sample from administrative records of law graduates annually dating back to the earliest period of lower or more stable tuition costs. Similarly, not all current students need to be surveyed, but rather a sample that ensures proportionate representation of their cohort.

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APPENDIX 3

Law Access Study (OLSAS): Project Advisory Committee Meeting (June 9)
LSUC Key Issues to Consider

- Research instruments, including the questionnaires and focus group protocols, should receive LSUC approval (would include review of instruments in light of broader objectives of study and social science standards to ensure reliability and validity of results)

- Should include independent research analyst to provide independent counsel to LSUC and to share access to the data (LSUC should share ownership of data and be able to conduct independent analyses)

- Key focus: changes over time both to socioeconomic status and selected demographic characteristics, including equity-seeking groups or those underrepresented in the profession

- Additional questions that may be emphasized could include: 1) How do tuition increases affect decisions about applying to law school? 2) How do tuition increases affect decisions about attending law school? 3) Which equity-seeking groups are affected most by tuition increases, and in what ways? 4) To what extent and in what ways do tuition fee increases and/or student debt affect the type of employment that law school graduates pursue or their subsequent career paths? 5) To what extent and in what ways do tuition fee increases and student debt affect the region of practice among law school graduates?

- Important to examine the intersection of key factors, i.e., how demographic factors intersect with socioeconomic factors. Especially should examine how socioeconomic status interacts with gender, ethnicity, Aboriginal status, and disability to influence post-secondary education in general.

- Other factors that require further investigation include language, immigrant status, province/region, and urban versus rural location (must have appropriate scientific measures, ideally consistent with Statistics Canada approaches to studying these issues for comparability).

- Specific component of research study should deal with Aboriginal groups because of their unique legislative and funding issues, and since Aboriginal participation may be compromised if they do not perceive any outcomes relevant to their concerns

- Study should include University of Toronto law students and graduates to be more fully representative of law profession in Ontario

- Better served by substituting a broader survey of LSUC members rather than an alumni survey (which does not capture U of T law students, includes too short a timeframe, and will include superfluous information from inappropriate cases)

- Sample should be drawn from LSUC administrative records rather than individual law schools, since LSUC tends to have the most recent and updated information

- Justification for years studied required. Study should extend back at least to 1990 to compare the career paths of those who completed their education before the tuition increases with more recent graduates (study should analyze data for any available years prior to the first series of tuition increases for the purpose of establishing a baseline)

- Not everyone from each year needs to be surveyed, but rather can substitute random sample from cohorts across years (will result in cost saving to help offset increased expenses associated with broadening the sample)

- Questionnaires: Need to articulate follow-up strategies to ensure greater participation (and how will non-respondents be treated?). Ideally should compare responses with 1991, 1996, and 2001 Census data to estimate representativeness in comparison with general population.

- Data should be linked LSUC records (information gathered through annual reports should be expanded to study career patterns more effectively), which will require confidentiality agreement and special approval

from Convocation. Analysis of career patterns or trajectories will be enhanced both for current research study and for future research of interest to LSUC

- Need specific information or more concrete guidelines regarding implementation of focus groups: focal questions, clear scripts, recording and analysis strategies (how integrated with quantitative analysis?)

- Consider comparison with law schools outside of Ontario (could include statistical comparisons with institutions in different provinces with varying tuition fee structures)

APPENDIX 4

Study of Accessibility to Ontario Law Schools
Responses to issues raised in LSUC paper "LSUC Key Issues to Consider"

The following represents our responses to the points made in the paper provided by Dr. Joe Michalski, Research Consultant to the LSUC Equity Group and presented to the Project Advisory Committee Meeting June 9th. We have numbered our responses 1 to 16 to follow the order of the points in the document.

1. The final revision of the instruments and procedures is the responsibility of the five Ontario Law Deans. LSUC contributions to the decision-making process are intended to occur within the context of the Project Advisory Committee.

2. The research is being conducted by an independent body, a team from the Social Program Evaluation Group of Queen's University. Ownership of the data and the research findings specific to each law school rest with each of the five Ontario Law Deans who commissioned this study. If an independent research counsel for LSUC were appointed, it would suggest a conflict of purpose, which does not exist.

3. Changes over time both to socioeconomic status and selected demographic characteristics of law school applicants, including equity-seeking groups or those underrepresented in the profession are the main thrust of the study, especially as these factors relate to tuition increases and student financial aid.

4. No effort will be made to determine the role of tuition increases in decisions of prospective applicants to law schools. However, analysis of application vs. acceptance and registration data will be conducted as well as retrospective analysis of decisions regarding applying to law schools by current students and graduates. The study's research methodology is designed to respond to your question 4: To what extent and in what ways do tuition fee increases and/or student debt affect the type of employment that law school graduates pursue or their subsequent career paths?, and to your question 5: To what extent and in what ways do tuition fee increases and student debt affect the region of practice among law school graduates?.

5. The study does not propose to determine the interaction of SES on gender, ethnicity, Aboriginal status and disability or to examine the influence of these factors on post secondary education in general. This area of investigation is far beyond this study's parameters.

6. This study incorporates the 'other factors' mentioned in this point (i.e., language, immigrant status, province/region and urban/rural location). Statcan classifications of these factors are being reviewed for appropriateness.

7. We plan to incorporate a special analysis of 'Aboriginal students' and graduates' data.

8. The Dean of University of Toronto's Law School has stated that they will not participate in this study.

9. This study was designed to respond to five Ontario law schools in relation to circumstances faced by their current and prospective students. It would not be appropriate to be changed to a broader mandate that includes a survey of LSUC members.

10. It is possible for the study to incorporate information from LSUC administrative records for members as far back as 1990.

11. See #10 above.

12. The number of potential respondents is not large enough to permit a random sample of cohorts across years because this approach would not yield adequate cell sizes for analyses of sociodemographic variables. Although it is not planned, it would be possible to survey additional cohorts of graduates from years prior to 2000 at minimal extra cost.

13. With regard to follow-up strategies to ensure maximum participation of graduates, see the attached amended graduate survey strategy using e-mail and a website. Also, questions of validity and reliability of Statcan categories and data prompt us to question their appropriateness. Category equivalencies will be developed that are appropriate to the law schools' datafiles.

14. The five Ontario Law Deans who commissioned this study have agreed that files related to each data source (i.e. OLSAS, law school student records) be independent (without links) in order to protect subjects' confidentiality. Merging of datafiles would violate university ethics principles.

15. Focus group topics and procedures have been expanded to provide further clarification and may be amended as input is received from Project Advisory Committee members. A draft of topics was presented briefly on an overhead transparency at the June 9th meeting (see attached).

16. We will examine relevant research studies conducted by other Canadian law schools, but do not expect to include their data into the five law schools' analyses.

We will be pleased to respond to any further methodological issues and guidance provided by LSUC.

Alan King & Wendy Warren
c/o SPEG, Queen's University
613-533-6000 ext 77259
June 10, 2003

Attachments: (prepared for PAC meeting June 9/03):
- Proposed Graduate Survey Procedures
- Focus Group Topics (examples)

APPENDIX 5

Proposed Graduate Survey Procedures

Revised Strategy

o E-mail procedure for response to website survey + a back-up mail out to inaccessible graduates.

Administering Graduate Survey

o Law School's Advisory Committee Chair (LSAC) contacts graduates

- 1st brief e-mail letter introduces study & alerts to 2nd message

- 2nd detailed message presents rationale, encourages participation, emphasizes ethics, strict security measures & PIN

o Database stored on Queen's Faculty of Ed server

- if research team finds no survey/PIN, LSAC sends out follow-up message

Securing Privacy and Confidentiality

o In password-protected Idfile, LSAC assigns graduate a PIN linked to e-mail address

- no access to the survey datafile

o Two weeks after survey start date, research team sends LSAC non-respondent list for follow up

o SPEG's analyst will store PINs with graduate responses on research team database

- before analysis begins, PINs will be deleted

Law Access Project team
c/o SPEG, Queen's
June 6, 03

APPENDIX 6

FOCUS GROUP TOPICS∗ (examples)

Current Student Status:
- year of the program, part-time/full-time/special category

Influences in Decision Making:
- to enter law & current program
- financial aid
- tuition & overall costs

Post-Graduation Plans:
- articling destination
  - by city and province
  - type of law
  - size of law firm or organization
- post-graduate education

Financial:
- size & implications of debt load at program entry & at program completion

Financial Aid:
- appropriateness of law school's financial aid program
- suggestions for changes to financial aid program

∗ Focus group sessions with each year's students in participating law programs will provide the opportunity to clarify, elaborate on and validate issues addressed on the questionnaire (p. 6 of Proposal). Number of focus groups (2 groups of 6-8 students from each of the three years) and student selection per law school may change.

Overcoming Barriers to Legal Education:

- suggestions: approach to overcome tuition increase barriers

Law Access Project team
c/o SPEG, Queen's
June 10/03

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

(1) Copy of letter from Dean Alison Harvison Young, Queen's University to Mr. Ron Manes, Chair, Board of Trustees, The Law Foundation of Ontario dated March 26, 2003.

(Appendix 1, pages 10 – 12)

(2) Copy of Table A – Data Sources and copy of Table B – Sample Presentation of Findings.

(Appendix A, pages 22 – 23)

Deans Feldthusen and Monahan briefly addressed Convocation and took questions.

It was moved by Mr. Copeland, seconded by Mr. Millar that the Law Society provide $100,000 funding to the Law Deans Group for the purpose of undertaking the Ontario Law School Accessibility Study.

An amendment was moved by Mr. Banack, seconded by Mr. Simpson and accepted that the Law Society's funding be contingent on the Law Deans receiving the balance of the funding.

The Copeland/Millar motion as amended was adopted.

Carried

ROLL-CALL VOTE

Alexander	For	Gold	Against
Arnup	For	Gotlib	Abstain
Backhouse	For	Gottlieb	Against
Banack	For	Harris	For
Bobesich	Against	Hunter	For
Bourque	For	MacKenzie	Against
Campion	For	Martin	Against
Carpenter-Gunn	For	Millar	For
Caskey	For	O'Donnell	For
Chahbar	For	O'Brien	Against
Cherniak	For	Pawlitza	Abstain
Coffey	For	Porter	For
Copeland	For	Potter	For
Curtis	For	Robins	For
Doyle	Abstain	Ruby	For
Dray	For	St. Lewis	For
Eber	For	Silverstein	Against
Ducharme	For	Simpson	For
Feinstein	For	Swaye	For
Finkelstein	For	Warkentin	For

Filion	Abstain	Wright	For
Finlayson	Abstain		

Vote: 31 For; 7 Against; 5 Abstentions

REPORT OF THE EQUITY & ABORIGINAL ISSUES COMMITTEE/COMITI SUR L'IQUITI ET LES AFFAIRES AUTOCHTONES

Re: Discrimination and Harassment Counsel Report

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

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
June 26, 2003

Report to Convocation

Purpose of Report: Information

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

INFORMATION
DISCRIMINATION & HARASSMENT COUNSEL
SEMI-ANNUAL REPORT
JULY 1, 2002 – NOVEMBER 30, 2002

1. The Committee presents the Discrimination & Harassment Counsel Program (DHC Program) Semi-Annual Report for the period of July 1, 2002 – November 30, 2002 (Appendix 1)[1].

2. During the reporting period, the DHC Program received approximately 35 calls per month for a total of 174 calls in five months. This represents a slight decrease from the last reporting period when on average 40 calls were received per month.

3. Of the 174 calls received, two-thirds were within the mandate of the DHC Program. This represents a decrease from past reporting periods when approximately 75-90% of the calls were within the mandate.

4. A quarter of the calls continue to deal with sexual harassment and personal harassment. The next most significant areas are calls regarding discrimination on the basis of race (8%), religion (4%), disability and sexual orientation (each 1%).

5. Eleven files were opened regarding complaints and matters requiring follow-up and ten of these matters are ongoing.

[1] The report does not cover the month of December 2002 due to Mary Teresa Devlin's appointment to the Ontario Court of Justice in November 2002. The month of December 2002 will be covered in the next DHC Semi-Annual Report.

6. To date, 17 files have been closed (including files opened in earlier reporting periods) with the following resolutions: six matters were resolved through internal or external processes, three matters were resolved by the Law Society and eight matters were resolved through successful intervention of the DHC.

APPENDIX 1

DISCRIMINATION & HARASSMENT COUNSEL PROGRAM
SEMI-ANNUAL REPORT:
JULY 1, 2002 – NOVEMBER 30, 2002

Submitted to
THE LAW SOCIETY OF UPPER CANADA

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DISCRIMINATION & HARASSMENT COUNSEL PROGRAM
SEMI-ANNUAL REPORT
JULY 1, 2002 – NOVEMBER 30, 2002

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EXECUTIVE SUMMARY

This report covers the activities of the *Discrimination & Harassment Counsel (DHC) Program* from July 1, 2002 to November 30,2002.[1]

During this reporting period, I received approximately 35 calls per month for a total of 174 calls in five months. This represents a slight decrease from the last reporting period when I received on average 40 calls per month. July, October and November were the most intense months with 47, 40, and 41 calls respectively. September was the slowest month with only 13 calls.

Of the 174 calls, two-thirds were within the mandate of the Program. This represents a decrease from past reporting periods when approximately 75-90% of the calls were within the mandate.

A quarter of the calls continue to deal with sexual and personal harassment. The vast majority of these calls were generated by women. The next most significant areas were calls regarding discrimination on the basis of race (8%), religion (4%), gender (2%), disability and sexual orientation (each 1%). All of the calls regarding discrimination on the basis of race were generated by men. All of the calls regarding discrimination on the basis of religion, gender, disability and sexual orientation were generated by women.

The vast majority of calls (112 of 133[2] or 84%) were generated by members of the public. Twenty-one calls were received from lawyers and/or law students.

For the first time since the Program started, socio-economic data was collected during this reporting period. Attached as Appendix "C" is a sample Questionnaire.

Every effort was made to collect the information from each caller and the system worked well with callers who contacted the Program via telephone. I recommend that the system now be expanded to include callers who contact the Program via e-mail.

During this reporting period 20 Questionnaires were completed (See Appendix "D"). The data reveals that the average caller is a Caucasian, English-speaking female member of the public. She has post-secondary education and earns over $30,000.00 annually. She was referred to the Program through the internet either via the Law Society's web page or the DHC Program's web page.

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[1] Normally this report would cover the period from July 1, 2002 to December 31, 2002. However, due to my appointment as a Justice in the Ontario Court of Justice, my term as the DHC ended on November 30, 2002.

2 None of the 41 calls received in November have been included in this calculation as these calls were transferred to the interim DHC and therefore it is unknown how many represented calls from members of the profession versus calls from members of the public.

Eleven files were opened regarding complaints and matters requiring follow up and ten of these matters are ongoing.

To date, 17 files have been closed (including files opened in earlier reporting periods) with the following resolutions:

a. 6 matters were resolved through internal or external processes, such as a grievance or a complaint to the Ontario Human Rights Commission;

b. 3 matters were resolved by the Law Society, two of which were dealt with through the Discipline Process;

c. 8 matters were resolved through successful intervention of the DHC, including 2 involving mediation services.

As of November 30, 2002 there were 21 ongoing files including 7 files transferred to the interim Discrimination & Harassment Counsel. All of these ongoing files will be transferred to the new DHC.

DIRECT SERVICES

Overview of Calls

From July 1, 2002 to November 30, 2002 I received 174 calls generated by 154 callers. If these calls, two thirds fall within the mandate of the Program. This figure refers to all calls from people with either a specific complaint requesting direct services, or requests for information about the Program.

Calls from members of the public continue to out-pace calls from members of the profession at a rate of 5:1. While more women than men continue to contact the Program, the number of men contacting the Program has dramatically increased: in this reporting period 66 calls were received from men compared with 88 calls from women. With the exception of two callers who spoke French, all callers in this reporting period were English speaking.

	2002[3]	2001[4]	1999-2000[5]
Total number of calls received:	411	366	582
Total number of calls w/in mandate	270	325	430
Total number of individual callers	299	295	469
Total number of female callers:	190	218	263
Total number of male callers:	123	77	91

Total number of calls from members from the profession (lawyers, law students):

		2002 (12 mos)	2001 (12 mos)	1999-2000 (14 mos)
a.	F	51	53	52
b.	M	33	18	27

[3] These figures refer to all calls received in 2002.
[4] These figures refer to all calls received in 2001.
[5] These figures refer to calls received in the first 14 months of the Program's operation, ie. November 1999 – December 31, 2000.

Total number of calls from the public:

a.	F	98	165	267
b.	M	55	59	93

The monthly breakdown of calls for this reporting period is set out in "Appendix A" to this Report. Appendix "B" provides a breakdown based on subject areas of the calls within the mandate.

Appendix A: Number of Calls Received Each Month

On average, I received approximately 35 calls per month. July, October and November were the busiest months with 47, 40 and 41 calls respectively. September was the slowest month with only 13 calls.

Appendix "B": Breakdown of Calls Within the Mandate

Approximately a quarter of the calls were complaints, usually by women, of sexual and personal harassment (20 of 84).

The next most significant area was discrimination on the basis of race where I received 7 calls, all generated by men.

I received 3 calls regarding discrimination on the basis of religion and 3 calls regarding discrimination on the basis of sexual orientation, 2 calls regarding gender discrimination and 1 call regarding discrimination on the basis of disability. All of these calls were generated by women.

Requests for general information about the DHC Program, including requests for specific information such as a copy of the *Rules of Professional Conduct*, or a *Model Policy*, accounted for 26 of the calls within the mandate (30%).

Complaints

i. Number and Type

During this reporting period I opened 11 files[6] as follows:

a. sexual harassment

F	2
M	1

b. discrimination – gender

F	3
M	1 (Third party complaint on behalf of a woman)

c. discrimination – race

F	1
M	3

d. problems with the LSUC7

[6] The decision to open files is a subjective one based on whether there will be ongoing contact with a caller requiring a file to be maintained. As such, this figure is not indicative of the number of matters dealt with under the mandate of the Program. Instead, reference should be made to the total number of calls within the mandate (84) during this reporting period.

[7] This complaint involved a lawyer regarding the Law Society's method of communicating with members of the

F	0
M	1

iii. Services Provided

Of the 11 files opened during this reporting period, the services provided include the following:

Information and Advice including what resources are available, copies of LSUC materials, reviewing a firm's existing policies and procedures and recommending changes: all 11.

Coaching including tips on how to handle the problem, who to approach, strategies, and possible responses: 3.

Support including ongoing contact through an external resolution process (usually a LSUC complaint) and/or attendance at the hearing: 6.

Mediation including negotiations with both parties to achieve a satisfactory result: 2.

The individuals involved in these matters are comprised of members of the profession (6), clients (4) and employees (3, including 2 members of the profession).

Six matters involve women; five involve men. The complaints made by clients involved allegations of discrimination on the basis of race (2) and gender (2). The complaints made by employees involved allegations of sexual harassment (2),and discrimination on the basis of race (1).

iv. Open Files - Ongoing

Of the 11 files opened during this reporting period, 10 are ongoing and involve the following areas:

a.	Discrimination – Gender	4
b.	Discrimination – Race	3
c.	Sexual Harassment	3

iv. Closed Files

During this reporting period, 17 files were closed. These files dealt with the following matters:

Sexual Harassment	9
Personal Harassment	2
Discrimination-Disability	1
Discrimination-Gender	1
Discrimination-Race	3
Discrimination-Sexual Orientation	1

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profession. The matter was resolved internally.

Except for one third party complaint filed by a man on behalf of a female student, all of the complaints involving sexual harassment were from women members of the public. Some of the individuals who complained were employed by lawyers.

Lawyers complained of personal harassment (1), discrimination on the basis of disability (1), and discrimination on the basis of sexual orientation (1). Lawyers (2) and a client (1) complained of discrimination on the basis of race. All three of these complainants were women; one was an Aboriginal client.

Of the 17 closed files, the resolutions were as follows:

Internal Process[8]:	3 (Matters settled; confidential terms)
External Process[9]:	3 (One matter involved a potential law suit; the others were employees of law firms who filed complaints of sexual harassment with the OHRC)
LSUC:	3 (2 matters were resolved through the LSUC Discipline Process, although one matter took approximately YEARS to get to a hearing and then YEARS for the Discipline Panel to release its written reasons)
Mediation[10]:	2 (1 matter was settled on confidential terms. The respondent in the second matter was unwilling to participate in the DHC process which is voluntary.)
Information Provided:	6

PROMOTION AND PUBLICITY

i. Web Page

Thanks to the collaborative efforts of the Communications and IT Departments at the Law Society, I am pleased to announce that the DHC web page is now available at:

www.dhcounsel.on.ca

The DHC web-site is linked to the Law Society's site (and vice-versa); it also has links to other related sites. The Program's web page will be an important resource and of great assistance in reaching the public.

ii. Other Promotional Activities

Numerous promotional activities were planned for this reporting period as follows:

- Windsor University Faculty of Law – November 6, 2002
- Sexual Abuse Symposium of Northern Ontario, Sudbury – November 8 and 9
- Promoting Dialogue and Creating Change, LSUC – November 21 and 23
- Presentation to Staff at Warkworth Institution – December

However, as a result of being appointed to the Ontario Court of Justice on October 30, 2002, all of the activities noted above were cancelled.

[8] Internal processes include a complaint pursuant to the organization's internal policy or a grievance.
[9] External processes include filing a complaint with the Ontario or Canadian Human Rights Commission or filing a civil law suit.
[10] Mediation refers to formal and informal complaints to the DHC Program where the resolution was achieved either through negotiation, conciliation, or mediation.

APPENDIX "A"
NUMBER OF CALLS RECEIVED EACH MONTH[11]

	Total Calls	Calls w/i Mandate	Calls o/s Mandate
July	47	32	15
August	33	20	13
September	13	4	9
October	40	28	12
November[12]	41	N/A	N/A
Totals	174	84	49

APPENDIX "B"
BREAKDOWN OF CALLS WITHIN THE MANDATE

During this reporting period, 84[13] calls were within the mandate as follows:

a. Sexual Harassment
F: 15
M: 2

b. Personal Harassment
F: 2
M: 1

c. Discrimination - Disability
F: 1
M: 0

d. Discrimination - Gender
F: 2
M: 0

e. Discrimination - Race

[11] These figures refer to the number of calls *received*, not the number of individuals calling. In some instances, particularly where the caller required ongoing assistance, one person generated several calls. Also, these figures do not refer to the number of outgoing calls made by the DHC in relation to matters within the DHC mandate.
[12] All calls received in November were transferred to the interim DHC. As a result, there is no data available for this report on the breakdown of those calls.
[13] This figure refers to calls received between July 1st and October 31st only and does not include any of the 41 calls transferred to the interim DHC for November. Likely some of the November calls would also have been within the mandate of the Program.

F: 0
M: 7

f. Discrimination - Religion
F: 3
M: 0

g. Discrimination – Sexual Orientation
F: 3
M: 0

h. Information
F: 16
M: 10

i. Administrative
F: 18
M: 6

DISCRIMINATION AND HARASSMENT COUNSEL
SOCIO ECONOMIC QUESTIONNAIRE

The data collected through this form is for anonymous statistical purposes only so that we can provide the best possible service to callers.

1. Gender:

9 Male
9 Female

2. Age:

9 Under 18
9 18-24
9 25-34
9 35-49
9 50-64
9 65 +

3. Race: How would you identify yourself from the following list of choices:

9 Aboriginal (Indian, Metis or Inuit)
9 Arab/West Asian (Armenian, Egyptian, Iranian)
9 Black (African, Haitian, Jamaican, Somali)
9 Chinese
9 Filipino
9 Japanese
9 Korean
9 Latin American
9 South Asian (East Indian, Pakistani, Punjabi, Sri Lankan)
9 Southeast Asian (Cambodian, Indonesian, Laotian, Vietnamese)
9 White/Caucasian
9 Other _____

4. Status: Are you a Lawyer?
   - 9 Yes
   - 9 No

5. Employment Situation (for lawyers only):

   - 9 Sole Practitioner – 4 Lawyers
   - 9 Small Firm (5-25 lawyers)
   - 9 Medium Firm (26-50 lawyers)
   - 9 Large Firm (51 + lawyers)
   - 9 Government
   - 9 In-House Counsel
   - 9 Other _____

6. Language: Which of the following languages do you understand and speak the best?

   - 9 English
   - 9 French
   - 9 Other_____

7. Education: What is the highest level of education that you have completed?

   - 9 Less than high school
   - 9 High School Diploma
   - 9 Some post-secondary
   - 9 College/technical degree
   - 9 University degree, undergraduate studies
   - 9 University degree, graduate studies
   - 9 Other_____

8. Income: In which of the following group does your yearly gross income fall?

   - 9 Less than $15,000
   - 9 $15,000 - $29,999
   - 9 $30,000 - $59,999
   - 9 $60,000 - $79,999
   - 9 $80,000 - $99,999
   - 9 $100,000 or more

9. Contact with Program: How did you hear about the DHC Program?

   - 9 Ontario Reports Ad
   - 9 Gazette
   - 9 DHC Brochure
   - 9 DHC Presentation
   - 9 Word of Mouth
   - 9 Other (please specify)_____

APPENDIX "D"
OVERVIEW OF SOCIO-ECONOMIC DATA

1. Gender
   Male: 8 F: 12

2. Age
   - 25-34: 5
   - 35-49: 7
   - 50-60: 7
   - 65+: 1

3. Race
   - Caucasian: 14
   - South Asian: 2
   - Black: 2
   - Latin American: 1
   - Aboriginal: 1

4. Members of the Profession
   Yes: 5 No: 15

5. Employment Status (Lawyers Only)
   - Solo Practice 2
   - Small Firm: 1
   - Government: 1
   - Other (Student): 1

6. Language
   English: 18 French: 2

7. Education
   - <Highschool: 2
   - >Highschool: 2
   - Some Post-Sec: 3
   - College/Technical: 2
   - Undergrad: 8
   - Graduate: 3

8. Income
   - >15,000: 2
   - $15-29,000: 2
   - $30-59,000: 5
   - $60-79,000: 3
   - $80-99,000: 2
   - $100,000+: 6

9. Referral Sources
   - OR Ad: 3
   - Word of Mouth: 4
   - Internet: 12
   - LSUC: 1

APPENDIX "E"
OVERVIEW OF TRENDS

- Although more women than men continue to contact the Program, there has been a dramatic increase in the number of calls from men, particularly among calls from the public (66 from men; 88 from women)

- Members of the profession (including lawyers, law students and articling students) continue to avail themselves of the Program's services

- Complaints of sexual and personal harassment continue to account for a significant portion of calls within the mandate

- More areas of discrimination and harassment identified, ie. discrimination on the basis of gender, sexual orientation, and religion

APPENDIX "F"
BUDGET FOR 2002

The budget for 2002 was $100,000.00. These funds have been spent as follows:

Fees	$60,975.00
Disbursements	$ 9,130.45
GST	$ 4,901.26
TOTAL	$75,006.71[14]

MOTION – ELECTION OF BENCHER

It was moved by Ms. Curtis, seconded by Ms. Potter that Mary Louise Dickson be elected a Bencher as a result of the vacancy created by the election of the Treasurer.

Carried

REPORT OF THE INTER-JURISDICTIONAL MOBILITY COMMITTEE

Re: By-Law Amendments and Fees Respecting Inter-Jurisdictional Mobility

Mr. Millar presented the Report of the Inter-Jurisdictional Mobility Committee for approval by Convocation.

[14] This figure does not include services provided by the interim DHC in December 2002.

Report to Convocation
June 26, 2003

Inter-Jurisdictional Mobility Committee

Purpose of the Report: Decision

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

OVERVIEW OF POLICY ISSUE

BY-LAW AMENDMENTS AND FEES RESPECTING INTERJURISDICTIONAL MOBILITY

Request to Convocation

1. That Convocation approve the Motion set out at Appendix 1, containing proposed By-law amendments to By-laws 13, 16 and 33.

2. That Convocation approve the recommendation that the transfer fees for lawyers from signatory jurisdictions that have implemented the National Mobility Agreement be $1410 plus GST.

Summary of the Issue

3. In August 2001 the Federation of Law Societies established a National Mobility Task Force to make recommendations on enhanced mobility for lawyers within Canada. In May 2002 the Task Force reported to the Federation with recommendations. The recommendations were accepted and in August 2002 the Federation delegates accepted a National Mobility Agreement. In December 2002, eight jurisdictions, including Ontario, signed the National Mobility Agreement. In March 2003 Convocation approved by-law amendments to By-laws 11, 13 and 33 to implement the provisions of the National Mobility Agreement. In April 2003 additional amendments were approved to By-laws 11and 13.

4. As signatory law societies prepare to implement the Agreement effective July 1, 2003 issues have arisen that require additional minor amendments to by-laws. As well, the insurance requirements must be amended to reflect the agreements for insurance coverage pursuant to the Agreement.

5. The matters for Convocation's consideration are:
   a. Amendments to By-law 13 (Members) to provide that a person who transfers from another signatory and who has limitations or restrictions on his or her right to practise law brings those restrictions with him or her upon transfer;

   b. Amendments to the insurance provisions in By-law 16 (Professional Liability Insurance Levies);

   c. Amendments to By-law 33 (Inter-Provincial Practice of Law) to address the language related to work before federal courts and tribunals; and

   d. The fees to be charged for the transfer process pursuant to section 4.2(3) of By-law 11.

THE REPORT

Terms of Reference /Committee Process

6. The Committee met on June 17, 2003. Derry Millar (Chair), John Campion, Abe Feinstein, and George Hunter attended. Staff members Elliot Spears and Sophia Sperdakos also attended.

7. The Committee is reporting on the following matters:

Policy – For Decision

- Amendments to By-laws 13, 16 and 33 respecting inter-jurisdictional mobility
- Fees Respecting transfer pursuant to section 4 of By-law 11 (implementing the provisions of the National Mobility Agreement)

BY-LAW AMENDMENTS AND FEES RESPECTING INTERJURISDICTIONAL MOBILITY

(a) Background

8. In August 2001 the Federation of Law Societies established a National Mobility Task Force to make recommendations on enhanced mobility for lawyers within Canada. In May 2002 the Task Force reported to the Federation with recommendations. The recommendations were accepted and in August 2002 the Federation delegates accepted a National Mobility Agreement (the Agreement). Each law society then considered whether to become a signatory to the Agreement and implement its provisions.

9. In September 2002 the Committee recommended approval of the Agreement to Convocation, which accepted the recommendation and authorized the Law Society to become a signatory.

10. In December 2002 eight Canadian jurisdictions signed the Agreement. They are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec[1], Nova Scotia, and Newfoundland. New Brunswick, the Northwest Territories, Nunavut, Prince Edward Island and the Yukon have voted not to sign the Agreement at this time.

11. Following the signing the Task Force developed Model Rules to ensure a national approach to the implementation of the Agreement. Jurisdictions have used the Model Rules as the basis for drafting their specific rules or by-laws.

12. In March 2003 Convocation approved amendments to By-laws 11, 13, and 33 to implement the provisions of the Agreement. In April 2003 Convocation approved further amendments to By-laws 11 and 13. By-law 11 (Call to the Bar and Enrolment as a Solicitor) addresses the requirements for permanent transfer to Ontario. By-law 13 (Members) provides for categories of members, including those people who become members by way of transfer. By-law 33 (Inter-provincial Practice of Law) provides for the inter-provincial practice of law on a temporary basis and sets out the requirements for lawyers from jurisdictions that have signed and implemented the Agreement as well as those from jurisdictions that have not signed.

13. The mobility implementation process is a complex one. To facilitate a seamless national approach, a national implementation group meets weekly to discuss issues and consider whether the implementation language is the best possible in all circumstances. A number of further amendments to the by-laws are necessary as a result of issues raised in the national discussions and to ensure that all aspects of the

[1] Although Quebec is a signatory, it is not in a position to implement until it obtains approval from l'Office des professions, the government agency that oversees all professions in the province of Quebec.

Agreement are reflected in by-laws and rules enacted in each jurisdiction. In addition the insurance requirements must be amended to reflect the agreements for insurance coverage pursuant to the Agreement.

14. The four matters for Convocation's consideration are:

a. Amendment to By-law 13 (Members) to provide that a person who transfers from another signatory and who has limitations or restrictions on his or her right to practise law brings those restrictions with him or her upon transfer;

b. Amendments to the insurance provisions in By-law 16 (Professional Liability Insurance Levies);

c. Amendments to By-law 33 (Inter-Provincial Practice of Law) to address the language related to work before federal courts and tribunals; and

d. The fees to be charged for the transfer process pursuant to section 4.2(3) of By-law 11.

AMENDMENTS TO BY-LAW 13

15. By-law 13 governs members, including those who become members by transfer. In March and April 2003 amendments were made to the By-law to provide that a person transfers to Ontario with the category status he or she had in the home province. This ensures that when the Law Society's Private Practice Refresher Program 2 comes into force in 2007, lawyers who become members by transfer will be subject to the same provisions as lawyers originally called in Ontario.

16. One of the underlying principles of the mobility agreement is that a lawyer will not be able to improve his or her status or gain rights he or she does not have in the home jurisdiction by transferring to another jurisdiction. To ensure this principle is followed, a further amendment to By-law 13 is required, at section 2.2, to provide that a lawyer who transfers to Ontario with restrictions or limitations on his or her right to practise continues to hold such restrictions upon transfer.

17. Appendix 2 contains the current version of By-law 13. The proposed amendments to the By-law, which the Committee recommends for approval, are contained in the Motion at Appendix 1.

AMENDMENTS TO BY-LAW 16 REGARDING INSURANCE LEVIES

18. By-law 16 sets out the requirements for paying insurance levies and for being exempted from such payment. It also describes the levies payable. Certain insurance provisions contained within the National Mobility Agreement must be included in By-law 16 as part of the implementation of the Agreement.

19. The insurance providers across the country have been consulted to ensure that all insurers agree upon the principles that would apply for insurance coverage in the mobility context. The insurers requested that certain terms be used to ensure all jurisdictions approach coverage in the mobility context in the same way.

20. To put into effect the insurance provisions agreed to pursuant to the National Mobility Agreement and the Model Rules the Committee proposes that By-law 16 on Professional Liability Insurance Levies be amended as follows:

a. Subparagraph iii of paragraph 2 of subsection 9(1): amendment to adopt the language of "coverage" agreed to in the Agreement and Model Rules;

b. Subsection 9(1): addition of a new category of exemption from the requirement to pay levies - where an Ontario member is also a member of and resident in a reciprocating jurisdiction and demonstrates proof of coverage for his or her practice in Ontario under the insurance program of the reciprocating jurisdiction;

[2] The Private Practice Refresher Program (PPRP), which will become operational in 2007 provides that before being eligible to move from Category B or C to Category A (private practice), a lawyer who has not been in Category A for five years or more will be subject to the PPRP.

c. Section 9: addition of definitions of “reciprocating jurisdiction” and “resident”.

21. Appendix 3 contains the current version of By-law 16. The proposed By-law amendments are contained in the Motion for Convocation’s approval at Appendix 1.

AMENDMENT TO BY-LAW 33

22. In developing the rules for temporary mobility the signatories agreed that time spent in appearances before federal courts and tribunals, as well as time spent preparing for and working on such matters, should be exempted from the 100 day limit as well as from the other requirements that apply to be eligible for mobility without a permit. There are two reasons for this.

a. The right to appear before such courts and tribunals is defined by the specific legislation that governs those bodies. Generally persons who are entitled to practise law in any Canadian jurisdiction may appear before them. Mobility by-laws or rules cannot impose on these lawyers requirements for temporary mobility without a permit that may be different or more onerous than the legislative requirements of those courts or tribunals.

b. The location of federal courts and tribunals in a jurisdiction is a matter of convenience unconnected to the jurisdiction in question. Counting time spent in such matters as part of the 100 days would not be appropriate.

23. As a matter of policy, it is also reasonable that lawyers in the employ of a federal board or tribunal who provide legal services support to those tribunals should not be required to calculate the time spent on such advice outside of their home jurisdiction as part of the 100 days temporary mobility calculation.

24. The Task Force did not, however, intend that the exemption for temporary mobility purposes, as described in 22 and 23 above, would also exempt such persons from the provisions regarding “economic nexus”, which require lawyers to become members of the applicable law society where certain criteria of permanence are met.

25. A number of law societies are re-considering the wording of their by-law or rule provision and are amending the language to implement the Task Force’s intent on this issue.

26. The Committee recommends that By-law 33 be amended to reflect the following:

a. Persons only appearing before or working in relation to matters before federal courts and tribunals in Ontario will not be subject to the requirements of sections 10(2) of By-law 33;

b. Persons appearing before such tribunals in Ontario in addition to practising law in or with respect to the law of Ontario as contemplated by the National Mobility Agreement will be subject to the requirements of 10(2), but will not be required to include in the calculation of the 100 day limitation for temporary mobility time spent appearing before federal courts or tribunals, and

c. Persons described in (a) are, like all those exercising temporary mobility under Part II, subject to the provisions of the By-law regarding economic nexus.

27. This reflects the approach being adopted by all signatory jurisdictions that are in the course of implementing the Agreement.

28. It is also recommended that section 15 of By-law 33, which applies to persons from non-signatory jurisdictions, be amended to reflect the understanding that persons appearing before federal courts and tribunals under the 10-20-12 provisions are also exempted from the counting requirement for the reasons described above.

29. Appendix 4 contains the current version of By-law 33. The proposed amendments to the By-law are contained in the Motion for Convocation’s approval at Appendix 1.

TRANSFER FEES

30. Section 4.2 (3) of By-law 11 requires that applicants for admission by way of transfer pay fees in an amount determined by Convocation.

31. Lawyers writing transfer examinations in Ontario currently pay a transfer application and examination fee of $2,675 (with materials) or $1712 (without materials), including GST plus a call to the bar fee of $224.70 including GST. This will continue to be the fee for lawyers who continue to write transfer examinations.

32. Law societies throughout the country currently charge a range of fees for the transfer process as follows:

British Columbia	$1845
Alberta	$2135
Saskatchewan	$1405
Manitoba	$1450
Nova Scotia	$ 750
Newfoundland	$2525

33. In developing the rules for mobility the signatory law societies have sought to develop procedures that are as similar as possible, keeping in mind the specific circumstances and considerations of each jurisdiction.

34. The signatory law societies have exchanged information about possible fees. The various jurisdictions are anticipating fees that range between approximately $1000 and approximately $1600, plus GST. The fees reflect the cost of materials, administrative processing and call to the bar fees.

35. Currently the materials portion of the Ontario's transfer process is approximately $960. The administrative portion is approximately $1700. The call fee is $210 plus GST. Under the reading requirement the materials will be somewhat reduced in length. The administrative process will no longer include examination marking, but will continue to include the processing of the applications, including communications with the home jurisdiction and any other jurisdiction in which the applicant is or has been a member, communications with the applicant, consideration of the good character requirement and preparation of the file for call to the bar.

36. Given the above-mentioned considerations the Committee recommends a fee of $1410 plus GST. This includes the following:

Application Process	$ 600.00
Materials	$ 600.00
Call to the bar fee	$ 210.00
GST	$ 98.70
Total	$1508.70

Request to Convocation

37. That Convocation approve the Motion set out at Appendix 1, containing proposed By-law amendments to By-laws 13, 16 and 33.

38. That Convocation approve the recommendation that the transfer fees for lawyers from signatory jurisdictions that have implemented the National Mobility Agreement be $1410 plus GST.

APPENDIX 1
4-aes

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 26, 2003

MOVED BY

SECONDED BY

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on June 26, 2003, be amended as follows:

BY-LAW 13
[MEMBERS]

1. Section 2.2 of By-Law 13 [Members] is amended by adding the following:

Interpretation: "order"

(0.1) In subsections (1) and (2), "order" means,

(a) an order under the Act; and

(b) if a person becomes a member by transferring from a jurisdiction outside Ontario under section 4 or 4.1 of By-Law 11, an order by a tribunal of the governing body of the legal profession in the jurisdiction from which the person transferred to Ontario.

2. Subsections 2.2 (1) and (2) of the By-Law are amended by deleting "under the Act".

BY-LAW 16
[PROFESSIONAL LIABILITY INSURANCE LEVIES]

3. Subparagraph iii of paragraph 2 of subsection 9 (1) of By-Law 16 [Professional Liability Insurance Levies] is amended by deleting "at least equivalent to that" and substituting "reasonably comparable in coverage and limits to professional liability insurance that is".

4. Subsection 9 (1) of the By-Law is amended by adding the following:

2.1 Any member who, during the course of the year for which a levy is payable,

i. will be resident in a reciprocating jurisdiction, and

ii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of the reciprocating jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.

5. Subsection 9 (1.1) of the By-Law is amended by adding "2.1" after "paragraph 1, 2".

6. Section 9 of the By-Law is amended by adding the following:

Interpretation: "reciprocating jurisdiction"

(2.1) In subsection (1), "reciprocating jurisdiction" means a Canadian jurisdiction other than Ontario,

(a) which is a signatory to the agreement on the inter-provincial practice of law originally entered into in December 2002 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law

Society of Manitoba, The Barreau du Québec, the Nova Scotia Barristers' Society and the Law Society of Newfoundland;

(b) in which a member is authorized to practise law; and

(c) which would exempt the member from its mandatory professional liability insurance program if the member were resident in Ontario and demonstrated proof of coverage for the member's practice in the jurisdiction under the Society's insurance plan which was reasonably comparable in coverage and limits to the professional liability insurance that would otherwise be required of the member by the jurisdiction.

7. Section 9 of the By-Law is further amended by adding the following:

Interpretation: "resident"

(5) In subsection (1), "resident" has the same meaning given it for the purposes of the *Income Tax Act* (Canada).

BY-LAW 33
[INTER-PROVINCIAL PRACTICE OF LAW]

8. Subsection 4 (1) of By-Law 33 [Inter-Provincial Practice of Law] is amended by adding at the end a comma and the words "other than a person who practises law in Ontario under subsection 10 (2.1) or (4)".

9. Section 10 of the By-Law is amended by adding the following:

Same

(2.1) A person who is not a member, if and so long as the person is authorized to practise law in a province or territory of Canada outside Ontario and does not establish an economic nexus with Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

(a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or

(b) as counsel to a court or tribunal mentioned in clause (a).

10. Section 10 of the By-Law is further amended by adding the following:

Same

(4) A person who is entitled under subsection (2.1) to practise law in Ontario on an occasional basis may practise law in Ontario on more that an occasional basis, as permitted by a Society official, if, and so long as, the person is authorized to practise law in a province or territory of Canada outside Ontario and does not establish an economic nexus with Ontario.

11. Section 15 of the By-Law is amended by adding the following:

Same

(1.1) A person who is not a member, if and so long as the person is authorized to practise law in a province or territory of Canada outside Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

(a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of

Canada, the Tax Court of Canada or a tribunal established under an Act of Parliament or the Legislature in Ontario; or

(b) as counsel to a court or tribunal mentioned in clause (a).

APPENDIX 2

BY-LAW 13

Made: January 28, 1999
Amended:
March 26, 1999
December 10, 1999
March 22, 2001
February 20, 2002
October 31, 2002
March 27, 2003
April 25, 2003

MEMBERS

HONORARY MEMBERS

Authority to make persons honorary members
1. Convocation may make any person an honorary member.

LIFE MEMBERS

Life member: eligibility
2. (1) Every member of the Society who has been entitled to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor for a period of fifty years is a life member.

Period of fifty years
(2) The following periods of time may be counted towards the period of fifty years required by subsection (1):

1. A period of time during which the member's membership is in abeyance under section 31 of the Act.

2. A period of time during which the member's membership is interrupted by war service.

3. Subject to subsection (3), a period of time during which the member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor is suspended for failure to pay a fee or levy.

4. In the absolute discretion of the standing committee of Convocation responsible for admissions matters, a period of time during which the member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor is suspended for a reason other than failure to pay a fee or levy.

Period of suspension for non-payment: limit on time that may be counted
(3) The total amount of time that may be counted under paragraph 3 of subsection (2) towards the period of fifty years required by subsection (1) is one year.

Period of suspension for non-payment: exception to limit

(4) Despite subsection (3), in appropriate circumstances, the committee may permit a period of time in excess of one year to be counted under paragraph 3 of subsection (2) towards the period of fifty years required by subsection (1).

Exercise of powers by committee

(5) The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for admissions matters under this section is not subject to the approval of Convocation.

CATEGORIES OF MEMBERS

Categories of members

2.1 (1) The following are the categories of members:

1. Category A members.

2. Category B members.

3. Category C members.

Category A members

(2) Every member who is required to pay, and is not exempt from the payment of, insurance premium levies under By-Law 16 is a category A member.

Category B members

(3) Every member who is not a category A member or a category C member is a category B member.

Category C members

(4) Every member who is exempt from the payment of the annual fee under section 4 of By-Law 15, or who is exempt from the requirement to file an annual report under section 2 of By-Law 17, is a category C member.

Member by transfer

(5) A person who becomes a member by transferring from a jurisdiction outside Ontario under section 4 or 4.1 of By-Law 11 is, immediately the person becomes a member, a category A, category B or category C member, as the case may be, if immediately before the person became a member, the person had in the jurisdiction from which the person transferred to Ontario the rights and privileges of that category of member.

Category A members: rights and privileges

2.2 (1) Subject to any order made against the member under the Act, a category A member may practise law without any restrictions.

Category B members: rights and privileges

(2) Subject to any order made against the member under the Act, a category B member may practise law subject to the following restrictions:

1. The member is not permitted to practise law through a partnership.

2. The member is not permitted to practise law through a professional corporation.

3. The member is not permitted to practise law through a sole proprietorship.

4. The member is not permitted to practise law through any arrangement which permits two or more members to share all or certain common expenses but to practise law as independent practitioners.

Category C members: rights and privileges

(3) A category C member is not permitted to practise law.

Interpretation: "Private Practice Refresher Program"

2.3. (1) In this section, "Private Practice Refresher Program" means the program, administered by the Society for the purposes of ensuring that category B and category C members have the practice skills necessary to become category A members, consisting of the following modules:

1. Time management.

2. File management.

3. Financial management.

4. Client relationships/communication.

5. Technology and equipment.

6. Professional management.

7. Personal management.

8. Professional responsibility

Interpretation: "Society official"

(2) In this section, "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this section.

Changing status: from category B or category C to category A

(3) A category B member or a category C member may become a category A member by applying to the Society for a change in status.

Immediate change in status

(4) An application for a change in status made under subsection (3) shall be considered by a Society official and the Society official shall grant the change in status unless, for 80 percent or more of the five years immediately preceding the date of the application, the member has been a category B member or a category C member.

Member by transfer

(4.1) For the purposes of determining the entitlement to a change of status under subsection (4) of a person who became a member by transferring from a jurisdiction outside Ontario under section 4 or 4.1 of By-Law 11, the Society official shall consider the period of time that the member was a category B or category C member and the period of time that the person had the rights and privileges of that category of member in the jurisdiction from which the person transferred to Ontario.

Change in status upon successful completion of program

(5) If the Society official cannot grant the change in status under subsection (4), the Society official shall grant the change in status after the member has successfully completed the required modules of the Private Practice Refresher Program.

Conditional change in status

(6) Despite subsections (4) and (5), the Society official may grant the change in status conditional on the member successfully completing the required modules of the Private Practice Refresher Program within a specified period of time and practising only as an employee or partner of, and under the supervision of, a category A member approved by the Society official.

Same

(7) If a category B member or a category C member, who is granted a conditional change in status under subsection (6), breaches any condition to which the change in status is subject, the change is status is revoked and, despite subsection (6), the Society official shall grant no further conditional change in status to the member

Private Practice Refresher Program: required modules

(8) If a category B member or a category C member, who applies to the Society for a change of status under subsection (3), is not entitled to be granted the change in status under subsection (4), the Society official shall determine the modules of the Private Practice Refresher Program that must be successfully completed by the member.

Information to be provided by member

(9) For the purposes of assisting the Society official to make the determination under subsection (8), the member shall provide the official with information on the activities engaged in by the member during the five years immediately preceding the date of the member's application for a change in status and such other information relating to the member's practice skills as may be required by the official.

Redetermination by bencher

(10) A member who is dissatisfied with a Society official's determination under subsection (8) may apply to an elected bencher appointed for the purpose by Convocation for a redetermination of the modules of the Private Practice Refresher Program that must be successfully completed by the member.

Procedure on redetermination

(11) Subject to subsection (12), the procedure applicable to a redetermination under subsection (10) shall be determined by the bencher and, without limiting the generality of the foregoing, the bencher may decide who may make submissions to him or her, when and in what manner.

Written submissions

(12) Unless the bencher permits a person to make oral submissions to him or her, all submissions to the bencher shall be in writing.

Commencement

3. This By-Law comes into force on February 1, 1999.

APPENDIX 3

BY-LAW 16

Made: January 28, 1999
Amended:
February 19, 1999
April 30, 1999
May 28, 1999
September 24, 1999

September 19, 2002

PROFESSIONAL LIABILITY INSURANCE LEVIES

Interpretation: "Society's insurance plan"

1. (1) In this By-Law, "Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its members.

Interpretation: engaging in practice of law

(2) In this By-Law, a person engages in the practice of law if he or she performs professional services for others in the capacity of a barrister or solicitor or if he or she gives legal advice to others.

Requirement to pay insurance premium levies

2. (1) Unless otherwise exempted, every member of the Society who is eligible for coverage under the Society's insurance plan and who engages in the practice of law during the course of any year shall pay insurance premium levies for that year in accordance with this By-Law.

Same

(2) A member who is required to pay any insurance premium levy shall pay the amount of the levy and any taxes that the Society is required to collect from a member in respect of the payment of the insurance premium levy.

Insurance premium levies

3. The insurance premium levies mentioned in section 2 shall consist of a base levy, an innocent party surcharge levy, a claims history surcharge levy and such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan.

Time for payment of insurance premium levies

4. (1) The base levy, the innocent party surcharge levy and the claims history surcharge levy are due and payable on January 1 of the year in which the coverage applies.

Same

(2) Such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan are due and payable on the dates specified by Convocation or the insurer of the Society's insurance plan.

Period of default

5. (1) For the purpose of subsection 46 (1) of the Act, the period of default for failure to pay an insurance premium levy is 120 days after the day on which payment of the levy is due.

Payment plan: deemed date of failure to pay

(2) Where the Society or the insurer of the Society's insurance plan arranges or permits a schedule for the payment of an insurance premium levy by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay the levy will be deemed to have occurred on January 1 of the year in which the coverage applies.

Reinstatement of rights and privileges

(3) If a member's rights and privileges have been suspended under subsection 46 (1) of the Act for failure to pay an insurance premium levy in a given year, for the purpose of subsection 46 (2) of the Act, the member shall pay an amount equal to the amount of the insurance premium levy which the member is required to pay in respect of that year and a reinstatement fee in an amount determined by Convocation from time to time.

Refund of unearned portion of insurance premium levy

6. Where a member, who has paid one or more of the base levy, innocent party surcharge levy and claims history surcharge levy, subsequently, during the course of the year for which the levy or levies were payable, dies, retires, ceases to be eligible for coverage or is exempted by the Society from the requirement to pay one or more of

the levies, the unearned portion of the levy or levies shall be refunded on a pro rata basis, subject to a two month minimum.

Society's insurance fund

7. (1) The insurance premium levies paid by members shall be used for the Society's insurance fund, or to pay the required insurance premiums to the insurer of the Society's insurance plan, claims, group deductibles, adjusting costs, counsel and legal fees, administration costs and such other expenses reasonably incurred in connection with the Society's insurance plan.

Society's Insurance fund not used up at year-end

(2) If at the end of any year the insurance fund is not entirely used up, the surplus remaining shall be carried forward into the next year.

Eligibility for coverage

8. (1) Every member of the Society other than an honorary member or a student member is eligible for coverage under the Society's insurance plan provided that his or her rights and privileges as a member are not suspended.

Application for coverage

(2) A member who is eligible for coverage under the Society's insurance plan but who is not required under this By-Law to pay insurance premium levies may apply to the Society or to the insurer of the Society's insurance plan for coverage and, if granted coverage, shall pay the required levies in accordance with this By-Law.

Exemption from payment of insurance premium levies

9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:

1. Any member who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario.

2. Any member who, during the course of the year for which a levy is payable,

   i. will be resident in a Canadian jurisdiction other than Ontario,

   ii. will engage in the practice of law in Ontario on an occasional basis only, and

   iii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be at least equivalent to that required under the Society's insurance plan.

3. Any member who, during the course of the year for which a levy is payable,

   i. will be employed by a single employer,

   ii. will provide legal service only for and on behalf of the employer as,

      A. counsel or solicitor to the Government of Canada or the Government of Ontario,

      B. a Crown Attorney,

      C. counsel to a corporation other than a law corporation, or

      D. a city solicitor, and

   iii. will not engage in the practice of law in Ontario so as to provide legal services to persons other than the employer.

4. Any member employed as a law teacher who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario so as to provide legal services other than teaching.

5. Any member who, during the course of the year for which a levy is payable,

a. will be employed in a clinic within the meaning of the *Legal Aid Services Act, 1998*, a student legal aid services society or an Aboriginal legal services corporation, that is funded by Legal Aid Ontario, but will not be directly employed by Legal Aid Ontario,

b. will provide legal service only through the clinic, student legal aid services society or Aboriginal legal services corporation to individuals in communities served by the clinic, student legal aid services society or Aboriginal legal services corporation and will not otherwise engage in the practice of law in Ontario, and

c. demonstrates proof of coverage for the provision of such legal service under a professional liability insurance policy issued by a licensed insurer in Canada, such coverage to be at least equivalent to that required under the Society's insurance plan.

Same

(1.1) A member who is exempt from payment of insurance premium levies under paragraph 1, 2, 3, 4 or 5 of subsection (1) continues to be exempt from payment of insurance premium levies even though he or she engages in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies if the following conditions are met:

1. The member's practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies is restricted to providing legal advice or services only on a *pro bono* basis and only to or on behalf of non-profit organizations.

2. Prior to engaging in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies, the member applies to the insurer of the Society's insurance plan, in accordance with procedures established by the insurer, to continue to be exempt from payment of insurance premium levies and the insurer approves the member's application.

Interpretation: occasional practice of law

(2) For the purposes of paragraph 2 of subsection (1), in any year, a member engages in the practice of law on an occasional basis if, during that year, the member,

(a) practises law in respect of not more than ten matters; and

(b) practises law for not more than twenty days in total.

Interpretation: "employer"

(3) In paragraph 3 of subsection (1), "employer" includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the member.

Interpretation: "affiliated", "controlled" and "subsidiary"

(4) In subsection (3), "affiliated", "controlled" and "subsidiary" have the same meanings given them in the *Securities Act*.

Exemption from payment of insurance premium levies: honorary members

10. Honorary members are exempt from payment of insurance premium levies.

Commencement
11. This By-Law comes into force on February 1, 1999.

APPENDIX 4

BY-LAW 33

Made: May 24, 2001
Amended: September 28, 2001
Revoked and Replaced: March 27, 2003

INTER-PROVINCIAL PRACTICE OF LAW
PART I
GENERAL

Definitions
1. In this By-Law,

"Inter-Jurisdictional Practice Protocol" means the agreement, as amended from time to time, entered into in and between 1994 and 1996 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, the Barreau du Québec, the Chambre des Notaires du Québec, The Law Society of New Brunswick, the Law Society of Prince Edward Island, the Nova Scotia Barristers' Society and the Law Society of Newfoundland in respect of the inter-provincial practice of law;

"National Excess Plan" means the plan established under the Inter-Jurisdictional Practice Protocol for the purpose of compensating any person who sustains a financial loss arising from the misappropriation of money or other property by a person qualified to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law;

"Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Prohibition against occasional practice of law
2. A person who is not a member shall not practise law in Ontario except in accordance with this By-Law or By-Law 22.

Insurance and defalcation coverage
3. (1) No person shall practise law in Ontario under this By-Law unless the person,

(a) has professional liability insurance for the person's practice of law in Ontario which is reasonably comparable in coverage and limits to professional liability insurance that is required of a member; and

(b) has coverage for defalcations, other than the National Excess Plan, which specifically extends to the person's practice of law in Ontario and is at least equivalent to the coverage available to a member.

Insurance: exemption
(2) A person who is entitled to practise law in Ontario under section 10 is exempt from the requirement contained in clause (1) (a) if the person meets any of the requirements for exemption from payment of insurance premium levies specified for members in By-Law 16.

Application of Act, *etc.*

4. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the Rules of Professional Conduct apply, with necessary modifications, to a person who practises law in Ontario under this By-Law.

Conflict

(2) In the event of a conflict between the provisions of this By-Law and the provisions of any other by-law, the provisions of this By-Law prevail.

Proof of Compliance

5. (1) A person who is not a member and who is practising law in Ontario shall, upon the request of a Society official and by not later than the day specified by the official, provide proof to the satisfaction of the official that he or she is in compliance with this By-Law or By-Law 22.

Deemed failure to comply

(2) If a person fails to provide proof to the Society official by the day specified by the official, the person shall be deemed not to be in compliance with this By-Law or By-Law 22.

Application of section

6. (1) This section applies to a person if the prior permission of the Society is required for the person to practise law in Ontario on an occasional basis.

Application for permission

(2) A person who wishes permission to practise law in Ontario on an occasional basis shall apply to the Society.

Application form

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

Documents, explanations, releases, *etc.*

(4) For the purposes of assisting the Society to consider an application under subsection (2), the person shall provide,

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

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

Application to be considered by Society official

(5) Every application under subsection (2) shall be considered by a Society official and,

(a) the Society official shall notify the person in writing that the person may practise law in Ontario on an occasional basis if the Society official is satisfied that the person has met the requirements, if any, for permission to practise law in Ontario on an occasional basis or that it would not be contrary to the public interest to permit the person to practise law in Ontario on an occasional basis; or

(b) the Society official shall notify the person in writing that the person may not practise law in Ontario on an occasional basis if the Society official is not satisfied that the person has met the requirements, if any, for permission to practise law in Ontario on an occasional basis and that it would not be contrary to the public interest to permit the person to practise law in Ontario on an occasional basis.

Terms and conditions

(6) Permission to practise law in Ontario on an occasional basis granted to a person by a Society official may include such terms and conditions as the official considers appropriate.

Application to committee of benchers

(7) If a Society official refuses to permit a person to practise law in Ontario on an occasional basis or includes terms and conditions in the permission, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the person may practise law in Ontario on an occasional basis or of whether the terms and conditions are appropriate.

Time for application

(8) An application under subsection (7) shall be commenced by the person notifying a Society official in writing of the application within thirty days after the day the person receives notice of the Society official's refusal to permit the person to practise law in Ontario on an occasional basis.

Parties

(9) The parties to an application under subsection (7) are the person and the Society.

Quorum

(10) An application under subsection (7) shall be considered and determined by at least three members of the committee of benchers.

Procedure

(11) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (7) as if the consideration of the application were the hearing of an application for admission under section 27 of the Act.

Same

(12) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee of benchers of an application under subsection (7).

Decision on application

(13) After considering an application under subsection (7), the committee of benchers shall determine that the person may practise law in Ontario on an occasional basis or may not practise law in Ontario on an occasional basis.

Terms and conditions

(14) Permission to practise law in Ontario on an occasional basis granted to a person by the committee of benchers may include such terms and conditions as the committee of benchers considers appropriate.

Decision final

(15) The decision of the committee of benchers on an application under subsection (7) is final.

Duration of permission

(16) Permission to practise law in Ontario on an occasional basis granted to a person remains in effect for one year after the day on which it comes into effect.

Permission withdrawn

(17) Permission to practise law in Ontario on an occasional basis granted to a person is automatically withdrawn immediately the person,

(a) does not meet the requirements, if any, for permission to practise law in Ontario on an occasional basis;

(b) ceases to have authority to practise law in a province or territory of Canada outside Ontario on the basis of which authority the person was granted permission to practise law in Ontario on an occasional basis;

(c) does not comply with clause 3 (1) (a);

(d) is the subject of an order made against the person by any tribunal of the governing body of the legal profession in any province and territory of Canada of which the person is a member,

(i) revoking the person's membership in the governing body, disbarring the person as a barrister and striking the person's name off the governing body's roll of solicitors, or

(ii) suspending the person's rights and privileges; or

(e) practises law in Ontario on more than an occasional basis, unless permitted to do so under this By-Law.

Permit fee

(18) A person permitted to practise law in Ontario on an occasional basis shall pay a permit fee in an amount determined by Convocation from time to time.

Disclosure of information

7. (1) If a member is the subject of an investigation or a proceeding at the instance of the governing body of the legal profession in a province or territory of Canada outside Ontario arising from the member's inter-provincial practice of law in the province or territory, the Society may, at the request of the governing body, provide to it such information in respect of the member as is reasonable for the Society to provide in the circumstances.

Same

(2) The Society may provide to the governing body of the legal profession in a province or territory of Canada outside Ontario information in respect of a member necessary to permit the governing body to determine if the member qualifies to practise law on an occasional basis, or on more than an occasional but less than a regular basis, in the province or territory.

PART II
OCCASIONAL PRACTICE OF LAW: 100 DAYS

Application of Part

8. This Part applies to a person if,

(a) the person is authorized to practise law in a province or territory of Canada outside Ontario; and

(b) the governing body of the legal profession in the province or territory of Canada outside Ontario in which the person is authorized to practise law has provisions respecting the practice of law on an occasional basis, or on more than an occasional but less than a regular basis, in that province or territory by a member that correspond to the provisions contained in this Part.

Definition: "day"

9. (1) In this Part, "day" means a calendar day or part of a calendar day.

Interpretation: practice of law

(2) In this Part, a person practises law in Ontario if the person,

(a) performs professional services for others in the capacity of a barrister or solicitor relying on, or with respect to, the laws of Ontario or the laws of Canada applicable in Ontario, or

(b) gives legal advice to others with respect to the laws of Ontario or the laws of Canada applicable in Ontario.

Occasional practice of law: excluded activities

(3) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada

shall not be included in calculating the maximum number of days a person is entitled or permitted to practise law in Ontario under this Part.

Interpretation: economic nexus

(4) In this Part, a person establishes an economic nexus with Ontario if the person,

(a) practises law in Ontario for more than the maximum number of days the person is entitled or permitted to practise law in Ontario under this Part;

(b) opens an office in Ontario from which to practise law;

(c) opens or operates a trust account at a financial institution located in Ontario;

(d) receives money in trust for a client other than as permitted under this Part;

(e) holds himself or herself out as willing to accept new clients in Ontario;

(f) becomes a resident in Ontario; or

(g) acts in any other manner inconsistent with practising law in Ontario only on an occasional basis.

Same

(5) Despite subsection (4), a person does not establish an economic nexus with Ontario only if the person practises law in Ontario from an office in Ontario that is affiliated with a law office in a province or territory of Canada outside Ontario in which the member is authorized to practise law.

Interpretation: occasional practice of law

10. (1) In this section, a person practises law on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

Prior permission not required

(2) A person who is not a member may, without the prior permission of the Society, practise law in Ontario on an occasional basis if, and so long as, the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of a criminal proceeding in a province or territory of Canada;

(c) is not the subject of a conduct, capacity or competence proceeding in a province or territory of Canada;

(d) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member,

(i) revoking the person's membership in the governing body, disbarring the person as a barrister and striking the person's name off the governing body's roll of solicitors, or

(ii) permitting the person to resign the person's membership in the governing body;

(e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is a member suspending or limiting the rights and privileges of the person, other than for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;

(f) has and has had no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is entitled to practice law; and

(g) does not establish an economic nexus with Ontario.

Practising on more than an occasional basis

(3) A person who is entitled under subsection (2) to practise law in Ontario on an occasional basis may practise law in Ontario on more than an occasional basis, as permitted by a Society official, if, and so long as, the person meets the requirements mentioned in subsection (2).

Interpretation: occasional practice of law

11. (1) In this section, a person practises law on an occasional basis if, during the year during which the person is permitted to practise law in Ontario on an occasional basis, the person practises law in Ontario for not more than 100 days.

Permission to practise law on an occasional basis

(2) A person who is not a member and is not entitled to practise law in Ontario under section (10) may, with the prior permission of the Society, practise law in Ontario on an occasional basis.

Handling of money

12. A person who is entitled or permitted under this Part to practise law in Ontario may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

(a) the person pays the money into a trust account at a financial institution located in a province or territory of Canada outside Ontario in which the person is authorized to practise law; or

(b) the person pays the money into a trust account that is kept in the name of and operated by a member in accordance with By-Law 19 and the money is handled only by the member in accordance with By-Law 19.

PART III
OCCASIONAL PRACTICE OF LAW: 12 – 10 – 20

Application of Part

13. This Part applies to a person if Part II does not apply to the person.

Interpretation: practice of law

14. (1) In this Part, a person practises law if the person performs professional services for others in the capacity of a barrister or solicitor or if the person gives legal advice to others with respect to the laws of Ontario or Canada.

Interpretation: occasional practice of law

(2) In this Part, a person practises law on an occasional basis if, during any period of twelve consecutive months, the person,

(a) practises law in respect of not more than ten matters; and

(b) practises law for not more than twenty days in total.

Occasional practice of law: excluded activities

(3) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada or a tribunal established under an Act of Parliament or the Legislature in Ontario shall not be included in calculating the ten matters or twenty days mentioned in subsection (2).

Interpretation: "law specific to Ontario"

(4) In this Part, "law specific to Ontario" means any substantive or procedural law that applies specifically to Ontario.

Prior permission not required

15. (1) A person who is not a member may, without the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of a criminal proceeding in a province or territory of Canada;

(c) has no criminal record;

(d) is not the subject of a conduct, capacity or competence proceeding in a province or territory of Canada;

(e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member; and

(f) has and has had no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is or was authorized to practise law.

Permission to practise on an occasional basis

(2) A person who is not a member and is not entitled to practise law in Ontario on an occasional basis under subsection (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada outside Ontario of which the person is a member; and

(c) has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is authorized to practise law.

Law specific to Ontario: competence

16. A person who is entitled or permitted under section 15 to practise law in Ontario on an occasional basis shall not practise law specific to Ontario unless the person is competent to practise law specific to Ontario.

Practising on more than an occasional basis

17. (1) On written application by a person who is entitled or permitted under section 15 to practise law in Ontario on an occasional basis, a Society official may permit the person to practise law in Ontario on more than an occasional basis if, in the opinion of the Society official, such permission is not contrary to the public interest.

Practising on regular basis not permitted

(2) Permission to practise law in Ontario on more than an occasional basis granted to a person shall not include permission to practise law in Ontario on a regular basis.

Law specific to Ontario

(3) Permission to practise law in Ontario on more than an occasional basis granted to a person shall not include permission to practise law specific to Ontario on more than an occasional basis.

Handling of money
18. A person who is entitled or permitted under this Part to practise law in Ontario may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

(a) any money received is only on account of fees for services not yet rendered for the client and the person immediately pays the money into a trust account at a financial institution located in a province or territory of Canada outside Ontario in which the person is authorized to practise law; or

(b) the person pays the money into a trust account that is kept in the name of and operated by a member in accordance with By-Law 19 and the money is handled only by the member in accordance with By-Law 19.

Holding out
19. A person who is entitled or permitted under this Part to practise law in Ontario shall not hold himself or herself out as or represent himself or herself to be willing or qualified to practise law in Ontario other than as entitled or permitted to under this Part.

PART IV
NATIONAL EXCESS PLAN

Society's contribution
20. (1) Not later than December 31 in each year, the Society shall pay to the Federation of Law Societies of Canada for the National Excess Plan an amount agreed to by the Society and the Federation.

Same
(2) Despite subsection (1), the Society is not required to pay any amount to the Federation of Law Societies of Canada for the National Excess Plan if the amount in the National Excess Plan is $1 million or more.

PART V
COMMENCEMENT

Commencement
21. (1) This By-Law comes into force on the day on which it is made.

Same
(2) Despite subsection (1), Part II and section 13 of this By-Law come into force on July 1, 2003.

It was moved by Mr. Millar, seconded by Mr. Hunter that Convocation approve the By-Law amendments to By-Laws 13, 16 and 33 set out at Appendix 1 on pages 11 to 14.

Carried

It was moved by Mr. Millar, seconded by Mr. Hunter that Convocation approve the recommendation that the transfer fees for lawyers from signatory jurisdictions that have implemented the National Mobility Agreement be $1,410 plus GST.

Carried

Amendments to By-Laws 13, 16 and 33

THE LAW SOCIETY OF UPPER CANADA

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

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on June 26, 2003, be amended as follows:

BY-LAW 13
[MEMBERS]

1. Section 2.2 of By-Law 13 [Members] is amended by adding the following:

Interpretation: "order"

(0.1) In subsections (1) and (2), "order" means,

(a) an order under the Act; and

(b) if a person becomes a member by transferring from a jurisdiction outside Ontario under section 4 or 4.1 of By-Law 11, an order by a tribunal of the governing body of the legal profession in the jurisdiction from which the person transferred to Ontario.

2. Subsections 2.2 (1) and (2) of the By-Law are amended by deleting "under the Act".

BY-LAW 16
[PROFESSIONAL LIABILITY INSURANCE LEVIES]

3. Subparagraph iii of paragraph 2 of subsection 9 (1) of By-Law 16 [Professional Liability Insurance Levies] is amended by deleting "at least equivalent to that" and substituting "reasonably comparable in coverage and limits to professional liability insurance that is".

4. Subsection 9 (1) of the By-Law is amended by adding the following:

2.1 Any member who, during the course of the year for which a levy is payable,

i. will be resident in a reciprocating jurisdiction, and

ii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of the reciprocating jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.

5. Subsection 9 (1.1) of the By-Law is amended by adding "2.1" after "paragraph 1, 2".

6. Section 9 of the By-Law is amended by adding the following:

Interpretation: "reciprocating jurisdiction"

(2.1) In subsection (1), "reciprocating jurisdiction" means a Canadian jurisdiction other than Ontario,

(a) which is a signatory to the agreement on the inter-provincial practice of law originally entered into in December 2002 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Nova Scotia Barristers' Society and the Law Society of Newfoundland;

(b) in which a member is authorized to practise law; and

(c) which would exempt the member from its mandatory professional liability insurance program if the member were resident in Ontario and demonstrated proof of coverage for the member's practice in the jurisdiction under the Society's insurance plan which was reasonably comparable in coverage and limits to the professional liability insurance that would otherwise be required of the member by the jurisdiction.

7. Section 9 of the By-Law is further amended by adding the following:

Interpretation: "resident"

(5) In subsection (1), "resident" has the same meaning given it for the purposes of the *Income Tax Act* (Canada).

BY-LAW 33
[INTER-PROVINCIAL PRACTICE OF LAW]

8. Subsection 4 (1) of By-Law 33 [Inter-Provincial Practice of Law] is amended by adding at the end a comma and the words "other than a person who practises law in Ontario under subsection 10 (2.1) or (4)".

9. Section 10 of the By-Law is amended by adding the following:

Same

(2.1) A person who is not a member, if and so long as the person is authorized to practise law in a province or territory of Canada outside Ontario and does not establish an economic nexus with Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

(a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or

(b) as counsel to a court or tribunal mentioned in clause (a).

10. Section 10 of the By-Law is further amended by adding the following:

Same

(4) A person who is entitled under subsection (2.1) to practise law in Ontario on an occasional basis may practise law in Ontario on more that an occasional basis, as permitted by a Society official, if, and so long as, the person is authorized to practise law in a province or territory of Canada outside Ontario and does not establish an economic nexus with Ontario.

11. Section 15 of the By-Law is amended by adding the following:

Same

(1.1) A person who is not a member, if and so long as the person is authorized to practise law in a province or territory of Canada outside Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

(a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada or a tribunal established under an Act of Parliament or the Legislature in Ontario; or

(b) as counsel to a court or tribunal mentioned in clause (a).

Mr. Millar thanked Messrs. Krishna, Hunter and Feinstein and Sophia Sperdakos for all the work they have done on mobility.

MOTION – APPOINTMENTS TO THE CONTINUUM OF LEGAL EDUCATION TASK FORCE (in camera)

The appointments to the Continuum of Legal Education Task Force were deferred to the July Convocation.

REPORTS FOR INFORMATION ONLY

Emerging Issues Committee Report
- Amendments to Rules of Professional Conduct Related to the Lawyer's Role in Corporate Governance

Emerging Issues Committee
June 26, 2003

Report to Convocation

Purposes of Report: Information

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

AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT* RELATED TO THE LAWYER'S ROLE IN CORPORATE GOVERNANCE

A. INTRODUCTION

1. The Emerging Issues Committee ("the Committee") will be requesting that Convocation approve the policy for and the text of proposed amendments to the *Rules of Professional Conduct* ("the Rules") to clarify obligations of lawyers who act as professional advisors to corporations. The obligations include a requirement that the lawyer, if the circumstances warrant, report corporate misconduct "up-the-ladder" within the organization.

2. The Committee's report in this matter will be presented later this year through the Professional Regulation Committee which has responsibility for the Rules. The Committee's policy report, based on the work of its working group on the lawyer's role in corporate governance, has been referred to the Professional Regulation Committee. After the Professional Regulation Committee has completed its review, the expectation is that it will provide a report to Convocation that will include proposed rule amendments.

B. BACKGROUND

3. In the fall of 2002, a working group of the Committee was formed in response to a priority issue identified by the Committee. The working group's mandate reflects this priority in the following language:

> To identify for the Committee the issues of corporate governance that relate to the lawyer's professional and ethical responsibilities as professional advisors to corporate

clients, to determine if a gap exists in the Society's guidance to such members in light of the identified issues, and to develop means to address such gaps through specific solutions that fall within the Society's jurisdiction. Part of this work will involve monitoring developments in the area of corporate governance that impact on the legal profession and framing responses, as appropriate, for review by the Committee, in consultation with or with the assistance of other relevant Law Society committees.

4. The benchers and non-benchers who form the working group[1] were called together prior to formal creation of the working group to prepare for Convocation's approval a response to the United States Securities and Exchange Commission ("SEC") on proposed rules governing the conduct of attorneys.[2] The proposed rules, discussed later in this report, in their initial form applied to Ontario and other foreign attorneys appearing and practising before the SEC.

5. The working group more recently turned its attention to the regulation of the conduct of lawyers who advise corporations (in-house and privately retained). The broad questions being examined by the working group include
   - what specific standards of conduct are expected of lawyers who advise corporate clients?
   - what do the Law Society's Rules say about lawyers in these roles?
   - are there gaps in the Society's regulatory scheme in this area?

6. As a first task, the working group reviewed the Rules to determine the extent of the guidance to lawyers as advisors to corporate clients and to determine what if anything should be done to enhance the Rules in this respect. As a result of its review of the working group's report, the Committee believes that certain amendments should be made to the Rules. This report outlines the policy basis for the suggested changes.

C. THE SCOPE OF THE COMMITTEE'S REVIEW

7. The context within which the Committee's working group began its review was set by the dialogue begun last fall between the Society and the Ontario Securities Commission ("OSC") on regulation of lawyers, and by the developments in the United States that led to the SEC's rule-making initiative.

8. In brief, the OSC requested the views of the Society on the need for the same type of rules on lawyer conduct that were mandated for the SEC by the *Sarbanes-Oxley Act of 2002*. The SEC's proposals, now formalized in a rule adopted by the SEC on January 29, 2003, require an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the issuer "up-the-ladder" within the company to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof). If they do not respond appropriately to the evidence, the attorney must report the evidence to the audit committee, another committee of independent directors, or the full board of directors. Although certain definitions in the rule limit the scope of its application insofar as Ontario lawyers are concerned, the rule will apply to foreign attorneys who provide legal advice regarding United States securities law, other than in consultation with United States counsel, if they conduct activities that constitute appearing and practicing before the SEC. [3]

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[1] The Hon. Allan F. Lawrence, P.C., Q.C., LSM (chair), Professor Treasurer Vern Krishna, Q.C., FCGA, Seymour Epstein, Gavin MacKenzie, Harvey T. Strosberg, Q.C., David S. Brennan (GE Canada), H. Garfield Emerson (Fasken Martineau DuMoulin LLP), David A. Jackson (Blake, Cassels & Graydon LLP), John B. Laskin (Torys LLP), Jonathan A. Levin (Fasken Martineau DuMoulin LLP), Richard A. Lococo (Manulife Financial), Jane Ratchford (Market Regulation Services Inc.), Philippe Tardif (Lang Michener), Edward Waitzer (Stikeman Elliott LLP), David A. Ward, Q.C. (Davies Ward Phillips & Vineberg LLP) and Susan Wolburgh-Jenah (Ontario Securities Commission).

[2] The response was sent to the SEC under the Treasurer's signature on December 6, 2002.

[3] Other proposals on a required withdrawal by the lawyer if the violation is not addressed, with disclosure by the lawyer of the withdrawal to the SEC ("the noisy withdrawal") and an alternative to noisy withdrawal, where the client makes the disclosure, are pending.

9. The Society's response to the OSC appears at Appendix 1. In the response, the Society noted that its rules include guidance on an "up-the-ladder" report. The Society's view was that its regulation of Ontario lawyers was comprehensive, but that if stricter rules were required, the Society would deal with that matter.

10. This view was affirmed in the Society's response to the SEC on its proposed rules. The Society expressed confidence to the SEC that the Society's rules of conduct impose rigorous standards on the profession and that any enhancements to the regulatory regime for lawyers should be left to the Society.

11. Against this background, the Committee's working group began a review of the Rules. The working group also reviewed other law society and bar association rules and codes to determine how they dealt with lawyer's duties as advisors for corporations.[4]

12. The Committee reviewed the working group's report and agreed with the working group's conclusion that meaningful changes should be made to the Rules to clarify certain duties and obligations that are unique to lawyers as professional advisors to corporations, both privately retained and in-house. But the Committee determined that the changes should be minimal, for the following reasons:
    a. The Society's Rules are intended to be a document of general application for all lawyers. While some rules deal with specific areas of practice, necessitated by the breadth of lawyers' activities, the extent to which specific areas require detailed rules should be limited so that the guidance is clear and interpretation easily achieved.
    b. Generally, the expectations of lawyers as professional advisors are already appropriately reflected in the Rules. While some refinements are desirable to reinforce certain aspects of a lawyer's responsibility and to demonstrate the responsiveness of the legal profession to concern with the influence of professional advisors on corporate conduct, the obligations of the lawyer should not change.

13. The Committee's focus is on the following:
    - whether the "up-the-ladder" guidance, currently in commentary to rule 2.03(3), should be in a rule,
    - clarifying the circumstances in which a lawyer in an "up-the-ladder" situation is required to withdraw, with reference to rule 2.09, and
    - whether there is a more appropriate place in the Rules for the "up-the-ladder" guidance.

14. These issues are discussed in detail below.

D. THE PROPOSALS

15. The current "up-the-ladder" commentary reads as follows:

> A lawyer employed or retained to act for an organization, including a corporation, confronts a difficult problem about confidentiality when he or she becomes aware that the organization may commit a dishonest, fraudulent, criminal, or illegal act. This problem is sometimes described as the problem of whether the lawyer should "blow the whistle" on his or her employer or client. Although the *Rules of Professional Conduct* make it clear that the lawyer shall not knowingly assist or encourage any dishonesty, fraud, crime, or illegal conduct (rule 2.02 (5)), it does not follow that the lawyer should disclose to the appropriate authorities an employer's or client's proposed misconduct. Rather, the general rule, as set out above, is that the lawyer shall hold the client's information in strict confidence, and this general rule is subject to only a few exceptions. Assuming the exceptions do not apply, there are, however, several steps that a lawyer should take when

[4] Copies of relevant rules from the Society's Rules (rules 2.01, 2.02, 2.03 and 2.09), the ABA Model Code, the Law Society of Alberta, the Nova Scotia Barristers' Society and the U.S. Securities and Exchange Commission (including the proposed alternative to the "noisy withdrawal" provisions) appear at **Appendix 2.**

> confronted with the difficult problem of proposed misconduct by an organization. The lawyer should recognise that his or her duties are owed to the organization and not to the officers, employees, or agents of the organization. The lawyer should therefore ask that the matter be reconsidered, and the lawyer should, if necessary, bring the proposed misconduct to the attention of a higher (and ultimately the highest) authority in the organization despite any directions from anyone in the organization to the contrary. If these measures fail, it may be appropriate for the lawyer to resign in accordance with the rules for withdrawal from representation (rule 2.09).

16. In its letter to the OSC noted above, the Society said:

> The Law Society is considering whether amendments to the Rule and the Commentary are needed to make them more specific. If the S.E.C enacts more stringent regulatory over-sight for lawyers who appear before it, we will review these rules and consider whether conditions in Canada might require us to make changes in our rules.

17. The Society recognized the importance of adding the "up-the-ladder" reporting guidance in 2000, when the new Rules were adopted. The developments in the latter part of 2002 and early 2003 have prompted the Committee to consider the merits of moving that guidance from a commentary to a rule.

18. The conclusion was that a rule would be appropriate. It would not only provide more definitive guidance to lawyers, but affirm the message already sent to the securities regulators that the Society takes its governance responsibilities seriously and is intent on pursuing clearer guidance to lawyers on these issues. Commentary to the rule, with appropriate cross-referencing to other rules, would also be useful.

19. In converting the commentary to a rule, attention must be paid to the "style" of the Rules. A rule would require a statement that reflects either a mandatory action or prohibited conduct. Accordingly, the concepts forming the basis for a rule, with reference to the commentary, have been identified, and include the following:
    - The responsibilities of a lawyer in respect of a particular retainer (i.e. as counsel for a corporation)
    - The lawyer's response to wrongdoing on the part of the client
    - The lawyer's obligation to consider if the circumstances warrant withdrawal from the retainer
    - The lawyer's withdrawal from the retainer, in certain circumstances.

Particular Issues to be Addressed in the Rule

20. The Committee considered the language in the existing commentary, noted how the ABA model rules deal with the organization as client, and referenced the SEC's new and proposed rules.

21. The "up-the-ladder" requirement would operate in the situation where the lawyer is not confident that his or her advice (for example, if the lawyer believes the conduct to be illegal and the person receiving the advice is disregarding this perspective) is being received by a person who appreciates all of the implications of a particular course of conduct. In that case, the lawyer must provide the advice "up the ladder" until the lawyer is satisfied that it is being appropriately considered. Where advice has been received and considered and the directing minds of the corporation nevertheless decide to proceed on a path that the lawyer considers, for example, illegal, the lawyer must resign. If the conduct contemplated is dishonest, fraudulent, criminal or illegal, rule 2.02(5) would prohibit the lawyer from knowingly assisting in or encouraging this behaviour.

22. Accordingly, the following should be included in the rule:
    a. The lawyer's obligation, whether as retained counsel or in-house counsel, is to act in the best interests of the client (i.e. the corporation). The lawyer's professional and ethical duties are owed to the corporation as an organization, not to the officers, directors, employees or agents of the corporation.
    b. The lawyer must address with the corporation a serious matter of which he or she becomes aware that affects the well-being of the client or may cause harm to the organization. Such a matter may be defined as conduct of a dishonest or fraudulent nature or other serious illegal conduct that is current or continuing, committed by the corporation or by an officer, director, employee, or agent of the corporation.

c. The lawyer, upon becoming aware of the conduct, must advise the appropriate individual or individuals to reconsider their actions and address the situation. If the individual or individuals refuse to do so, the lawyer must report evidence of the conduct to the corporation's chief legal officer or to both the chief legal officer and the chief executive officer.

d. If the chief legal officer or the chief executive officer has not provided an appropriate response within a reasonable time, the lawyer must report evidence of the conduct to a higher, and ultimately, the highest, authority in the corporation (e.g. the board of directors).

e. If the lawyer believes that it would be futile to report the conduct to the chief legal officer and chief executive officer, the lawyer must report the conduct directly to the highest authority.

f. If the lawyer's report does not result in an appropriate response or appropriate action being taken by the client, the lawyer may be required to resign as lawyer for the corporation in that particular retainer.

g. More specifically, where there is evidence of dishonest, fraudulent or other serious illegal conduct of the corporation that is ongoing or is about to occur and the corporation insists on following this course of action and instructs the lawyer accordingly, the lawyer must withdraw in accordance with rule 2.09. This may occur, for example, where the lawyer cannot implement the instructions of the client without breaching the Rules (e.g. rule 2.02(5)).

23. In connection with rule 2.09, the circumstances in which a lawyer should withdraw as counsel for a corporation should be clarified. It is clear from the rule that withdrawal is not always discretionary. Rule 2.09(7)(d) indicates that a lawyer *must* withdraw if the lawyer's continued employment will lead to a breach of the Rules.

24. Relating this guidance to the situation of counsel for a corporation, if he or she discovers past fraudulent conduct of the client which has no continuing effect, the view is that the lawyer, who may decide to address the issue with the client, should not be required to resign. However, if the fraudulent conduct continues, or is past conduct the effect of which is continuing, notwithstanding the lawyer's advice (or report "up-the-ladder" if circumstances required it), the view is that the lawyer must withdraw, or face breach of the Rules. As noted above, this type of response is contemplated in rule 2.09.

25. An important question is whether, in the circumstances described in 22 f. above, the lawyer is required to withdraw as lawyer for the corporation, or alternatively resign in the particular retainer in which the issue prompting the "up-the-ladder" report arises. The SEC's proposed alternative rule to the earlier proposed "noisy withdrawal" provides as follows:

> An attorney retained by the issuer shall withdraw from representing the issuer, and shall notify the issuer, in writing, that the withdrawal is based on professional considerations.
>
> An attorney employed by the issuer shall cease forthwith any participation or assistance in any matter concerning the violation and shall notify the issuer, in writing, that he or she believes that the issuer has not provided an appropriate response in a reasonable time to his or her report of evidence of a material violation...

26. The Committee's view is that requiring a lawyer to withdraw in all circumstances may be a disincentive to report the conduct, and affect the integrity of and the desired result the rule seeks to achieve. In particular, the view was that for in-house counsel, who would be subject to the rule, the disincentive to report could be significant, as the retainer is their livelihood, and the competing interests are very strong.

27. However, where the conduct is serious and ongoing, and the lawyer's continued representation risks the lawyer being implicated in the inappropriate conduct, the lawyer will have no alternative but to withdraw to ensure compliance with rule 2.09 and, at a personal level, to protect his or her own reputation as a professional advisor.

28. The particulars of the new rule, as is apparent from the above discussion, relate to other guidance in the Rules. It may be appropriate to refer to these Rules in commentary to the new rule. The following are the relevant Rules:

a. Rule 2.02(1) and its commentary require lawyers to provide "honest and candid" advice to a client, "open and undisguised" which "must clearly disclose what the lawyer honestly thinks about the merits and probable results". Rule 2.02(5), which includes instruction directly related to the "up-the-ladder" circumstance, requires lawyers to not knowingly assist in or encourage any fraud or crime. The expectation is that if the lawyer believes that the conduct being contemplated by the client is unethical or otherwise inappropriate, the lawyer should so advise the client.
b. Rule 2.03(1) requires lawyers to maintain the confidentiality of all information concerning the business and affairs of the client acquired in the course of the professional relationship, unless the client authorizes the disclosure of the information. This would preclude, except in very narrow circumstances, the lawyer disclosing corporate wrongdoing to authorities outside the organization. The commentary to rule 2.03(1) explains why confidentiality is so important:

> … a lawyer cannot render effective professional service to the client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

The confidentiality standard is central to the integrity of the "up-the-ladder" reporting regime. If the openness and candour of the lawyer and client relationship is compromised, the lawyer is much less likely to become aware of conduct that is potentially unethical or illegal and therefore to be in a position to counsel the client against it or take appropriate steps to address it.
c. Rule 2.09(2) governs withdrawal from a retainer (already noted above). The rule discusses circumstances around both permissive and mandatory withdrawal, using language such as "a serious loss of confidence between the lawyer and the client", "refusal of the client to accept and act upon the lawyer's advice on a significant point", being "deceived by a client", "the lawyer's continued employment [leading] to a breach of these rules". The rule is referenced in the existing "up-the-ladder" commentary, in respect of the circumstance where the lawyer may feel that it is appropriate to resign.

Location of a New Rule

29. The "up-the-ladder" commentary is currently found in rule 2.03 (Confidentiality). It was located in the rule on confidentiality when the new Rules were adopted in 2000 because it dealt with the requirement not only to not disclose confidential information outside of the client, but how to appropriately address within the organization circumstances which in the lawyer's view are problematic for the organization.

30. The events of the past year, in the Committee's view, have caused a shift in focus in relation to what is discussed in this commentary. While the treatment of confidential information forms part of the instruction, the broader and, arguably, more crucial, aspect is the lawyer's actions as professional advisor when corporate wrongdoing is discovered.

31. Accordingly, three options for a location for the new rule were considered. They were:
    a. Rule 2.01 on competence, in the context of advice to a client as a result of particular issues in the retainer
    b. Rule 2.02 on quality of service, which includes a lawyer not assisting a client in criminal, etc. activity
    c. Rule 2.09 on withdrawal from representation.

32. The Committee believes that the instruction in the rule is most closely related to that now provided in rule 2.02, and, subject to the views of the rules drafter, suggests that the rule be located here.

APPENDIX 1

LAW SOCIETY LETTER TO THE ONTARIO SECURITIES COMMISSION

October 31, 2002

Sent by "fax" to (416) 593-8122 and hand delivered

David A. Brown, Q.C.
Chair
Ontario Securities Commission
20 Queen Street West
Suite 1903
Toronto, Ontario
M5H 3S8

Dear Mr. Brown:

On behalf of Convocation, I welcome the opportunity to respond to your August 26, 2002 letter.

You asked for the Law Society's input on whether there is a need in Ontario for rules, including a "whistle blowing" rule, for lawyers appearing before your Commission, similar to those mandated by the *Sarbanes-Oxley Act of 2002* for lawyers appearing before the Securities & Exchange Commission (S.E.C.) in the United States.

As you are aware, the regulation of lawyers in the U.S. is different from that in Canada. The American courts and other judicial or quasi-judicial bodies regulate the conduct of those who appear before them. Canadian lawyers are held strictly accountable to provincial law societies created by statute. These societies undertake the full scope of regulation, including admitting members to practice, setting professional standards (including rules of conduct) and disciplining members. In Ontario this body is the Law Society of Upper Canada, which for many years has enforced *Rules of Professional Conduct* governing the conduct of all lawyers, including those who represent public and private corporations. The relatively small number of lawyers who appear before your Commission and the great number of lawyers who do not are already required to meet the standards set by the Rules. These Rules, including those in respect of "whistle blowing", either meet or exceed the existing standards of professional conduct for American lawyers appearing before the S.E.C.

Rule 2 of the Law Society's *Rules of Professional Conduct* deals with a lawyer's relationship with his client. A Commentary forming part of this rule deals specifically with "whistle blowing":

> A lawyer employed or retained to act for an organization, including a corporation, confronts a difficult problem about confidentiality when he or she becomes aware that the organization may commit a dishonest, fraudulent, criminal, or illegal act. This problem is sometimes described as the problem of whether the lawyer should "blow the whistle" on his or her employer or client. Although the *Rules of Professional Conduct* make it clear that the lawyer shall not knowingly assist or encourage any dishonesty, fraud, crime, or illegal conduct (rule 2.02 (5)), it does not follow that the lawyer should disclose to the appropriate authorities an employer's or client's proposed misconduct. Rather, the general rule, as set out above, is that the lawyer shall hold the client's information in strict confidence, and this general rule is subject to only a few exceptions. Assuming the exceptions do not apply, there are, however, several steps that a lawyer should take when confronted with the difficult problem of proposed misconduct by an organization. The lawyer should recognise that his or her duties are owed to the organization and not to the officers, employees, or agents of the organization. The lawyer should therefore ask that the matter be reconsidered, and the lawyer should, if necessary, bring the proposed misconduct to the attention of a higher (and ultimately the highest) authority in the organization despite any directions from anyone in the organization to the contrary. If these measures fail, it may be appropriate for the lawyer to resign in accordance with the rules for withdrawal from representation (rule 2.09).

This commentary was approved by Convocation in June 2000 and came into force November 2000.

The Law Society is considering whether amendments to the Rule and the Commentary are needed to make them more specific. If the S.E.C enacts more stringent regulatory over-sight for lawyers who appear before it, we will review these rules and consider whether conditions in Canada might require us to make changes in our rules.

Because of our statutory jurisdiction over all lawyers acting in any corporate setting, not only those representing public corporations who may be "issuers" under Ontario Securities Commission rules, we believe that our regulation is more comprehensive and will be more stringent than the American rules or any parallel regulation that the Ontario Securities Commission might consider.

Although the Law Society has already addressed the "whistle blowing" issue in its rules of conduct, it is prepared to consider any suggestions the Ontario Securities Commission may have to improve the rules. This would include specific concerns the Commission has that might require consideration for rule amendment, or views that would be useful to us in our on-going development of standards and Rules.

While adequate regulation of those involved in the capital markets is necessary to maintain the public's confidence in the markets, the public must also be assured that lawyers are regulated in a way that protects the fundamental values of the legal profession for the sake of the public interest. Our *Rules of Professional Conduct* are informed by this principle. Our intent is that there be clear Rules for all lawyers practicing in Ontario, or Ontario lawyers practicing elsewhere, on conduct involving corporate misfeasance. If there is a need to further address this subject in the Rules, the Law Society will undertake that initiative. The Law Society trusts that the Ontario Securities Commission will agree that there is no need for parallel rules.

I look forward to further dialogue with you on this important issue.

Yours very truly,

Professor Vern Krishna, Q.C.
Treasurer

APPENDIX 2

SELECTED RULES FROM

LAW SOCIETY OF UPPER CANADA

AMERICAN BAR ASSOCIATION

LAW SOCIETY OF ALBERTA

NOVA SCOTIA BARRISTERS' SOCIETY

U.S. SECURITIES AND EXCHANGE COMMISSION

<u>ALBERTA</u>

CHAPTER 12

THE LAWYER IN CORPORATE AND GOVERNMENT SERVICE

STATEMENT OF PRINCIPLE

A lawyer in corporate or government service has a duty to act in the best interests of the corporation or government, as they are perceived by the corporation or government, subject to limitations imposed by law or professional ethics.

RULES

1. A lawyer in corporate or government service must consider the corporation or government to be the lawyer's client.
2. A lawyer may act in a matter for another employee of a corporation or government only if the requirements of Rule #2 of Chapter 6, *Conflicts of Interest*, are satisfied.
3. If a lawyer while acting for a corporation or government receives information material to the interests of the corporation or government, the lawyer must disclose the information to an appropriate authority in the corporation or government.
4. A lawyer must not implement instructions of a corporation or government that would involve a breach of professional ethics or the commission of a crime or fraud.

COMMENTARY

General

G.1 *Definitions and application:* For the purposes of this chapter, "corporation" is to be interpreted broadly and includes a sole proprietor, partnership, joint venture, society and unincorporated association. Similarly, "government" is to be understood in its broadest sense. A lawyer working in a division, department or agency of the government or in a corporation ultimately controlled by the Crown is considered to be working for the government as a whole as opposed to that division, department, agency or corporation. See Commentary 1 for a more detailed discussion of client identification.

G.2 While the ethical standards that apply to lawyers in corporations and government are the same as those applying to other lawyers, the existence of an employment relationship may generate issues that do not normally arise in private practice. The rules and commentary of this chapter are intended to assist such counsel in identifying and resolving some of these concerns.
Lawyers in corporations and government may perform functions other than acting as lawyers. In this regard, see Chapter 15, *The Lawyer in Activities Other Than the Practice of Law.*

G.3 *Termination of employment:* A lawyer who leaves the employ of a corporation or government is governed by Rule #3 of Chapter 6, *Conflicts of Interest*, with respect to ability to subsequently act against the former employer. In addition, Rule #4 of that chapter applies if a lawyer moves during the currency of a matter to a firm representing another party to the matter. See also Chapter 7, *Confidentiality*, respecting a lawyer's obligations of confidentiality.

R.1 A lawyer in corporate or government service must consider the corporation or government to be the lawyer's client.

C.1 The client of a lawyer employed by a corporation is the corporation itself and not the board of directors, a shareholder, an officer or employee, or another component of the corporation. Likewise, the client of a lawyer employed by the government is the government itself and not a board, agency, minister or Crown corporation.

As an internal matter, a corporate or government client usually provides specific instructions regarding the lawyer's duties and responsibilities. These instructions may include a direction to accept instructions from and report to a particular person or group within the client; to keep certain information confidential from other persons or groups within the client; or to act for more than one of its components, in circumstances that would constitute a multiple representation if the corporation or government as a whole were not the client. A corporate or government lawyer is entitled to act in accordance with such instructions until they are countermanded or rescinded by the client.

Since a corporation or government must act through human agents, however, counsel must be satisfied that those purporting to speak for the client have the authority to do so and that the instructions they convey are in the best interests of the client, as perceived by the client based on considerations including legal advice. Independent inquiry or verification is seldom necessary when instructions have been received through normal channels and contain no

unusual or questionable elements. The risk of inaccurate or unauthorized instructions may also lessen as organizational size and complexity decrease since the interests of the person instructing the lawyer may be more closely identified with those of the client itself.

R.2 A lawyer may act in a matter for another employee of a corporation or government only if the requirements of Rule #2 of Chapter 6, *Conflicts of Interest*, are satisfied.

C.2 A corporate or government lawyer may be requested to perform legal services in circumstances in which another employee of the corporation or government expects that the lawyer will be protecting that person's interests. In some situations, it may appear that the corporation or government has no substantial interest in the matter, such as the purchase of a house by an employee. In other situations, such as the preparation of an employment contract, the corporation or government clearly has an interest that differs from that of the employee. In still others, such as the defence of both parties on a criminal or quasi-criminal charge, the corporation or government and the employee may seem to have a common interest. In any of these cases, however, the lawyer may acquire information from one party that could be significant to the other.

Before the lawyer undertakes the representation, therefore, the parties must agree that there will be a mutual sharing of material information. The other requirements of Rule #2 of Chapter 6, *Conflicts of Interest*, must also be satisfied. For example, the lawyer must:

- determine that the representation is in the best interests of both parties after consideration of all relevant factors;
- stipulate that the lawyer will be compelled to cease to act in the matter if a dispute develops, unless at that time both parties consent to the lawyer's continuing to represent the corporation or government in the matter;
- obtain the consent of the parties based on full and fair disclosure of the advantages and disadvantages of the lawyer's acting versus the engagement of outside counsel. If the employee involved is (for example) the president of a corporate client, the consent of the corporation required by Rule #2 of Chapter 6, *Conflicts of Interest*, must issue from someone other than the president, such as the board of directors.

If the lawyer considers the risk of divergence of interests to be high, or if one of the parties is unwilling to agree to the mutual sharing of material information, the employee must retain independent counsel.

Rule #2 and this commentary also apply in principle when a corporate or government lawyer is requested to represent a third party, such as an affiliated corporation or joint venturer, having an association with the corporation or government but not forming part of it.

R.3 If a lawyer while acting for a corporation or government receives information material to the interests of the corporation or government, the lawyer must disclose the information to an appropriate authority in the corporation or government.

C.3 It is usual to convey material information respecting the interests of a corporate or government client to the person to whom the lawyer normally reports. However, there may be circumstances in which reporting information to that individual would be ineffective or inappropriate. For example, the information may relate to misconduct by that person, or the person may have a history of refusing or failing to deal with similar information in a proper manner. In such a situation, the lawyer should report the information to other, usually more senior, authorities within the client until satisfied that the information has been conveyed to someone who will give it appropriate consideration.

If a lawyer, after taking all reasonable steps to protect the client's interests, receives instructions that would involve a breach of professional ethics or the commission of a crime or fraud, the lawyer may be compelled to withdraw from the representation. (see Commentary 4)

With respect to reporting a matter to authorities outside the client, see Rule #8(c) of Chapter 7, *Confidentiality*.

R.4 A lawyer must not implement instructions of a corporation or government that would involve a breach of professional ethics or the commission of a crime or fraud.

C.4 Like other lawyers, corporate and government counsel must refuse to engage in conduct that violates professional ethics. The fact that such a stand may create conflict with the client or jeopardize one's position or opportunity for advancement is not relevant from an ethical perspective.

Rule #10 of Chapter 9, *The Lawyer as Advisor*, and Rule #2(a) of Chapter 14, *Withdrawal and Dismissal*, provides that withdrawal is mandatory when a client persists in instructions constituting a breach of ethics. In private practice, withdrawal is understood to mean ceasing to act in a particular matter and does not necessarily preclude a lawyer's continuing to act in other matters for the same client. Similarly, a corporate or government lawyer may "withdraw" from a given matter by refusing to implement the client's instructions in that matter, while continuing to advise the corporation or government in other respects.

In the case of a profound and fundamental disagreement between lawyer and client or a pervasive institutional policy of illegality, withdrawal may also entail resignation. In most cases, however, a preferable approach is to refer the contentious matter to outside counsel, seek alternative instructions from other levels of authority in the corporation or government, or take similar action that falls short of resignation.
….

With respect to instructions of a corporation or government that would involve the commission of a crime or fraud, see Commentary 11 of Chapter 9, *The Lawyer as Advisor.*

NOVA SCOTIA

Chapter 4. Honesty and Candour When Advising Clients

Rule

A lawyer has a duty to be both honest and candid when advising a client.[1]

Guiding Principles

A lawyer has a duty to a client who seeks legal advice to give the client a competent opinion that is

(a) open and undisguised, clearly disclosing what the lawyer honestly thinks about the merits and probable results; and
(b) based on sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer’s own experience and expertise.

Commentary

Dishonesty or fraud by client organization
4.21 A lawyer, acting for an organization, who learns that the organization, or an employee or agent on behalf of the organization, is engaging in or contemplating dishonesty, fraud or illegal conduct, should take appropriate action. This may include

12. following a procedure prescribed by the organization;
(b) explaining the nature of the activity to

13. the employees or agents involved, and
    (ii) the person with whom the lawyer normally deals advising of the reasons why the lawyer recommends the activity should not be pursued, and outlining the consequences to the organization, the employees or agents, and to the lawyer which could result from the activity; and
14. Iif the issue is not resolved after the lawyer takes the action suggested in (a) and (b), then, depending upon the circumstances, it may be appropriate for the lawyer to
15. provide in writing the same advice which was given orally,
    (ii) advise as to the steps to be taken by the lawyer if this conduct is not stopped or suitably abated,
    (iii) inform the person's immediate superior, describing the nature of conduct, its potential consequences, and the action already taken by the lawyer, and
    (iv) provide advice in writing to a senior member of management, and thereafter, if necessary, to the chair and an outside member of the Board of Directors, or the Minister in case of a lawyer working in government, and include with such advice the information and correspondence already provided.

4.22 If a lawyer, after taking reasonable action to discourage such activity receives instructions that would involve breaching the duties in this Handbook, dishonesty, fraud or illegal conduct, the lawyer is under a duty to withdraw from the representation of the organization in the particular matter. [12]

12. In private practice, withdrawal is understood to mean ceasing to act in a particular matter and does not necessarily preclude a lawyer's continuing to act in other matters for the same client. Similarly, a lawyer employed by a client may "withdraw" from a given matter by refusing to implement the client's instructions in that matter, while continuing to advise the client in other respects.

In the case of a profound and fundamental disagreement between lawyer and client or a pervasive institutional policy of illegality, withdrawal may also entail resignation. In most cases, however, a preferable approach is to seek alternative instructions from other levels of authority in the organization, have the matter referred to outside counsel, or take similar action that falls short of resignation.

Cf. *Handbook*, Chapter 11, "Withdrawal," below, which addresses the lawyer's duties with respect to withdrawal, primarily in the private practice context.

Chapter 6. Impartiality and Conflict of Interest Between Clients

Rule
A lawyer has a duty not to:

(a) advise or represent both sides of a dispute; or
(b) act or continue to act in a matter where there is or is likely to be a conflicting interest, unless the lawyer has the informed consent of each client or prospective client for whom the lawyer proposes to act.

Guiding Principles

What is a conflicting interest?
1. A conflicting interest is one that would be likely to affect adversely the lawyer's judgment or advice on behalf of, or loyalty to a client or prospective client.[2] Conflicting interests include, but are not limited to,

the duties and loyalties of the lawyer or a partner or professional associate of the lawyer to any other client, whether involved in the particular transaction or not, including the obligation to communicate information.

…

Acting for organizations[8]
10. A lawyer acting for an organization in circumstances described in Guiding Principle 11 has a duty to make it clear to any person with whom the lawyer is dealing, such as a director, officer, employee, shareholder or member of that organization or related organization (the "individual"), that

(a) the organization is the lawyer's client;
(b) the individual is not the lawyer's client; and
(c) the lawyer may be obliged to provide to the organization any information acquired by the lawyer and the information may be used or disclosed by the organization.

11. The duty in Guiding Principle 10 arises when

(a) the lawyer perceives that the individual believes, or
(b) a reasonably informed member of the public could reasonably believe that the lawyer owes a duty to the individual not to pass information about the affairs of the individual to the organization.

12. Where a lawyer ought to have provided, but did not provide the clarification described in Guiding Principle 10 and the individual discloses information about the individual's affairs to the lawyer, the lawyer shall not disclose the information to the organization and shall not act for either the organization or the individual in a matter to which the information pertains if there is an issue contentious between them, if their interests, rights or obligations diverge, or if it is reasonably obvious that an issue contentious between them may arise or that their interests, rights or obligations will diverge as the matter progresses.

13. If the lawyer discloses information to the organization, the lawyer has a duty to tell the individual that the information has been disclosed to the organization if the circumstances described in Guiding Principle 12 exist or subsequently arise, unless telling the individual would provide an opportunity to conceal actions that are contrary to law.

Commentary

…

Acting for organizations
6.9 What a reasonably informed member of the public could reasonably believe is a question of fact. Relevant factors for determining when the duty referred to in Guiding Principle 10 arises include

(a) the organizational context such as

(i) legislation, policies, procedures and practices of the organization,
(ii) physical indicators such as proximity of offices, security systems, filing systems, sharing of secretarial support,
(iii) visible indicators such as job titles, letterhead, organizational charts;

(b) prior statements and actions by the lawyer or the individual such as whether the lawyer routinely performs legal services for individuals in the organization in their individual capacity;
(c) the individual context such as

(i) the experience, rank, or position of the individual in the organization or related organizations,
(ii) statements by the lawyer or the individual at the time of the disclosure of information.

6.10 For the purposes of Guiding Principles 10 to 13

(a) "organization" includes a body corporate, sole proprietorship, partnership, joint venture, society or unincorporated association, union, employers group, and a government;
(b) a lawyer working in a division, department or agency of an organization is considered to be working for the organization as a whole except as explicitly provided by the organization.

6.11 As an internal matter, an organization may provide specific instructions or follow practices governing the performance of a lawyer's obligations to the organization. These instructions or practices may include a direction to accept instructions from and report to a particular individual or a group of individuals within the organization; to keep certain information confidential from other individuals or groups within the organization; or to act for more than one component of the organization in circumstances that would constitute a multiple representation if the organization as a whole were not the client. A lawyer is entitled to act in accordance with such instructions or practices.

8.For clarification on the role of in-house counsel, which may be governed by Guiding Principles 10 to 13, see Commentaries 6.9 to 6.11; G. MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline* (Toronto: Carswell, 1993), Chapter 20, "The Corporate Counsel" and Chapter 21, "Government Lawyers"; and Smith, *supra*, note 1, Chapter 10, "The Lawyer as In-House Counsel.."

U.S. SECURITIES AND EXCHANGE COMMISSION – ADOPTED RULE

JANUARY 2003

PART 205 - STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE REPRESENTATION OF AN ISSUER

Sec.

205.1 Purpose and scope.

205.2 Definitions.

205.3 Issuer as client.

205.4 Responsibilities of supervisory attorneys.

205.5 Responsibilities of a subordinate attorney.

205.6 Sanctions and discipline.

205.7 No private right of action.

Authority: 15 U.S.C. 77s, 78d-3, 78w, 80a-37, 80a-38, 80b-11, 7202, 7245, and 7262.

§205.1 Purpose and scope.

This part sets forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in the representation of an issuer. These standards supplement applicable standards of any jurisdiction where an attorney is admitted or practices and are not intended to limit the ability of any jurisdiction to impose additional obligations on an attorney not inconsistent with the application of this part. Where the standards of a state or other United States jurisdiction where an attorney is admitted or practices conflict with this part, this part shall govern.

§205.2 Definitions.

For purposes of this part, the following definitions apply:

(a) Appearing and practicing before the Commission:

(1) Means:

(i) Transacting any business with the Commission, including communications in any form;

(ii) Representing an issuer in a Commission administrative proceeding or in connection with any Commission investigation, inquiry, information request, or subpoena;

(iii) Providing advice in respect of the United States securities laws or the Commission's rules or regulations thereunder regarding any document that the attorney has notice will be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission, including the provision of such advice in the context of preparing, or participating in the preparation of, any such document; or

(iv) Advising an issuer as to whether information or a statement, opinion, or other writing is required under the United States securities laws or the Commission's rules or regulations thereunder to be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission; but

(2) Does not include an attorney who:

(i) Conducts the activities in paragraphs (a)(1)(i) through (a)(1)(iv) of this section other than in the context of providing legal services to an issuer with whom the attorney has an attorney-client relationship; or

(ii) Is a non-appearing foreign attorney.

(b) Appropriate response means a response to an attorney regarding reported evidence of a material violation as a result of which the attorney reasonably believes:

(1) That no material violation, as defined in paragraph (i) of this section, has occurred, is ongoing, or is about to occur;

(2) That the issuer has, as necessary, adopted appropriate remedial measures, including appropriate steps or sanctions to stop any material violations that are ongoing, to prevent any material violation that has yet to occur, and to remedy or otherwise appropriately address any material violation that has already occurred and to minimize the likelihood of its recurrence; or

(3) That the issuer, with the consent of the issuer's board of directors, a committee thereof to whom a report could be made pursuant to §205.3(b)(3), or a qualified legal compliance committee, has retained or directed an attorney to review the reported evidence of a material violation and either:

(i) Has substantially implemented any remedial recommendations made by such attorney after a reasonable investigation and evaluation of the reported evidence; or

(ii) Has been advised that such attorney may, consistent with his or her professional obligations, assert a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to the reported evidence of a material violation.

(c) Attorney means any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

(d) Breach of fiduciary duty refers to any breach of fiduciary or similar duty to the issuer recognized under an applicable federal or state statute or at common law, including but not limited to misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

(e) Evidence of a material violation means credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur.

(f) Foreign government issuer means a foreign issuer as defined in 17 CFR 230.405 eligible to register securities on Schedule B of the Securities Act of 1933 (15 U.S.C. 77a et seq., Schedule B).

(g) In the representation of an issuer means providing legal services as an attorney for an issuer, regardless of whether the attorney is employed or retained by the issuer.

(h) Issuer means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn, but does not include a foreign government issuer. For purposes of paragraphs (a) and (g) of this section, the term "issuer" includes any person controlled by an issuer, where an attorney provides legal services to such person on behalf of, or at the behest, or for the benefit of the issuer, regardless of whether the attorney is employed or retained by the issuer.

(i) Material violation means a material violation of an applicable United States federal or state securities law, a material breach of fiduciary duty arising under United States federal or state law, or a similar material violation of any United States federal or state law.

(j) Non-appearing foreign attorney means an attorney:

(1) Who is admitted to practice law in a jurisdiction outside the United States;

(2) Who does not hold himself or herself out as practicing, and does not give legal advice regarding, United States federal or state securities or other laws (except as provided in paragraph (j)(3)(ii) of this section); and

(3) Who:

(i) Conducts activities that would constitute appearing and practicing before the Commission only incidentally to, and in the ordinary course of, the practice of law in a jurisdiction outside the United States; or

(ii) Is appearing and practicing before the Commission only in consultation with counsel, other than a non-appearing foreign attorney, admitted or licensed to practice in a state or other United States jurisdiction.

(k) Qualified legal compliance committee means a committee of an issuer (which also may be an audit or other committee of the issuer) that:

(1) Consists of at least one member of the issuer's audit committee (or, if the issuer has no audit committee, one member from an equivalent committee of independent directors) and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19));

(2) Has adopted written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under §205.3;

(3) Has been duly established by the issuer's board of directors, with the authority and responsibility:

(i) To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in §205.3(b)(4));

(ii) To determine whether an investigation is necessary regarding any report of evidence of a material violation by the issuer, its officers, directors, employees or agents and, if it determines an investigation is necessary or appropriate, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and

(iii) At the conclusion of any such investigation, to:

(A) Recommend, by majority vote, that the issuer implement an appropriate response to evidence of a material violation; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under this section and the appropriate remedial measures to be adopted; and

(4) Has the authority and responsibility, acting by majority vote, to take all other appropriate action, including the authority to notify the Commission in the event that the issuer fails in any material respect to implement an appropriate response that the qualified legal compliance committee has recommended the issuer to take.

(l) Reasonable or reasonably denotes, with respect to the actions of an attorney, conduct that would not be unreasonable for a prudent and competent attorney.

(m) Reasonably believes means that an attorney believes the matter in question and that the circumstances are such that the belief is not unreasonable.

(n) Report means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

§205.3 Issuer as client.

(a) Representing an issuer. An attorney appearing and practicing before the Commission in the representation of an issuer owes his or her professional and ethical duties to the issuer as an organization. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

(b) Duty to report evidence of a material violation. (1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report such evidence to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or the equivalents thereof) forthwith. By communicating such information to the issuer's officers or directors, an attorney does not reveal client confidences or secrets or privileged or otherwise protected information related to the attorney's representation of an issuer.

(2) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is appropriate to determine whether the material violation described in the report has occurred, is ongoing, or is about to occur. If the chief legal officer (or the equivalent thereof) determines no material violation has occurred, is ongoing, or is about to occur, he or she shall notify the reporting attorney and advise the reporting attorney of the basis for such determination. Unless the chief legal officer (or the equivalent thereof) reasonably believes that no material violation has occurred, is ongoing, or is about to occur, he or she shall take all reasonable steps to cause the issuer to adopt an appropriate response, and shall advise the reporting attorney thereof. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section if the issuer has duly established a qualified legal compliance committee prior to the report of evidence of a material violation.

(3) Unless an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has provided an appropriate response within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19))).

(4) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report such evidence as provided under paragraph (b)(3) of this section.

(5) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(3), or (b)(4) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve an officer or director of the issuer to whom such evidence has been reported under paragraph (b)(1), (b)(3), or (b)(4) of this section from a duty to respond to the reporting attorney.

(6) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if:

(i) The attorney was retained or directed by the issuer's chief legal officer (or the equivalent thereof) to investigate such evidence of a material violation and:

(A) The attorney reports the results of such investigation to the chief legal officer (or the equivalent thereof); and

(B) Except where the attorney and the chief legal officer (or the equivalent thereof) each reasonably believes that no material violation has occurred, is ongoing, or is about to occur, the chief legal officer (or the equivalent thereof) reports the results of the investigation to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee; or

(ii) The attorney was retained or directed by the chief legal officer (or the equivalent thereof) to assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation, and the chief legal officer (or the equivalent thereof) provides reasonable and timely reports on the progress and outcome of such proceeding to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee.

(7) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if such attorney was retained or directed by a qualified legal compliance committee:

(i) To investigate such evidence of a material violation; or

(ii) To assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation.

(8) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section need do nothing more under this section with respect to his or her report.

(9) An attorney who does not reasonably believe that the issuer has made an appropriate response within a reasonable time to the report or reports made pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section shall explain his or her reasons therefor to the chief legal officer (or the equivalent thereof), the chief executive officer (or the equivalent thereof), and directors to whom the attorney reported the evidence of a material violation pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section.

(10) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this part and reasonably believes that he or she has been discharged for so doing may notify the issuer's board of directors or any committee thereof that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section.

(c) Alternative reporting procedures for attorneys retained or employed by an issuer that has established a qualified legal compliance committee. (1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence to a qualified legal compliance committee, if the issuer has previously formed such a committee. An attorney who reports evidence of a material violation to such a qualified legal compliance committee has satisfied his or her obligation to report such evidence and is not required to assess the issuer's response to the reported evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a previously established qualified legal compliance committee in lieu of causing an inquiry to be conducted under

paragraph (b)(2) of this section. The chief legal officer (or the equivalent thereof) shall inform the reporting attorney that the report has been referred to a qualified legal compliance committee. Thereafter, pursuant to the requirements under §205.2(k), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c).

(d) Issuer confidences. (1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof) may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer, in a Commission investigation or administrative proceeding from committing perjury, proscribed in 18 U.S.C. 1621; suborning perjury, proscribed in 18 U.S.C. 1622; or committing any act proscribed in 18 U.S.C. 1001 that is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney's services were used.

§205.4 Responsibilities of supervisory attorneys.

(a) An attorney supervising or directing another attorney who is appearing and practicing before the Commission in the representation of an issuer is a supervisory attorney. An issuer's chief legal officer (or the equivalent thereof) is a supervisory attorney under this section.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in §205.5(a), that he or she supervises or directs conforms to this part. To the extent a subordinate attorney appears and practices before the Commission in the representation of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in §205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who has received a report of evidence of a material violation from a subordinate attorney under §205.3 may report such evidence to the issuer's qualified legal compliance committee if the issuer has duly formed such a committee.

§205.5 Responsibilities of a subordinate attorney.

(a) An attorney who appears and practices before the Commission in the representation of an issuer on a matter under the supervision or direction of another attorney (other than under the direct supervision or direction of the issuer's chief legal officer (or the equivalent thereof)) is a subordinate attorney.

(b) A subordinate attorney shall comply with this part notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with §205.3 if the subordinate attorney reports to his or her supervising attorney under §205.3(b) evidence of a material violation of which the subordinate attorney has become aware in appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by §205.3(b) or (c) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under §205.3(b) has failed to comply with §205.3.

§205.6 Sanctions and discipline.

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall subject such attorney to the civil penalties and remedies for a violation of the federal securities laws available to the Commission in an action brought by the Commission thereunder.

(b) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices. An administrative disciplinary proceeding initiated by the Commission for violation of this part may result in an attorney being censured, or being temporarily or permanently denied the privilege of appearing or practicing before the Commission.

(c) An attorney who complies in good faith with the provisions of this part shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices.

(d) An attorney practicing outside the United States shall not be required to comply with the requirements of this part to the extent that such compliance is prohibited by applicable foreign law.

§205.7 No private right of action.

(a) Nothing in this part is intended to, or does, create a private right of action against any attorney, law firm, or issuer based upon compliance or noncompliance with its provisions.

(b) Authority to enforce compliance with this part is vested exclusively in the Commission.

By the Commission.

Jill M. Peterson
Assistant Secretary

Date: January 29, 2003

U.S. SECURITIES AND EXCHANGE COMMISSION – ORIGINAL PROPOSED RULE (INCLUDING “NOISY WITHDRAWAL”)

NOVEMBER, 2002

PART 205 - STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE REPRESENTATION OF AN ISSUER

Sec.

205.1 Purpose and scope.

205.2 Definitions.

205.3 Issuer as client.

205.4 Responsibilities of supervisory attorneys.

205.5 Responsibilities of a subordinate attorney.

205.6 Sanctions.

Authority: 15 U.S.C. 77s, 78d-3, 78w, 80a-37, 80a-38, 80b-11, 7202, 7245, and 7262.

§205.1 Purpose and scope.

Consistent with Section 307 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7245, the Commission is adopting rules setting forth minimum standards of professional conduct for attorneys appearing and practicing before it in any way in the representation of an issuer. Where the standards of a state where an attorney is admitted or practices conflict with this part, this part shall govern.

§205.2 Definitions.

For purposes of this part, the following definitions apply:

(a) Appearing and practicing before the Commission includes, but is not limited to, an attorney's:

(1) Transacting any business with the Commission, including communication with Commissioners, the Commission, or its staff;

(2) Representing any party to, or the subject of, or a witness in a Commission administrative proceeding;

(3) Representing any person in connection with any Commission investigation, inquiry, information request, or subpoena;

(4) Preparing, or participating in the process of preparing, any statement, opinion, or other writing which the attorney has reason to believe will be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(5) Advising any party that:

(i) A statement, opinion, or other writing need not or should not be filed with or incorporated into any registration statement, notification, application, report, communication orother document filed with or submitted to the Commissioners, the Commission, or its staff; or

(ii) The party is not obligated to submit or file a registration statement, notification, application, report, communication or other document with the Commission or its staff.

(b) Appropriate response means a response to evidence of a material violation reported to appropriate officers or directors of an issuer that provides a basis for an attorney reasonably to believe:

(1) That no material violation, as defined in paragraph (i) of this section, is occurring, has occurred, or is about to occur; or

(2) That the issuer has, as necessary, adopted remedial measures, including appropriate disclosures, and/or imposed sanctions that can be expected to stop any material violation that is occurring, prevent any material violation that has yet to occur, and/or rectify any material violation that has already occurred.

(c) Attorney refers to any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

(d) Breach of fiduciary duty refers to any breach of fiduciary duty recognized at common law, including, but not limited to, misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

(e) Evidence of a material violation means information that would lead an attorney reasonably to believe that a material violation has occurred, is occurring, or is about to occur.

(f) In the representation of an issuer means acting in any way on behalf, at the behest, or for the benefit of an issuer, whether or not employed or retained by the issuer.

(g) Issuer means an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under Section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under Section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(h) Material refers to conduct or information about which a reasonable investor would want to be informed before making an investment decision.

(i) Material violation means a material violation of the securities laws, a material breach of fiduciary duty, or a similar material violation.

(j) Qualified legal compliance committee means a committee of an issuer that:

(1) Consists of at least one member of the issuer's audit committee and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, "interested persons" as defined in Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19));

(2) Has been duly established by the issuer's board of directors and authorized to investigate any report of evidence of a material violation by the issuer, its officers, directors, employees or agents;

(3) Has established written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under §205.3(c);

(4) Has the authority and responsibility:

(i) To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances describedin §205.3(b)(5));

(ii) To decide whether an investigation is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur and, if so, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and

(iii) At the conclusion of any such investigation under paragraph (j)(4)(ii) of this section, to:

(A) Direct the issuer to adopt appropriate remedial measures, including appropriate disclosures, and/or to impose appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under paragraph (j)(4)(ii) of this section and the appropriate remedial measures to be adopted; and

(5) Each member of which individually, together with the issuer's chief legal officer and chief executive officer (or the equivalents thereof) individually, has the authority and responsibility, in the event the issuer fails in any material respect to take any of the remedial measures that the qualified legal compliance committee has directed the issuer to take, to notify the Commission that a material violation has occurred, is occurring or is about to occur and to disaffirm in writing any document submitted to or filed with the Commission by the issuer that the individual member of the qualified legal compliance committee or the chief legal officer or the chief executive officer reasonably believes is false or materially misleading.

(k) Reasonable or reasonably denotes the conduct of a reasonably prudent and competent attorney.

(l) Reasonably believes means that an attorney, acting reasonably, would believe the matter in question.

(m) Report means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

§205.3 Issuer as client.

(a) Representing an issuer. An attorney appearing and practicing before the Commission in the representation of an issuer represents the issuer as an organization and shall act in the best interest of the issuer and its shareholders. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

(b) Duty to report evidence of a material violation. (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report any evidence of a material violation to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or to the equivalents thereof) forthwith (unless the issuer has a qualified legal compliance committee and the attorney chooses instead to report the evidence of a material violation to that committee under paragraph (c) of this section). An attorney does not reveal client confidences or secrets or privileged or otherwise protected information by communicating such information related to the attorney's representation of an issuer to the issuer's officers or directors.

(2) The attorney reporting evidence of a material violation shall take steps reasonable under the circumstances to document the report and the response thereto and shall retain such documentation for a reasonable time.

(3) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur. If the chief legal officer reasonably believes no material violation has occurred, is occurring, or is about to occur, he or she shall so advise the reporting attorney. If the chief legal officer reasonably believes that a material violation has occurred, is occurring, or is about to occur, he or she shall take any necessary steps to ensure that the issuer adopts appropriate remedial measures, including appropriate disclosures, and/or imposes appropriate sanctions to stop any material violation that is occurring, prevent any

material violation that is about to occur, and/or to rectify any material violation that has already occurred. The chief legal officer shall promptly report the remedial measures adopted and/or sanctions imposed to the chief executive officer, to the audit committee of the issuer's board of directors, or to the issuer's board of directors, and to the reporting attorney. The chief legal officer shall take reasonable steps to document his or her inquiry and to retain such documentation for a reasonable time. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section. If the issuer fails in any material respect to take any remedial measure that the qualified legal compliance committee directs the issuer to take in order to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred, the chief legal officer shall notify the Commission that a material violation has occurred, is occurring or is about to occur and shall disaffirm in writing any documents submitted to or filed with the Commission by the issuer that the chief legal officer reasonably believes are false or materially misleading.

(4) If an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has not provided an appropriate response, or has not responded within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19))).

(5) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report the evidence of a material violation as provided under paragraph (b)(4) of this section.

(6) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(4), or (b)(5) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve the officers or directors of the issuer to whom the evidence of a material violation has been reported under paragraph (b)(1), (b)(4), or (b)(5) of this section of the duty to respond to the reporting attorney.

(7) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section and who has taken reasonable steps to document his or her report and the response thereto under paragraph (b)(2) of this section need do nothing more under this section regarding the evidence of a material violation.

(8) If the attorney reasonably believes that the issuer has not made an appropriate response to the report or reports made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section, or the attorney has not received a response in a reasonable time, the attorney shall:

(i) Explain his or her reasons for so believing to the chief legal officer, chief executive officer, or directors to whom the attorney reported the evidence of a material violation pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section; and

(ii) Take reasonable steps to document the response, or absence thereof, and to retain such documentation for a reasonable time.

(c) Alternative reporting procedures for attorneys retained or employed by an issuer with a qualified legal compliance committee. (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence of a material violation to a qualified legal compliance committee, if the issuer has duly formed such a committee. Except as provided in paragraph (b)(3) of this section, an attorney who reports evidence of a material violation to a qualified legal compliance committee has satisfied his or her obligation to report evidence of a material violation within the issuer, is not required to assess the issuer's response to the reported evidence of a material violation, and is not required to take any action under paragraph (d) of this section regarding the evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee in lieu of causing an inquiry to be conducted under paragraph (b)(3) of this section. Thereafter, pursuant to the requirements under §205.2(j), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c) of this section.

(d) Notice to the Commission where there is no appropriate response within a reasonable time. (1) Where an attorney who has reported evidence of a material violation under paragraph 3(b) of this section rather than paragraph 3(c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report, and the attorney reasonably believes that a material violation is ongoing or is about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or of investors:

(i) An attorney retained by the issuer shall:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;

(B) Within one business day of withdrawing, give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Promptly disaffirm to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;

(ii) An attorney employed by the issuer shall:

(A) Within one business day, notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Promptly disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

(2) Where an attorney who has reported evidence of a material violation under paragraph (b) rather than paragraph (c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report under paragraph (b) of this section, and the attorney reasonably believes that a material violation has occurred and is likely to have resulted in substantial injury to the financial interest or property of the issuer or of investors but is not ongoing:

(i) An attorney retained by the issuer may:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;

(B) Give written notice to the Commission of the attorney's withdrawal,

indicating that the withdrawal was based on professional considerations; and

(C) Disaffirm to the Commission, in writing, any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;

(ii) An attorney employed by the issuer may:

(A) Notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

(3) The notification to the Commission prescribed by this paragraph (d) does not breach the attorney-client privilege.

(4) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this section and reasonably believes that he or she has been discharged for so doing may notify the Commission that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section and may disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading.

(e) Issuer confidences. (1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof), may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of the issuer's illegal act in the furtherance of which the attorney's services had been used.

(3) Where an issuer, through its attorney, shares with the Commission information related to a material violation, pursuant to a confidentiality agreement, such sharing of information shall not constitute a waiver of any otherwise applicable privilege or protection as to other persons.

§205.4 Responsibilities of supervisory attorneys.

(a) An attorney supervising, directing, or having supervisory authority over another attorney is a supervisory attorney. An issuer's chief legal officer (or the equivalent) is a supervisory attorney under this section.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in §205.5(a), that he or she supervises, directs, or has supervisory authority over is appearing and practicing before the Commission conforms to this part and complies with the statutes and other rules administered by the Commission. To the extent a subordinate attorney appears and practices before the Commission on behalf of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in §205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who reasonably believes that information reported to him or her by a subordinate attorney under §205.5(c) is not evidence of a material violation shall take reasonable steps to document the basis for the supervisory attorney's belief.

§205.5 Responsibilities of a subordinate attorney.

(a) An attorney under the supervision, direction, or supervisory authority of another attorney is a subordinate attorney.

(b) A subordinate attorney is bound by this part notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with §205.3 if the subordinate attorney reports to his or her supervising attorney under §205.3(b) evidence of a material violation that the subordinate attorney becomes aware of in the course of appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by §205.3(b), (c), and (d) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under §205.3(b) has failed to comply with §205.3.

§205.6 Sanctions.

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), and any such attorney shall be subject to the same penalties and remedies, and to the same extent, as for a violation of that Act.

(b) With respect to attorneys appearing and practicing before the Commission on behalf of an issuer, "improper professional conduct" under section 4C(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d-3(a)) includes:

(1) Intentional or knowing conduct, including reckless conduct, that results in a violation of any provision of this part; and

(2) Negligent conduct in the form of:

(i) A single instance of highly unreasonable conduct that results in a violation of any provision of this part; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of a provision of this part.

(c) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices.

By the Commission.

Margaret H. McFarland
Deputy Secretary

Date: November 21, 2002

U.S. SECURITIES AND EXCHANGE COMMISSION – PROPOSED ALTERNATIVE TO "NOISY WITHDRAWAL" RULE

JANUARY 2003

PART 205 STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE REPRESENTATION OF AN ISSUER

1. The authority citation for Part 205 continues to read as follows:

Authority: 15 U.S.C. 77s, 78d-3, 78w, 80a-37, 80a-38, 80b-11, 7202, 7245, and 7262.

2. Amend §205.3 by:

a. Redesignating paragraph (d) as paragraph (g); and

b. Adding paragraphs (d), (e) and (f).

The additions read as follows:

§205.3 Issuer as client.

* * * * *

(d) Actions required where there is no appropriate response within a reasonable time.

(1) Where an attorney who has reported evidence of a material violation under paragraph (b) of this section rather than paragraph (c) of this section:

(i) Does not receive an appropriate response, or has not received a response in a reasonable time,

(ii) Has followed the procedures set forth in paragraph (b)(3) of this section, and

(iii) Reasonably concludes that there is substantial evidence of a material violation that is ongoing or is about to occur and is likely to cause substantial injury to the financial interest or property of the issuer or of investors:

(A) An attorney retained by the issuer shall withdraw from representing the issuer, and shall notify the issuer, in writing, that the withdrawal is based on professional considerations.

(B) An attorney employed by the issuer shall cease forthwith any participation or assistance in any matter concerning the violation and shall notify the issuer, in writing, that he or she believes that the issuer has not provided an appropriate response in a reasonable time to his or her report of evidence of a material violation under paragraph (b) of this section.

(2) An attorney shall not be required to take any action pursuant to paragraph (d)(1) of this section if the attorney would be prohibited from doing so by order or rule of any court, administrative body or other authority with jurisdiction over the attorney, after having sought leave to withdraw from representation or to cease participation or assistance in a matter. An attorney shall give notice to the issuer that, but for such prohibition, he or she would have taken such action pursuant to paragraph (d)(1) or (d)(2), and such notice shall be deemed the equivalent of such action for purposes of this part.

(3) An attorney employed or retained by an issuer who has reported evidence of a material violation under this part and reasonably believes that he or she has been discharged for so doing shall notify the issuer's chief legal officer (or the equivalent thereof) forthwith.

(4) The issuer's chief legal officer (or the equivalent thereof) shall notify any attorney retained or employed to replace an attorney who has given notice to an issuer pursuant to paragraph (d)(1), (d)(2) or (d)(3) of this section that the previous attorney has withdrawn, ceased to participate or assist or has been discharged, as the case may be, pursuant to the provisions of this paragraph.

(e) Duties of an issuer where an attorney has given notice pursuant to paragraph (d). Where an attorney has provided an issuer with a written notice pursuant to paragraph (d)(1), (d)(2) or (d)(3) of this section, the issuer shall, within two business days of receipt of such written notice, report such notice and the circumstances related thereto on Form 8-K, 20-F, or 40-F (§§ 249.308, 220f or 240f of this chapter), as applicable.

(f) Additional actions by an attorney. An attorney retained or employed by the issuer may, if an issuer does not comply with paragraph (e) of this section, inform the Commission that the attorney has provided the issuer with notice pursuant to paragraph (d)(1), (d)(2), or (d)(3) of this section, indicating that such action was based on professional considerations.

* * * * *

PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

Section 240.13a-11 is also issued under Secs. 3(a) and 307, Pub. L. No. 107-204, 116 Stat. 745.

* * * * *

Section 240.13a-17 is also issued under Secs. 3(a) and 307, Pub. L. No. 107-204, 116 Stat. 745.

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Section 240.15d-11 is also issued under Secs. 3(a) and 307, Pub. L. No. 107-204, 116 Stat. 745.

* * * * *

Section 240.15d-17 is also issued under Secs. 3(a) and 307, Pub. L. No. 107-204, 116 Stat. 745.

* * * * *

4. Section 240.13a-11 is amended by revising paragraph (b) to read as follows:

§240.13a-11 Current reports on Form 8-K (§249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to §240.13a-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to §270.30b1-1 of this chapter under the Investment Company Act of 1940, except where such investment companies are required to file:

(1) Notice of a blackout period pursuant to §245.104 of this chapter, or

(2) A notice regarding an attorney withdrawal pursuant to §205.3(e) of this chapter.

5. Add §240.13a-17 to read as follows:

§240.13a-17 Reports of foreign private issuers pursuant to §205.3(e) of this chapter.

Every foreign private issuer which is subject to §240.13a-1 shall make reports pursuant to §205.3(e) of this chapter. If a foreign private issuer is filing a report on Form 20-F (§249.220f of this chapter) or Form 40-F (§249.240f of this chapter) solely to provide information pursuant to §205.3(e) of this chapter, the foreign private issuer is not required to include the certifications required by §240.13a-14 in such report.

6. Section 240.15d-11 is amended by revising paragraph (b) to read as follows: **§**240.15d-11 Current reports on Form 8-K (§249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to §240.15d-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file periodic reports pursuant to §270.30b1-1 of this chapter under the Investment Company Act of 1940, except where such investment companies are required to file:

(1) Notice of a blackout period pursuant to §245.104 of this chapter, or

(2) A notice regarding an attorney withdrawal pursuant to §205.3(e) of this chapter.

7. Add §240.15d-17 to read as follows:

§240.15d-17 Reports of foreign private issuers pursuant to §205.3(e) of this chapter.

Every foreign private issuer which is subject to §240.15d-1 shall make reports pursuant to §205.3(e) of this chapter. If a foreign private issuer is filing a report on Form 20-F (§249.220f of this chapter) or Form 40-F (§249.240f of this chapter) solely to provide information pursuant to §205.3(e) of this chapter, the foreign private issuer is not required to include the certifications required by §240.15d-14 in such report.

PART 249 - FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 249 is amended by revising the sectional authority for §§249.220f, 249.240f and 249.308 to read as follows:

Authority: 15 U.S.C. 78a, et seq., unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 208, 301, 302, 306(a), 307, 401(a), 401(b), 406 and 407, Pub. L. No. 107-204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 202, 208, 301, 302, 306(a), 307, 401(a), 406 and 407, Pub. L. No. 107-204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a-29, 80a-37 and secs. 3(a), 306(a), 307 401(b) and 406, Pub. L. No. 107-204, 116 Stat. 745.

* * * * *

9. Amend Form 20-F (referenced in §249.220f) by:

a. Adding a paragraph on the cover page before the line beginning with the phrase "Commission file number";

b. Adding paragraph (d) to General Instruction A;

c. Removing the word "annual" in each place where it appears in paragraphs (a) and (b) of General Instruction D;

d. Adding Item 16E; and

e. Removing the phrase "[annual report]" in the paragraph after "Signatures" and adding in its place "[report]".

The additions read as follows:

Note: The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20-F

* * * * *

OR

[ ] REPORT PURSUANT TO RULES 13a-17 AND 15d-17 UNDER THE SECURITIES EXCHANGE ACT OF 1934

Commission file number * * *

* * * * *

GENERAL INSTRUCTIONS

A. Who May Use Form 20-F and When It Must be Filed.

* * * * *

(d) A foreign private issuer must file a report on this Form within two business days after receipt of an attorney's written notice pursuant to 17 CFR 205.3(d)(1), (d)(2) or (d)(3). Such filing may consist only of the following: the facing page, the information required by Item 16E of this Form and the signature page. If such filing is made solely to provide information pursuant to 17 CFR 205.3(e), the foreign private issuer is not required to include the certifications required by 17 CFR 240.13a-14 or 17 CFR 240.15d-14 in the report.

* * * * *

Item 16E. Receipt of an Attorney's Written Notice Pursuant to 17 CFR 205.3(d).

Upon receipt of written notice from an attorney (as defined in 17 CFR 205.3(d)), provide the information specified in 17 CFR 205.3(e). You do not need to provide the information called for by this Item 16E unless you are using this form pursuant to General Instruction A.(d).

* * * * *

10. Amend Form 40-F (referenced in §249.240f) by:

a. Revising the line on the cover page that begins with the phrase "For the fiscal year ended";

b. Adding paragraph (5) to General Instruction A;

c. Adding paragraph (15) to General Instruction B;

d. Removing the word "annual" in each place where it appears in paragraphs (7) and (8) of General Instruction D;

e. Removing the phrase "[annual report]" in the paragraph after "Signatures" and in its place adding "[report]"; and

f. Removing the word "annual" in the first sentence of Instruction A to "Signatures."

The revisions and additions read as follows:

Note: The text of Form 40-F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 40-F

* * * * *

For the fiscal year ended.....

OR

[ ] REPORT PURSUANT TO RULES 13a-17 AND 15d-17 UNDER THE SECURITIES EXCHANGE ACT OF 1934

Commission file number.....

* * * * *

GENERAL INSTRUCTIONS

A. Rules As To Use of Form 40-F

* * * * *

(5) If the Registrant uses Form 40-F to file reports with the Commission pursuant to Section 13(a) of the Exchange Act (15 U.S.C. 78m(a)) and Rule 13a-3 thereunder (17 CFR 240.13a-3) or pursuant to Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) and Rule 15d-4 thereunder (17 CFR 240.15d-4), the Registrant must file a report on this Form 40-F within two business days after receipt of an attorney's written notice pursuant to 17 CFR 205.3(d)(1), (d)(2) or (d)(3). Such filing may consist only of the following: the facing page, the information required by General Instruction B.(15) of this Form 40-F and the signature page. If such filing is made solely to provide information pursuant to 17 CFR 205.3(e), the Registrant is not required to include the certifications required by 17 CFR 240.13a-14 or 17 CFR 240.15d-14 in the report.

* * * * *

B. Information To Be Filed on this Form

* * * * *

(15) Receipt of an Attorney's Written Notice Pursuant to 17 CFR 205.3(d). Upon receipt of written notice from an attorney (as defined in 17 CFR 205.3(d)), provide the information specified in 17 CFR 205.3(e). You do not need to provide the information called for by this General Instruction B.(15) unless you are using this form pursuant to General Instruction A.(5).

* * * * *

11. Form 8-K (referenced in §249.308) is amended by:

a. Removing the word "and" after the phrase "Rule 15d-11" and in its place adding a comma and adding the phrase "and for reports of an attorney's written notice required to be disclosed by 17 CFR 205.3(e)" before the period at the end of General Instruction A;

b. Adding a sentence to the end of General Instruction B(1); and

c. Adding Item 13 under "Information to be Included in the Report."

The additions read as follows:

Note: The text of Form 8-K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 8-K

* * * * *

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports

1. * * * A report on this form pursuant to Item 13 is required to be filed within two business days after receipt of an attorney's written notice pursuant to 17 CFR 205.3(d)(1), (d)(2) or (d)(3).

* * * * *

Information to be Included in the Report

* * * * *

Item 13. Receipt of an Attorney's Written Notice Pursuant to 17 CFR 205.3(d).

Upon receipt of written notice from an attorney (as defined in 17 CFR 205.3(d)) provide the information specified in 17 CFR 205.3(e).

By the Commission.

Jill M. Peterson
Assistant Secretary

Dated: January 29, 2003

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

(1) Copies of Selected Rules from The Law Society of Upper Canada and the American Bar Association.

(Appendix 2, pages 17, - 38)

Access to Justice Committee Report
- Symposium on Access to Justice

Access to Justice Committee
June 26th, 2003

Report to Convocation

Purpose of Report: Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

FOR INFORMATION

SYMPOSIUM ON ACCESS TO JUSTICE, MAY 28TH, 2003

1. 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 28th, 2003.

2. The Symposium was sponsored by the Law Foundation of Ontario and a number of corporate sponsors. The Law Society contributed organizational and administrative support.

3. The Symposium was well received and came in at $18,400 under budget, on a total budget of $262,500. This cost reduction was primarily due to savings in postage achieved by using the Ontario Lawyers' Gazette to distribute the brochure to all members, rather than paying for a separate mailing.

4. The Law Society retained two academic consultants, Professors Fred Zemans and Bill Bogart, to advise on the content and development of the Symposium. On their advice, Professor Roderick Macdonald of McGill University was retained to write a "Foundation Paper" setting out the access to justice landscape in Canada. This paper was made available to all the speakers at the Symposium. The Executive Summary of the paper is attached as Appendix 1. The full paper is available on the Law Society's website.

5. The speakers at the Symposium were a mix of Canadian and international authorities on the subject, and included several non-lawyers with interesting perspectives. A copy of the brochure showing the full programme is attached at Appendix 2.

6. The Symposium was attended by 371 registrants. This was a much larger attendance than had been expected as a result of concerns about the SARS outbreak. The 371 included students, low-income lawyers and representatives of non-profit community organizations whose tickets were donated by the sponsoring law firms listed at Appendix 3.

7. The awards dinner featured the first annual presentation of awards by *Pro Bono Law Ontario* and a moving speech by Justice Albie Sachs of the Constitutional Court of South Africa.

8. Professors Zemans and Bogart, as part of their terms of reference, are in the process of preparing a report to the Access to Justice Committee which will summarize and analyze the presentations at the Symposium, together with some further discussions held by the Access to Justice Committee and stakeholders in the community. The purpose of this report will be to assist the Committee in developing options for Convocation to consider, in designing a strategy for the Law Society to promote access to justice in Ontario.

9. In addition, it is intended to publish the entire proceedings of the Symposium, either as a report or as a book. Discussions are underway with an academic publisher with a view to publication as a book as part of a series on related topics. This would ensure a wide distribution for the papers and commentary.

Appendix 1

FOUNDATION PAPER

-Executive Summary-

ACCESS TO JUSTICE IN 2003

SCOPE, SCALE, AMBITIONS

Roderick A. Macdonald
F.R. Scott Professor of Public and Constitutional Law
McGill

This paper was prepared for the exclusive use of the Law Society of Upper Canada in connection with the SYMPOSIUM ON ACCESS TO JUSTICE, MAY 2003

April 2003

Executive Summary

In well-functioning liberal democracies accessible institutions of both public and private governance are the foundation of civil society. In the public sphere, the underlying rationale for universal suffrage and democratic practice is, ultimately, an access to justice rationale. Social justice is a concern of everyone. In the private sphere, the reason for principles such as freedom of contract and private property lies in the belief that the benefits flowing from these structures of individual and collective action should be equally available to everyone. In other words, in a liberal democracy, all people should have an equal right to participate in every institution where law is debated, created, found, organized, administered, interpreted and applied.

To conceive law from the perspective of access to justice is to put the focus not only on system inputs – on abstract declarations of legal rights and entitlements – but also on system outputs – can citizens to whom these rights have been allocated effectively exercise them?

History of Access to Justice

Since the slogan "access to justice" first burst upon the scene forty years ago the expression has been a commonplace in legal circles, although today there is little agreement about what it means. In part this has been because the on-the-ground problems of access to justice have themselves changed over the years. Responding adequately to a more socio-demographically diverse population, to the challenges of globalization, and to newly emerging (or newly recognized) patterns of affect in personal relationships has taxed the imagination of both governments and lawyers. But lack of agreement can also be traced to an evolution in thinking about what access to justice in a liberal democracy actually requires. Heated debates are now engaged about *hyperlexis*, litigation mania, and the legalization of everyday life. Indeed, many jurists today question whether more law and more courts are the remedy for a lack of access to justice.

The first wave: Five different waves can be observed in scholarly reflection about access to justice. In the 1960s, access to justice was the slogan of European proceduralists who sought to reform the institutions and processes of private law. The expression was soon appropriated by activists in the United States who had spent the 1960s promoting due process in the criminal law, engaging in civil rights litigation, opening store-front clinics, and generally "practising law for poor people".

In this first wave of access to justice thinking, the concept meant little more than access to courts and to lawyers. Of particular concern were issues of cost, delay and complexity in the legal system. Legal aid programmes (including community clinics, public defender offices, and certificate systems) to permit the poor to benefit from the services of

a lawyer – especially in relation to defending criminal cases, but also in representing them before various government welfare, housing, and employment-related agencies – were perceived as the necessary and sufficient vehicle for breaking down the barriers to access.

The second wave: In the 1970s scholars began to perceive the inadequacies of the "legal aid" approach to access. The scope of inquiry was widened so as to embrace questions of institutional redesign. Issues such as the actual performance of courts, their procedures, and their organization came under critical light. Considerable attention was given to the criminal law: reforming procedures of arrest and pre-trial detention, speeding up the prosecution of cases, and humanizing the penal, probation and parole systems. Nonetheless, most reforms of this period were focused on aspects of the civil justice process. Usually the aim was to reorient the mechanics and structure of litigation. Proposals to create small claims courts, to permit class actions, to modify discovery rules, to change costs-rules, to allow contingency fees, to grant greater power to judges to manage trials, and so on were mooted as ways to speed up lawsuits, reduce their cost or enhance their availability to those seeking redress.

At this time, access to justice came to be seen as an issue affecting the middle classes as well as the poor. Governments sought to deploy a variety of non-judicial institutions to deal with specific types of civil claims – typically in tort or contract fields that generated what came to be known as "mass adjudication". Legislatures enacted new substantive regimes of legal regulation – most notably the introduction of no-fault automobile compensation schemes, the reconfiguration of workers compensation appeals, the establishment of criminal injuries compensation tribunals and the like. In addition, other agencies, like human rights commissions, landlord-tenant bureaux and certain business-practices tribunals, were delegated specific decision-making authority in the hopes of making the resolution of civil disputes cheaper and more expeditious.

Reformers also came to see that the problems of bureaucracy previously believed to be unique to agencies dealing with the poor (welfare, housing, employment regimes) were more widespread. Much substantive injustice was caused by governmental and administrative processes themselves, with no effective recourses against such action. As a result, major efforts were made to enhance the procedural fairness of administrative decision-making. The streamlining of judicial review remedies the creation of Ombudsman Offices, and the development of Privacy and Access to Information Commissions were part and parcel of this richer conception of access to justice.

The third wave: By the 1980s jurists in Canada realized that even these measures were insufficient. In part because of the *Charter of Rights and Freedoms*, access to justice came to be understood as centrally a problem of equality. More than this, the equality in issue meant not just equality in the capacity and opportunity to litigate, but also embraced equality of outcomes. Because of the perception that workloads were becoming unmanageable, courts themselves began to implement modern organizational thinking through notions like "case management", "commercial lists" and other specialized panels, and "streamlined procedures" for certain categories of cases.

Some measures to enhance access were substantive, and aimed at meeting a particular need: continued efforts to reform family property law, successions and dependent's relief, real estate conveyancing, divorce, and child welfare law were of this character. So too were attempts to recast the principles and processes of criminal sentencing – through *Young Offenders* legislation, through the use of sentencing circles in trials involving aboriginal offenders, and through greater attention to the idea of "restorative justice". Along with these new substantive rules legislatures also began to imagine innovative institutions and techniques of dispute settlement.

From an initial theorization in the legal process literature of the 1950s, there developed a full flowering of the alternative dispute resolution (ADR) movement – court-annexed mandatory mediation, consensual arbitrations in contract claims, reference to experts in construction disputes, and so on. Much effort was devoted to promoting ADR and other mechanisms for dejudicializing civil justice. In a parallel manner, the attention of scholars and activists moved towards programmes of public legal information and education. Likewise, the plain language movement and mandatory standard form consumer contracts moved to centre stage as techniques to enhance access. The slogan of the 1980s was "empowerment of citizens through the demystification of law".

The fourth wave: The next wave in access to justice thinking (associated with the 1990s) can be seen as a reflection of the judgement that true access to justice encompasses at least three non-dispute-resolution dimensions. First, an entirely different view of ADR was proposed in which these processes were also viewed as vehicles to help citizens avoid conflicts, or deal with them before they became crystallized as legal problems. The central theme of this

approach was preventative law. The ideas of store-front clinics, neighbourhood justice centres and informal institutions of dispute avoidance and ultimately, dispute settlement were reinvigorated.

Second, this broader conception of access to justice required improving processes and mechanisms for involving the public in the institutions where law was made and administered as well as applied. Hence legislative bodies sought to enhance citizen participation in Parliamentary committees and the rule-making hearings of administrative bodies. Public policy consultations with funded intervenors from NGOs and other typically absent voices became *de rigueur*.

Third jurists came to realise how much law is made and applied by non-public bodies: rules promulgated by private standards organisations; enforcement by private police of rules and bylaws promulgated by shopping centre, building and land-owners; and binding decisions by private arbitrators. Much energy was expended on increasing access to these private institutions of civil justice.

The fifth wave: Today we are in the middle of a fifth, proactive, wave. If reflection about ADR inevitably leads to preventative law and better public legal information, and if it also leads to concern for enhancing access to official and myriad unofficial institutions where law is made and administered, then necessarily access to justice implies a concern with every facet of the social life of citizens. There is no issue of interpersonal or group relationships that does not call forth considerations of substantive justice, procedural fairness and equal access to legal institutions.

Access to justice is now perceived as required equal opportunities for the excluded to gain full access to positions of authority within the legal system. Improving access to legal education, to the judiciary, to the public service (including the police), to election to Parliament and to membership in the various law societies is now seen as the best way of changing the system to overcome the disempowerment, disrespect and disengagement felt by many citizens.

These legal strategies are, of course, not sufficient to address the roots of the access to justice problems encountered by the poor and the disenfranchised. The correlation between health, social service, employment, victimisation by violence and lack of access to civil justice is cited as a reason for a proactive access to justice strategy that would also involve establishing partnerships with health and social services agencies.

Outline of Foundation Paper

This Study is organized to explore access to justice in the widest possible compass. Its Introduction first considers the causes of a lack of access to justice. These are usually cast as barriers: physical barriers like building design, hours of opening, distance to a point of service, lack of translation services; objective structural barriers like cost, delay and complexity; subjective structural barriers such as personality, ability to take time off work a feeling of social disempowerment.

This last type of barrier suggests that certain groups are more vulnerable than others. Many of the target groups for whom an access to justice strategy is particularly meaningful, show up as under-represented in other fields. These same groups typically have low voter turnouts in the political process; they typically do not directly own shares or otherwise participate in the wealth-generating mechanisms of a capitalist economy; they typically do not file briefs to parliamentary committees, or participate in public consultation processes; and they typically are under-represented users of the health care system. In other words, access to justice is not an issue discrete from all other social issues that affect these populations: distance from the social mainstream along any one of economic, socio-demographic, disability or emotion dimensions correlates with a lack of access to justice.

Chapter Two examines access to justice as a problem of financial resources: how can society put into place systems that enable it to expend more resources on access to justice? and how can it achieve a more efficient deployment of the resources it does expend? Conceptually, the choices boil down to two: increase revenues for the system; or reduce costs.

The chapter suggests that several assumptions about the way in which legal services are delivered might be re-examined. It also intimates that several assumptions about litigation before courts as the litmus test of accessibility are also questionable. Of course, the chapter does not claim either that legal aid should have a diminished role in

providing access to justice or that lawyers should have a diminished role in managing litigation. The point is, rather, that revenues have to be found in a variety of places, and that cost reductions have to be found in a variety of places as well. Consideration is given to different models for financing and administering legal aid, and for determining models of remuneration for those providing legal services.

Chapter Two also explores a range of alternatives to legal aid as means to overcome financial barriers to access. These include proposals to reorganize the way legal services are delivered, consideration of the contribution that could be made by alternative service provides such as paralegals, changing costs rules, contingency fees, intervenor funding and *Charter* challenge programmes, and other mechanisms to lessen the structural cost of litigation and the provision of legal services by the state.

Chapter Three considers procedural and institutional reforms to enhance the accessibility of both public and private dispute settlement institutions. It presupposes that some of the costs of civil litigation can be reduced by creating new courts and redesigning the rules of civil procedure. Strategies reviewed include various types of small claims courts, streamlined proceedings for medium-sized lawsuits, class actions, and to giving judges greater authority to manage civil litigation. The chapter also examines how processes of judgement enforcement can be streamlined, and reviews attempts to make public law litigation (especially the review of administrative decisions) more expeditiously and less costly.

There is a further point. Sometimes, the best cost-reduction strategy is to create other institutions and other processes altogether. Various possibilities were mooted. They included a variety of publicly-managed alternatives such as administrative compensation schemes, administrative regulatory tribunals, public agencies like Human Rights Commissions, Ombudsman Offices to assist citizens in pursuing redress, mandatory insurance and mandatory compensation funds, standard form contracts and improved technology to streamline non-litigation civil justice processes like registration of births and land.

The chapter concludes by looking at privately-organized ADR systems—as adjuncts to civil litigation, as alternatives to civil litigation, as means to avoid civil disputes, and even as means to resolve conflict even before it is characterized as a civil dispute. The Chapter notes that several of these options enhance accessibility by making dispute resolution more expeditious, less traumatic and more tailored to the expectations of justice seekers.

Chapter Four broadens inquiry to consider several hidden dimensions of access to justice – dimensions that often get lost when the focus is on courts, lawyers and legal aid. Often, the most severe problems of dispute resolution can be overcome by changing the substance of the law and the mechanisms deployed to induce private settlements. To ensure these changes, increased access to institutions of law creation is a pre-requisite. This means making processes by which citizens can participate in parliamentary hearings, and the regulatory processes of administrative agencies more accessible. The same can be said for institutions (such as the police) of law application and administration.

But today many of the most important law-making institutions are “private legislatures”. Among these are standardisation organisations like Underwriters Laboratories and trade associations like the Canadian Lumber Manufacturers Association, the Insurance Bureau of Canada, or the Canadian Bankers Association. Ensuring assess to institutions of unofficial law-making that develop protocols and rules governing their affairs without sufficient input from consumers is a necessary feature of any comprehensive access to justice strategy.

Ultimately, the Chapter argues that access to justice also implies not only access to the processes of and services provided by state institutions – Parliaments, courts, police, administrative agencies – but also access to membership in these institutions. That is, until road access is provided to law faculties, the legal professions, parliament and the judiciary a truly accessible justice in Canada will remain unattainable.

Chapter Five assesses a variety of processes and institutional responses that can serve to empower citizens to become effective legal actors themselves. The point is to resituate reflection about what access to justice really means. After all, access to justice understood just as a matter of overcoming barriers, wrongly presupposes that justice exists apart from the citizens whose everyday interaction is its object.

Access to justice is not the goal; it is the process. Access to justice is not a reaction; it the positive act of creating a more just society. Access to justice is not what lawyers, courts, Parliaments and the executive offer to citizens;

access to justice is the empowerment that citizens claim for themselves. Viewed in this light, education, information and validation – both in relation to the rules and institutions of official law, and in relation top the rules and institutions of everyday law that is the foundation of human interaction – not only conduces to, but actually constitutes, access to justice.

The Conclusion argues that, to a very great degree, access to justice thinking has been shaped by its origins in the idea that the central concern was to overcome barriers (especially financial barriers tied to the cost of legal services) to the enforcement of legal rights by judicial institutions. But the past four decades have revealed that the real issue is neither access, nor law. It is not just the procedure that matters. The goal is the outcome: not access to a process but substance is the need. And it is not law that one seeks. The goal is justice: not justice according to law, but social justice in the broader sense. Achieving true access to justice requires an investment in changing the distribution of social power in Canada today.

Finally, this Foundation Paper offers a number of suggestions and possible options as to how the Law Society of Upper Canada might go about developing its own strategic agenda in the access to justice field. The Paper argues that there is something important to be learned by examining as many aspects as possible of the law as it exists in Ontario and Canada today through the lens of access to justice. There is nothing particularly transcendent in the access to justice perspective. Like all perspectives – the perspective of economics, the perspective of political science, the perspective of psychology – it offers a way of examining an issue, of articulating and valuing certain goads and processes, and of ordering a range of possible responses. That said, of course, this Foundation Paper does conclude that the images brought into focus by the "access to justice" lens are those to which all jurists individually, and the Law Society of Upper Canada in its corporate capacity, should be paying especial attention.

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

(1) A copy of the Access to Justice Symposium brochure.

(Appendix 2, pages 11 – 14)

CONVOCATON ROSE AT 1:00 P.M.

Confirmed in Convocation this 25th day of September 2003

Treasurer