

MINUTES OF CONVOCATION

Thursday, 24 November, 2011
9:30 a.m.

PRESENT:

The Treasurer (Laurie H. Pawlitza), Aaron (on telephone), Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Bryant (on telephone), Callaghan, Campion, Chilcott (on telephone), Conway, Copeland (on telephone), Daud, Dickson, Doyle, Dray, Epstein, Eustace (on telephone), Evans, Falconer, Ferrier, Furlong (on telephone), Gold (on telephone), Goldblatt, Gottlieb, Haigh, Halajian, Hartman, Horvat, Hunter (on telephone), Krishna, Leiper, Lerner, MacKenzie, MacLean, McDowell, McGrath, Manes (on telephone), Marmur, Matheson, Mercer, Minor, Murchie, Murphy, Murray, Porter, Potter, Pustina (on telephone), Rabinovitch, Richardson, Richer, Robins, Ross, Rothstein, Ruby, Sandler, Scarfone, Schabas, Sikand, Silverstein, C. Strosberg, Swaye, Symes, Wadden, Wardlaw, Wardle, Wright (on telephone) and Yachetti (on telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed former Treasurer Lee Ferrier back to Convocation, following his retirement from the Superior Court of Justice on November 1, 2011.

The Treasurer announced that the Attorney General, the Honourable John Gerretsen would be a guest at luncheon, together with Kirby Chown, Megan Shortreed and Heather Williams, who played a pivotal role in the success of the Justicia project.

The Treasurer noted the Paralegal Reception held last week and on behalf of Convocation welcomed all new paralegal licensees to the Law Society and the legal profession.

The Treasurer encouraged nominations from all communities and regions across the province for the Law Society Medal, Awards and the new Paralegal Achievement Award, the nominations for which close January 25, 2012.

The Treasurer congratulated Beth Symes who was named one of the 'top 25 women of influence' in Canada by *Women of Influence Magazine*.

The Treasurer congratulated David Shannon, a lawyer from Thunder Bay on his appointment to the Order of Canada on November 4, 2011 for his championship of the rights of people with disabilities.

The Treasurer thanked the local bar in Goderich, Ontario for their efforts in meeting the difficult challenges following the devastating tornado last August.

The Treasurer welcomed Juda Strawczynski who joined the Law Society's Policy and Tribunals Department on November 7, 2011, as Counsel to the Director.

The Treasurer congratulated Malcolm Heins and the senior management team on the achievement of being selected for the sixth consecutive year as one of the Greater Toronto Area's Top Employers.

DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of October 27, 2011 were confirmed.

MOTIONS – APPOINTMENTS – Tribunals Committee, Appeal and Hearing Panels, Finance Committee and Board of Directors of LibraryCo Inc.

It was moved by Christopher Bredt, seconded by Susan McGrath, –

THAT Bob Aaron be removed from the Finance Committee at his own request.

THAT Lee Ferrier be appointed to the Tribunals Committee and be appointed to the Appeal Panel and Hearing Panel for a term of two years.

Carried

It was moved by Christopher Bredt, seconded by Susan McGrath, –

THAT Cathy Corsetti, Jacqueline Horvat, James Scarfone and Alan Silverstein be reappointed to the Board of Directors of LibraryCo Inc. effective December 31, 2011 for a term of one year.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, November 24th, 2011.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 2011

CANDIDATES FOR CALL TO THE BAR
November 24, 2011

Transfer from another province (Mobility)

Bavia Bisetty
Meghan Lynn Butler
Sarah Jessie Schachter Glickman
Michelle Han
Reagan Layne Humphrey
Aaron Michael Huntly
Shannon Renée Lazell
Kenda Lorraine Murphy
Caroline Maureen Price
Dana Lynn Romanick
John Christopher Russell
Peter Joseph Gregory Sullivan
Ilan Tsekhman

Transfer from another province (Quebec)

Catherine Marie-Charlotte Pascal
Yoonji Oh

Licensing Process

Felice Raffaele Ferri

It was moved by Mr. Conway, seconded by Ms. Dickson, that the Report of the Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

PARALEGAL STANDING COMMITTEE REPORT

Ms. Corsetti presented the Report.

Report to Convocation
November 24th, 2011

Paralegal Standing Committee

Committee Members
Cathy Corsetti, Chair
Susan McGrath, Vice-Chair
Marion Boyd
Robert Burd
Paul Dray
Seymour Epstein
Robert Evans
Michelle Haigh
William C. McDowell
Malcolm M. Mercer
Kenneth Mitchell
James Scarfone
Baljit Sikand

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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COMMITTEE PROCESS

1. The Committee met on November 10th, 2011. Committee members present were Cathy Corsetti (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd, Paul Dray, Seymour Epstein, Robert Evans, Michelle Haigh (by telephone), Will McDowell, Malcolm M. Mercer, Ken Mitchell (by telephone), James Scarfone (by telephone) and Baljit Sikand. Staff members in attendance were Zeynep Onen, Diana Miles, Terry Knott, Jim Varro, Sheena Weir, Kevin Davies, Juda Strawczynski and Julia Bass.

FOR DECISION

BY-LAW 3: TIE BREAKING IN THE ELECTION OF PARALEGAL BENCHERS

Motion

2. That By-law 3 be amended to provide for a new process for the breaking of a tie in the election of the paralegal benchers.

Background

3. In March 2010, the first ever election of the paralegal members of the Paralegal Standing Committee was held, followed at the April Committee meeting by the first election of paralegal benchers and election of the Committee's chair. These elections were held pursuant to the provisions of By-law 3 governing paralegal elections, which had been generally modeled on the provisions of By-law 3 governing the lawyer benchers' election and the election of the Treasurer by Convocation.
4. At the April meeting, there was a tie in the votes for the election of the two paralegal benchers. Committee members expressed dissatisfaction with the process for the breaking of the tie, and indicated that they would prefer a procedure whereby voting would continue until two successful candidates emerge.
5. The process at the April meeting was governed by the current wording in By-law 3, which is as follows:

Same numbers of votes

46.7 (2) If two or more candidates have the same numbers of votes, but the number of persons remaining to be elected as benchers is fewer than the number of candidates having the same numbers of votes, the Elections Officer shall, in the absence of all persons but in the presence of the vice-chair of the Committee, randomly select, from the candidates having the same numbers of votes, the necessary number of candidates to be elected as benchers.

6. This wording was developed based on the provision governing tie-breaking in the election of the Treasurer.
7. The process governing the election of the Paralegal Standing Committee Chair, referred to above, provides for further voting until a clear result is achieved.

The Committee's Deliberations

8. The Committee reviewed the wording at Appendix 1, in particular sections 46.5 and 46.7, and recommends it to Convocation for approval. The formal bilingual motion will be distributed at Convocation.
9. Although the next election of paralegal benchers will not be until 2014, the Committee regards it as prudent to have the process established well in advance.

Appendix 1

ELECTION OF BENCHERS LICENSED TO PROVIDE LEGAL SERVICES

GENERAL

Definitions

46.1. (1) In this Part,

“Committee” means the Paralegal Standing Committee;

“Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this Part;

“election of benchers” means an election of benchers licensed to provide legal services in Ontario;

“elector” means a person who is entitled under this Part to vote in an election of benchers.

Interpretation: “bencher”

(2) In this Part, except where a contrary intention appears, “bencher” means a bencher licensed to provide legal services in Ontario.

ELECTION DAY

Election

46.2. (1) There shall be an election of benchers at the time specified in subsection (1.1) to elect two benchers.

Election day

(1.1) There shall be an election of benchers in 2010 and in every fourth year thereafter on the day on which the Committee has its first regular meeting following the election to the Committee in that year of five persons licensed to provide legal services in Ontario under Part VII.1 of this By-Law.

First matter of business

(2) The election of benchers shall be the first matter of business at the meeting of the Committee on election day.

Elections Officer to conduct election

(3) The election of benchers shall be conducted by the Elections Officer.

CANDIDATES**Candidates**

46.2. Every person who was elected to the Committee under Part VII.1 of this By-Law and took office as a member of the Committee on election day is a candidate in the election of benchers.

ELIGIBILITY FOR ELECTION**Who may not be elected**

46.3. No candidate shall be elected as bencher in the election of benchers if, at the time of her or his election,

- (a) the candidate is no longer licensed to provide legal services in Ontario or the candidate's licence is suspended;
- (b) the candidate is not eighteen or more years of age;
- (c) the candidate is an undischarged bankrupt; or
- (d) the candidate does not consent to her or his election.

POLL**Poll**

46.4. (1) In the election of benchers, a poll shall be conducted to elect the benchers.

Secret ballot

(2) A poll to elect the benchers shall be conducted by secret ballot.

VOTING

Right to vote

46.5. (1) The following members of the Committee are entitled to vote in the election of benchers:

1. Persons who are licensed to provide legal services in Ontario.
2. Lay benchers.

Procedure for voting: first ballot

(2) On election day, each elector who is in attendance in person at the meeting of the Committee at the time of the first ballot shall receive a first ballot listing the names of all candidates in the election of benchers.

Procedure for voting: second ballot

(2.1) If the required number of benchers is not elected as a result of the votes cast on the first ballot, each elector who is in attendance in person at the meeting of the Committee at the time of the second ballot shall receive a second ballot listing the names of all the candidates remaining in the election of benchers at the time of that ballot.

Application of subs. (2.1) to second and further ballots

(2.2) Subsection (2.1) applies to the second ballot and, with necessary modifications, to any further ballots in the election of benchers.

Names on ballot

(2.3) A ballot in the election of benchers shall contain the names of the candidates who have not already been elected in the election of benchers.

Marking ballot

(3) An elector voting on a ballot in the election of benchers shall vote for not more than the number of benchers remaining to be elected on the ballot, and shall indicate the candidates or candidate of her or his choice by placing a mark beside the name of the candidate.

Ballot box

(4) After an elector voting on a ballot in the election of benchers has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Elections Officer, put the ballot into a ballot box.

COUNTING THE VOTES

Counting votes

46.6. After all electors voting on a ballot in the election of benchers have put the ballot into the ballot box, the Elections Officer shall, in the absence of all persons but in the presence of the vice-chair of the Committee, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.

RESULTS

Results: ballot on which two benchers remain to be elected

46.7. (1) Immediately after the count of votes under section 46.6 has been completed on a ballot on which two benchers remain to be elected,

- (a) if the Elections Officer determines that only two candidates received the same, largest number of votes, the Elections Officer shall declare to have been elected as benchers the two candidates who received the largest numbers of votes;
- (b) if the Elections Officer determines that one candidate received the largest number of votes and only one candidate received the next largest number of votes, the Elections Officer shall declare to have been elected as benchers the candidate who received the largest number of votes and the candidate who received the next largest number of votes;
- (b) if the Elections Officer determines that one candidate received the largest number of votes and two or more candidates received the same, next largest number of votes, the Elections Officer shall,
 - (i) declare to have been elected as bencher the candidate who received the largest number of votes; and
 - (ii) report to the Committee that a further ballot will be required in order to elect a second bencher; or
- (c) if the Elections Officer determines that three or more candidates received the same, largest number of votes, the Elections Officer shall report to the Committee that a further ballot will be required in order to elect the benchers.

Results: ballot on which one bencher remains to be elected

(2) Immediately after the count of votes under section 46.6 has been completed on a ballot on which one bencher remains to be elected,

- (a) if the Elections Officer determines that one candidate received the largest number of votes, the Elections Officer shall declare to have been elected as bencher the candidate who received the largest number of votes; or

- (b) if the Elections Officer determines that two or more candidates received the same, largest number of votes, the Elections Officer shall report to the Committee that a further ballot will be required in order to elect the benchers.

Report and publication of results

- (3) The Elections Officer shall report to the Committee and to Convocation and shall publish on the Society's website the names of the candidates elected as benchers in the election of benchers.

TAKING OFFICE

Taking office

- 46.8. (1) The candidates who are elected as benchers in the election of benchers shall take office on the day on which Convocation has its first regular meeting following election day.

Term of office

- (2) Subject to any by-law that provides for the removal of benchers from office, the candidates who take office under subsection (1) shall remain in office until their successors take office.

DISPOSITION OF ELECTION MATERIALS

How long to be retained

- 46.9. (1) The Elections Officer shall retain all election materials and other documents relating to the election of benchers for at least thirty days after election day.

Destruction

- (2) The Elections Officer may destroy all election materials and other documents relating to the election of benchers after the time for retaining the materials and documents under subsection (1) has passed.

VACANCIES DURING TERM OF OFFICE

By-election

- 46.10. (1) If a bencher resigns from office, is removed from office or for any other reason is unable to continue in office, a by-election shall be held to elect a person as a bencher to fill the resulting vacancy.

Day of by-election

(2) The by-election shall be held on the day on which the Committee has its first regular meeting following the day on which the candidate, who is deemed to have been elected to the Committee to fill the vacancy in the Committee resulting from the bencher's resignation from, removal from or inability to continue in office, takes office.

Elections Officer to conduct by-election

(3) The by-election shall be conducted by the Elections Officer.

Candidates

46.11. Every person, who is not a bencher, who was elected or deemed to have been elected to the Committee under Part VII.1 of this By-Law and who took office as a member of the Committee on or before the day of the by-election is a candidate in the by-election.

Application of sections

46.12. Sections 46.3 to 46.9 apply, with necessary modifications, to the by-election held under section 46.10.

. . . .

BY-LAW 4 AMENDMENT RE: APPEALS RESOLUTION OFFICERS (ARO'S)

Motion

10. That paragraph 13 (2) (f) of By-law 4 be amended to add the Appeals Resolution Officers at the Workplace Safety and Insurance Board to the list of eligible adjudicators.

Background

11. In April 2011, Convocation approved the Committee's request for an amendment to By-law 4 providing special consideration in the paralegal licensing process for members of adjudicative tribunals with five years of full-time experience. Eligible adjudicators were granted "educational equivalency", which means that their years of tribunal experience are permitted to replace the two year college programme. (All other licensing requirements, such as the licensing examination and good character status, continue to apply). The relevant excerpt from By-law 4 subsection 13 (2) is attached at Appendix 2.
12. Although many tribunal members are lawyers, there is a tradition of non-lawyer tribunal members choosing to develop a new career appearing before the tribunal on which they sat. This is subject to appropriate conflict of interest rules.
13. The rationale for the amendment was that the adjudicators are generally well trained, as tribunals usually have mandatory continuing education programmes. The provision was thus seen as permitting the Law Society to acquire a group of well-educated members, most of whom would probably not become licensed if they were required a two year educational programme (although some might find it possible to obtain advanced standing in a community college paralegal programme, by application to the college).

14. Convocation limited the provision to full-time tribunal members only, as there are definitional problems with setting a required number of hours for part-time work.
15. It was noted that the applicants under the process would probably only have substantive legal knowledge in one or two areas. However, they are bound by the *Paralegal Rules of Conduct* which prohibit taking a file for which one lacks the necessary skills and knowledge.

The Eligible Tribunals

16. The list of tribunals set out in the by-law was taken from Schedule 'A' of Regulation 126/10 made pursuant to the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, on the advice of the board of directors of the Society of Ontario Adjudicators and Regulators ('SOAR'), the principal association for members of Ontario adjudicative tribunals .
17. However, this list does not include the Workplace Safety & Insurance Board, and in particular the Appeals Resolution Officers (ARO's), who play a key role in the adjudication of workers' compensation claims. The ARO job description is attached at Appendix 3.
18. Most of the ARO's are not lawyers, and have often been promoted from other positions within the Workplace Safety & Insurance Board. Unlike most Ontario tribunal members, they are unionized. However, they regard the adjudicative work they perform as equivalent to that performed by the tribunal members currently listed in the by-law.

Processes at the Workplace Safety & Insurance Board

19. ARO's deal with claims that have been rejected at the first stage at the Workplace Safety & Insurance Board. The process is as follows:
 - a. The claimant can send in an Objection Form to the original adjudicator. If the original decision-maker does not change the decision, the file will be referred to an ARO at the Appeals Branch.
 - b. If the case is fairly simple, it may be processed under the WSIB 60-Day Decision Option: an ARO will issue a decision within 60 days based on the information in the claim file, including any other information that the claimant or employer submits in writing. There is no oral hearing.
 - c. Alternatively, an ARO may conduct a mediation, in which case the ARO contacts the parties to discuss the issues in dispute and to attempt an agreed upon settlement. If necessary, the ARO will gather more information. If the parties are able to settle the dispute, the ARO will prepare an agreement and confirm, in writing, that it complies with the *Workplace Safety and Insurance Act* and WSIB Policy. The agreement is then considered a final decision of WSIB.
 - d. If the parties are unable to reach an agreement, the ARO will either decide the issue(s) on the basis of written submissions, or schedule the case for an oral in-person hearing.

- e. Final WSIB decisions may be appealed to the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

The Committee's Deliberations

20. The Committee was of the view that the role of the ARO's is similar in nature to that of the other tribunal members in subsection 13 (2) of the by-law and that accordingly it would be appropriate to add the Appeals Resolution Officers to the by-law. The wording for the bilingual motion will be distributed at Convocation.

Appendix 2

BY-LAW 4 [LICENSING] SECTION 13 - *EXCERPTS*

Exemption from education requirement

- (2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,
 (a) for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis; or

* * * * *

(f) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of a member of one or more of the following entities:

- (i) Agriculture, Food and Rural Affairs Appeal Tribunal,
- (ii) Animal Care Review Board,
- (iii) Assessment Review Board,
- (iv) Board of negotiation continued under subs. 27 (1) of the *Expropriations Act*,
- (v) Board of negotiation established under subs. 172 (5) of the *Environmental Protection Act*,
- (vi) Building Code Commission,
- (vii) Child and Family Services Review Board,
- (viii) Chiropody Review Committee,
- (ix) Consent and Capacity Board,
- (x) Conservation Review Board,
- (xi) Criminal Injuries Compensation Board,
- (xii) Crown Employees Grievance Settlement Board,
- (xiii) Custody Review Board,
- (xiv) Dentistry Review Committee,
- (xv) Environmental Review Tribunal,
- (xvi) Fire Safety Commission,
- (xvii) Health Professions Appeal and Review Board,
- (xviii) Health Services Appeal and Review Board,
- (xix) Human Rights Tribunal of Ontario,
- (xx) Landlord and Tenant Board,
- (xxi) Licence Appeal Tribunal,
- (xxii) Medical Eligibility Committee formed under subs. 7 (1) of the *Health Insurance Act*,
- (xxiii) Normal Farm Practices Protection Board,

- (xxiv) Ontario Civilian Police Commission,
- (xxv) Ontario Labour Relations Board,
- (xxvi) Ontario Municipal Board,
- (xxvii) Ontario Parole Board,
- (xxviii) Ontario Review Board,
- (xxix) Ontario Special Education Tribunal (English),
- (xxx) Ontario Special Education Tribunal (French),
- (xxxi) Optometry Review Committee,
- (xxxii) Pay Equity Hearings Tribunal,
- (xxxiii) Physician Payment Review Board,
- (xxxiv) Public Service Grievance Board,
- (xxxv) Social Benefits Tribunal,
- (xxxvi) Workplace Safety and Insurance Appeals Tribunal.

FOR INFORMATION

WELCOME RECEPTION FOR NEWLY LICENSED PARALEGALS

21. The first reception for newly licensed paralegals was held on Tuesday November 15th.

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

Copy of the Appeals Resolution Officer's (ARO's) job description.

(Appendix 3, page 16 – 19)

Re: Amendment to By-Law 3 Respecting the Paralegal Benchers Election

It was moved by Mr. Dray, seconded by Ms. McGrath, that By-Law 3 be amended to provide for a new process for the breaking of a tie in the election of the paralegal benchers as set out in the motion distributed under separate cover.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 3 [BENCHERS, CONVOCATION AND COMMITTEES]

THAT By-Law 3 [Benchers, Convocation and Committees], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, September 20, 2007, November 22, 2007, June 26, 2008, April 30, 2009, September 24, 2009, February 25, 2010, May 27, 2010, October 28, 2010, November 25, 2010 and January 27, 2011, be further amended as follows:

1. Subsection (1) , including the marginal note, of the first section 46.2 of English version of the By-Law is revoked and the following substituted:

Election

(1) There shall be an election of benchers at the time specified in subsection (1.1) to elect two benchers.

Election day

(1.1) There shall be an election of benchers in 2010 and in every fourth year thereafter on the day on which the Committee has its first regular meeting following the election to the Committee in that year of five persons licensed to provide legal services in Ontario under Part VII.1 of this By-Law.

2. Subsection (1) , including the marginal note, of the first section 46.2 of French version of the By-Law is revoked and the following substituted:

Élection

(1) Une élection se tient à la date spécifiée au paragraphe (1.1) pour élire deux conseillers ou conseillères.

our de l'élection

(1.1) Une élection de conseillers et de conseillères se tient en 2010 et tous les quatre ans par la suite, le jour de la première réunion ordinaire du Comité qui suit l'élection au même Comité, cette année-là, de cinq personnes pourvues d'un permis les autorisant à fournir des services juridiques en Ontario en application de la partie VII.1 du présent règlement administratif.

3. The second section 46.2 of the English and French versions of the By-Law is re-numbered as section 46.2.1.

4. Section 46.3 of the English version of the By-Law is amended by adding “in the election of benchers” after “bencher”.

5. Subsection 46.4 (1), including the marginal note, of the English version of the By-Law is revoked and the following substituted:

Poll

(1) In the election of benchers, a poll shall be conducted to elect the benchers.

6. Subsection 46.4 (1), including the marginal note, of the French version of the By-Law is revoked and the following substituted:

Scrutin

(1) L'élection des conseillers et des conseillères se fait par voie de scrutin.

7. Subsection 46.4 (2) of the English version of the By-Law is amended by adding "the" before "benchers".

8. Subsections 46.5 (2) and (3), including the marginal notes, of the English version of the By-Law are revoked and the following substituted:

Procedure for voting: first ballot

(2) On election day, each elector who is in attendance in person at the meeting of the Committee at the time of the first ballot shall receive a first ballot listing the names of all candidates in the election of benchers.

Procedure for voting: second ballot

(2.1) If the required number of benchers is not elected as a result of the votes cast on the first ballot, each elector who is in attendance in person at the meeting of the Committee at the time of the second ballot shall receive a second ballot listing the names of all the candidates remaining in the election of benchers at the time of that ballot.

Application of subsection (2.1) to second and further ballots

(2.2) Subsection (2.1) applies to the second ballot and, with necessary modifications, to any further ballots in the election of benchers.

Names on ballot

(2.3) A ballot in the election of benchers shall contain the names of the candidates who have not already been elected in the election of benchers.

Marking ballot

(3) An elector voting on a ballot in the election of benchers shall vote for not more than the number of benchers remaining to be elected on the ballot and shall indicate the candidates or candidate of her or his choice by placing a mark beside the name of the candidate.

9. Subsections 46.5 (2) and (3), including the marginal notes, of the French version of the By-Law are revoked and the following substituted:

Procédure de vote : premier tour de scrutin

(2) Le jour de l'élection, chaque électrice ou électeur qui assiste en personne à la réunion du Comité au moment du premier tour de scrutin reçoit un premier bulletin où apparaissent les noms des candidats et candidates en lice pour le poste de conseiller.

Procédure de vote : deuxième tour de scrutin

(2.1) Si le nombre requis de conseillers ou de conseillères n'est pas élu par suite du décompte des voix exprimées lors du premier tour de scrutin, chaque électrice et électeur qui assiste en personne à la réunion du Comité au moment du deuxième tour de scrutin reçoit un deuxième bulletin où apparaissent les noms des candidates et candidats encore en lice pour le poste de conseiller au moment de ce tour de scrutin.

Application du paragraphe (2.1) aux tours de scrutin subséquents

(2.2) Lors de l'élection des conseillers et des conseillères, le paragraphe (2.1) s'applique au deuxième tour de scrutin et, avec les adaptations nécessaires, aux tours de scrutin subséquents.

Noms figurant sur le bulletin de vote

(2.3) Sont inscrits sur le bulletin de vote à l'élection des conseillers et des conseillères les noms des candidates et des candidats qui n'ont pas déjà été élus à cette élection.

Inscriptions sur les bulletins de vote

(3) Les électeurs et électrices qui votent à un tour de scrutin lors de l'élection de conseillers et de conseillères ne votent pas pour plus de personnes qu'il n'en reste à élire à ce tour de scrutin, et ils indiquent les candidats et candidates de leur choix en faisant une coche à côté de leur nom.

10. Subsection 46.5 (4) of the English version of the By-Law is amended by adding "voting on a ballot in the election of benchers" after "elector".

11. Subsection 46.5 (4) of the French version of the By-Law is amended by replacing "dépose" with "déposent".

12. Section 46.6, including the marginal note, of the English version of the By-Law is revoked and the following substituted:

Counting votes

46.6 After all electors voting on a ballot in the election of benchers have put the ballot into the ballot box, the Elections Officer shall, in the absence of all persons but in the presence of the vice-chair of the Committee, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.

13. Section 46.6, including the marginal note, of the French version of the By-Law is revoked and the following substituted:

Dépouillement du scrutin

46.6 Une fois que tous les électeurs et électrices qui participent à un scrutin lors de l'élection de conseillers et de conseillères ont déposé leurs bulletins de vote dans la boîte de scrutin, le ou la responsable des élections, en l'absence de toutes les personnes sauf du vice-président ou de la vice-présidente du Comité, ouvre la boîte de scrutin, en retire tous les bulletins, les ouvre et procède au décompte des voix exprimées par candidat ou candidate.

14. The heading immediately preceding section 46.7 and section 46.7, including the marginal notes, of the English version of the By-Law are revoked and the following substituted:

RESULTS

Results: ballot on which two benchers remain to be elected

46.7 (1) Immediately after the count of votes under section 46.6 has been completed on a ballot on which two benchers remain to be elected,

- (a) if the Elections Officer determines that only two candidates received the same, largest number of votes, the Elections Officer shall declare to have been elected as benchers the two candidates who received the same, largest number of votes;
- (b) if the Elections Officer determines that one candidate received the largest number of votes and only one candidate received the next largest number of votes, the Elections Officer shall declare to have been elected as benchers the candidate who received the largest number of votes and the candidate who received the next largest number of votes;
- (c) if the Elections Officer determines that one candidate received the largest number of votes and two or more candidates received the same, next largest number of votes, the Elections Officer shall,
 - (i) declare to have been elected as bencher the candidate who received the largest number of votes, and
 - (ii) report to the Committee that a further ballot will be required in order to elect a second bencher; or
- (d) if the Elections Officer determines that three or more candidates received the same, largest number of votes, the Elections Officer shall report to the Committee that a further ballot will be required in order to elect the benchers.

Results: ballot on which one benchner remains to be elected

(2) Immediately after the count of votes under section 46.6 has been completed on a ballot on which one benchner remains to be elected,

- (a) if the Elections Officer determines that one candidate received the largest number of votes, the Elections Officer shall declare to have been elected as benchner the candidate who received the largest number of votes; or
- (b) if the Elections Officer determines that two or more candidates received the same, largest number of votes, the Elections Officer shall report to the Committee that a further ballot will be required in order to elect the benchner.

Report and publication of results

(3) The Elections Officer shall report to the Committee and to Convocation and shall publish on the Society's website the names of the candidates elected as benchners in the election of benchners.

15. The heading immediately preceding section 46.7 and section 46.7, including the marginal notes, of the French version of the By-Law are revoked and the following substituted:

RÉSULTATS

Résultats lorsque deux conseillers ou conseillères sont à élire

46.7 (1) Immédiatement après le décompte des voix effectué conformément à l'article 46.6 à un tour de scrutin où deux conseillers ou conseillères sont à élire,

- a) si le ou la responsable de l'élection détermine que deux candidats ou candidates seulement ont recueilli à égalité le nombre le plus élevé de voix, il ou elle déclare élus au poste de conseiller ces deux candidats ou candidates;
- b) si le ou la responsable de l'élection détermine qu'un candidat ou une candidate a recueilli le nombre de voix le plus élevé et qu'un seul candidat ou candidate est venu au deuxième rang pour le nombre de voix recueillies, il déclare élus au poste de conseiller le candidat ou la candidate qui a recueilli le nombre de voix le plus élevé et celui ou celle qui est venu au deuxième rang pour le nombre de voix recueillies;
- c) si le ou la responsable de l'élection détermine qu'un candidat ou une candidate a recueilli le nombre de voix le plus élevé et que deux candidats ou plus sont venus à égalité au deuxième rang pour le nombre de voix recueillies,
 - (i) il ou elle déclare élu au poste de conseiller le candidat ou la candidate qui a recueilli le nombre de voix le plus élevé,
 - (ii) il ou elle annonce au Comité la tenue d'un tour de scrutin supplémentaire afin d'élire une deuxième personne au poste de conseiller;

- d) si le ou la responsable de l'élection détermine que trois candidats ou candidates ou plus ont recueilli à égalité le nombre le plus élevé de voix, il ou elle annonce au Comité la tenue d'un tour de scrutin supplémentaire afin d'élire les conseillers ou les conseillères.

Résultats lorsqu'un conseiller ou une conseillère reste à élire

- (2) Immédiatement après le décompte des voix effectué conformément à l'article 46.6 à un tour de scrutin où un conseiller ou une conseillère reste à élire,
 - a) si le ou la responsable de l'élection détermine qu'un candidat ou une candidate a recueilli le nombre de voix le plus élevé, il ou elle déclare cette personne élue au poste de conseiller;
 - b) si le ou la responsable de l'élection détermine que deux candidats ou candidates ou plus ont recueilli à égalité le nombre le plus élevé de voix, il ou elle annonce au Comité la tenue d'un tour de scrutin supplémentaire afin d'élire le conseiller ou la conseillère.

Communication et publication des résultats

- (3) Le ou la responsable des élections informe le Comité et le Conseil des noms des candidates et des candidats élus au poste de conseiller par suite des élections et les publie sur le site web du Barreau.

16. Subsection 46.8 (1), including the marginal note, of the English version of the By-Law is revoked and the following substituted:

Taking office

- (1) The candidates who are elected as benchers in the election of benchers shall take office on the day on which Convocation has its first regular meeting following election day.

17. Subsection 46.8 (1), including the marginal note, of the French version of the By-Law is revoked and the following substituted:

Entrée en fonction

- (1) Les candidates et les candidats élus au poste de conseiller lors de l'élection des conseillers et des conseillères entrent en fonction le jour de la première réunion ordinaire du Conseil qui suit le jour de l'élection.

18. Subsection 46.9 (1) of the English version of the By-Law is amended by striking out “the declaration of results under section 46.7” and substituting “election day”.

19. Subsection 46.9 (1) of the French version of the By-Law is amended by striking out “la déclaration des résultats prévue à l’article 46.7” and substituting “le jour de l’élection”.

Re: Amendment to By-Law 4 Respecting Appeals Resolution Officers

It was moved by Mr. Dray, seconded by Ms. McGrath, that paragraph 13 (2) (f) of By-Law 4 be amended to add the Appeals Resolution Officers at the Workplace Safety and Insurance Board to the list of eligible adjudicators as set out in the motion distributed under separate cover.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

**BY-LAW 4
[LICENSING]**

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010, October 28, 2010, April 28, 2011, June 23, 2011 and September 22, 2011, be further amended as follows:

- 1. Clause 13 (2) (e) of the English version of the By-Law is amended by deleting “or” at the end.**
- 2. Clause 13 (2) (f) of the English version of the By-Law is amended by deleting the period at the end and substituting “; or”.**
- 3. Clause 13 (2) (f) of the French version of the By-Law is amended by deleting the period at the end and substituting a semi-colon.**
- 4. Subsection 13 (2) of the English version of the By-Law is amended by adding the following clause:**

- (g) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of an Appeals Resolution Officer at the Workplace Safety and Insurance Board.

5. Subsection 13 (2) of the French version of the By-Law is amended by adding the following clause:

- g) pour un total d'au moins 5 ans, le requérant ou la requérante a assumé à plein temps les fonctions et exécuté les tâches d'un commissaire aux appels de la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail.

6. Subsection 13 (2.1) of the English version of the By-Law is amended by striking out "clause (2) (f)" and substituting "clauses (2) (f) and (g)".

7. Subsection 13 (2.1) of the French version of the By-Law is amended by striking out "de l'alinéa (2) f)" and substituting "des alinéas (2) f) et g)".

For Information

- Paralegal Welcome Reception

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Schabas presented the Report.

Report to Convocation
November 24, 2011

Professional Regulation Committee

Committee Members
Paul Schabas (Chair)
Julian Porter (Vice-Chair)
Susan Richer (Vice-Chair)
Robert Burd
John Campion
Robert Evans
Julian Falconer
Alan Gold
Carol Hartman
Janet Leiper
William McDowell
Kenneth Mitchell
Malcolm Mercer
Jan Richardson
Sydney Robins
James Scarfone

Purpose of Report: Decision

Prepared by the Policy Secretariat
(Sophie Galipeau – 416-947-3458)

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on November 10, 2011. In attendance were Paul Schabas (Chair), Julian Porter (Vice-Chair), Susan Richer (Vice-Chair), Robert Burd, Robert Evans, Julian Falconer, Janet Leiper, William McDowell, Malcolm Mercer, Kenneth Mitchell and Jan Richardson. Staff attending were Naomi Bussin, Lesley Cameron, Zeynep Onen, Juda Strawczynski, Jim Varro and Sophie Galipeau. Also in attendance was Neils Orved of McCarthy Tétrault.

FOR DECISION

CONVOCATION POLICY ON HOLDING HEARINGS IN ABEYANCE PENDING CONCURRENT CIVIL OR CRIMINAL PROCEEDINGS

Motion

2. That Convocation revoke the policy titled *Holding Discipline Hearings in Abeyance Pending Concurrent Civil or Criminal Proceedings*.

Introduction

3. At its November 2011 meeting, the Committee reviewed the *Policy on Holding Discipline Hearings in Abeyance Pending Concurrent Civil or Criminal Proceedings* (“the Policy”) which was adopted by Convocation in 1990. The Policy appears at Appendix 1.
4. The Committee is proposing that Convocation revoke the Policy, as a comprehensive operational policy dealing with this subject has been developed.

Background

5. The *Policy on Holding Hearings in Abeyance Pending Concurrent Civil or Criminal Proceedings* relates to the circumstances in which the Law Society is required to proceed with discipline proceedings where a lawyer is subject to concurrent criminal charges or civil proceedings. It dictates when to proceed and when to wait for the completion of the concurrent civil or criminal proceedings. It is silent about whether to proceed with an investigation in these circumstances. This policy was passed in 1990, at a time when Convocation was more actively involved in establishing operational policies for the regulatory process.
6. In an effort to continuously improve and modernize processes, the Director, Professional Regulation identifies for review policies and procedures related to professional regulation. This is an ongoing process.

7. In step with this effort, in 2004 Convocation created the Investigations Task Force to review the status and efficiency of the investigations process and recommend any policy, process or legislative changes required to improve the timeliness and the effectiveness of the process.
8. As part of its review, the Task Force considered the *Complainant's Protocol* and the *Third Party Complaints Policy Where Litigation is Pending*, two policies that related to the manner in which Law Society investigations were undertaken. In its report, the Task Force recommended that those policies be revoked, as they were largely operational, were unwieldy for staff to implement and to change, and their language was outdated. In the Task Force's view, it was more appropriate for these policies to be created at staff level.
9. The following is an excerpt from the May 25, 2006 Investigations Task Force Final Report to Convocation:

The Task Force believes that these policies should be replaced with general direction to staff from Convocation to have and maintain express operational standards, which staff would create and implement. This would permit staff to design operational standards in keeping with Convocation's broad policy direction and to maintain the currency of the policies through changes or enhancements when the need arises. This is a more flexible approach than the current system, where any amendments to the policies require Convocation's approval.

The efficacy of the express operational standards, or the need to improve them, will be a matter of comment in the quarterly operational report Ms Onen provides to the Professional Regulation Committee, which includes extensive information on the Professional Regulation Division's processes and progress in complaints handling.

10. Convocation accepted this recommendation.

Current Operational Policy

11. In keeping with the direction of Convocation, the Director, Professional Regulation, created an operational Policy & Procedures Manual. The Manual includes guidelines relating to concurrent proceedings.
12. The guidelines set out a number of factors to consider in deciding whether to proceed with an investigation when the licensee is the subject of concurrent civil or criminal proceedings. They also include criteria for seeking an interlocutory suspension order where the licensee is suspected of criminal activity. The guidelines, which are available on the Law Society public website, appear at Appendix 2.

Discussion and Recommendation

13. The Committee is of the view that the *Policy on Holding Hearings in Abeyance Pending Concurrent Civil or Criminal Proceedings* is similar to other policies that Convocation revoked in 2006 based on the recommendation of the Investigations Task Force. This policy should be revoked on the same basis.

14. Further, the substance of the Policy has effectively been superseded by the guidelines developed by staff. In the Committee's view, those guidelines appropriately identify the factors to consider in deciding whether to proceed with an investigation when there are concurrent civil or criminal proceedings. They take into account the risks to the public, to the licensee and to the Law Society.
15. The Committee recommends that Convocation revoke the Policy titled *Holding Discipline Hearings in Abeyance Pending Concurrent Civil or Criminal Proceedings* with a general direction to the Law Society to establish and maintain express operational standards for deferring an investigation when there are concurrent criminal charges or civil proceedings. In the Committee's view, the guidelines described above fulfill this direction.

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

- (1) Copy of the Policy titled *Holding Discipline Hearings in Abeyance Pending Concurrent Civil or Criminal Proceedings*.
(Appendix 1, page 6)
- (2) Copy of the Professional Regulation Department's Operational Guidelines relating to concurrent proceedings.
(Appendix 2, pages 7 – 12)

Re: Proposed Revocation of Policy Respecting Hearings in Abeyance Pending Concurrent Civil or Criminal Proceedings

It was moved by Mr. Schabas, seconded by Ms. Richer, that Convocation revoke the policy titled *Holding Discipline Hearings in Abeyance Pending Concurrent Civil or Criminal Proceedings*.

Carried

INTER-JURISDICTIONAL MOBILITY COMMITTEE REPORT

Mr. Conway presented the Report.

Report to Convocation
November 24, 2011

Inter-Jurisdictional Mobility Committee

Committee Members
Tom Conway (Chair)
Constance Backhouse
Jacqueline Horvat
Vern Krishna
Wendy Matheson
Joe Sullivan

Purpose of Report: Decision

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

TABLE OF CONTENTS

For Decision

Amendments to By-Laws 4 and 6 Respecting Extension of Mobility Rights under the Québec Mobility Agreement to Québec Notaries and Amended Temporary Mobility Provisions for Lawyers from Québec and from the Northwest Territories, Yukon and Nunavut (the territories)..... TAB A

Renewal of Territorial Mobility Agreement and Amendment to By-Law 6 TAB B

COMMITTEE PROCESS

1. The Committee met by teleconference on November 7, 2011. Committee members Tom Conway (Chair), Constance Backhouse, Jacqueline Horvat, Vern Krishna and Wendy Matheson participated. Staff members Elliot Spears, Sophia Sperdakos and Sandra Vernon-Noble also participated.

DECISION

Amendments to By-Laws 4 and 6 Respecting Extension of Mobility Rights under the Québec Mobility Agreement to Québec Notaries and Amended Temporary Mobility Provisions for Lawyers from Québec and from the Northwest Territories, Yukon and Nunavut (the territories)

MOTION

2. That Convocation approve the proposed amendments to By-Laws 4 and 6, set out in English at Appendices 1 and 2, to implement its October 27, 2011 approval of,
 - a. the extension of mobility rights under the Québec Mobility Agreement to Québec notaries; and
 - b. amended temporary mobility provisions for lawyers from Québec and from the Northwest Territories, Yukon and Nunavut (the territories).

Introduction and Background

3. On October 27, 2011 Convocation approved the Committee's recommendation respecting the extension of the Québec Mobility Agreement (QMA) to members of the Chambre des notaires.
4. The general approach that Convocation approved is as follows:
 - a. An application is submitted and supported by a certificate of standing and proof of insurance.
 - b. An initial application fee is charged.

- c. The duration of the certificate is based on the calendar year and is open to renewal each year for a fee.
- d. In accordance with the proposed addendum to the QMA, a certificate entitles the notary to,
 - i. give legal advice and consultations on legal matters involving the law of Québec or involving matters under federal jurisdiction;
 - ii. prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations;
 - iii. give legal advice and consultations on legal matters involving public international law; and
 - iv. plead or act before a judicial or quasi judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.
- 5. The Law Society may refuse a certificate and/or revoke it where the applicant does not, or no longer, meets the criteria.
- 6. Convocation also approved changes to the temporary mobility provisions respecting the Barreau du Québec and the Northwest Territories, the Yukon and Nunavut.
- 7. The general approach Convocation approved is that members from the Barreau and the three Territories would,
 - a. apply for the first matter/case and get a permit for up to a maximum of 10 matters in a calendar year. Lawyers will not be required to specify the matters, but will need to keep track of them in case the Law Society wishes to ensure they have not exceeded the limit. They will not be able to ask for permission to handle more than 10 matters in a calendar year;
 - b. there is an annual fee per year with no extensions. If a matter goes over to the next calendar year, lawyers would have to apply again and pay the fee again;
 - c. as was the case under the Inter-jurisdictional Practice Protocol (IJPP) lawyers will be able to practise the law of Ontario where they are competent to do so. In addition they will be eligible to do anything that would be covered under the L3 licence.
 - d. There would be discretion to refuse the permit and revoke it in accordance with the criteria set out in By-law 4.
 - e. The provision would only apply to permit temporary mobility.

8. The proposed by-law amendments to By-law 4, set out in English at Appendix 1, address both the approved approaches in paragraphs 4 and 7. An annotated version highlighting the changes is also included at the end of Appendix 1.
9. By-law 6 (Professional Liability Insurance) requires some consequential amendments to reflect changes to definitions. These are set out in English at Appendix 2 in section 1.
10. The official French and English versions of the proposed by-law amendments will be provided in a motion under separate cover at Convocation.

Appendix 1

THE LAW SOCIETY OF UPPER CANADA

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

**BY-LAW 4
[LICENSING]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON NOVEMBER 24, 2011

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010, October 28, 2010, April 28, 2011, June 23, 2011 and September 22, 2011, be further amended as follows:

- 1. Part VII of the English version of the By-Law is revoked and the following substituted:**

PART VII

INTER-PROVINCIAL PRACTICE OF LAW

GENERAL

Insurance and defalcation coverage

36. (1) No person shall practise law in Ontario under this Part 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 licensee who holds a Class L1 licence; 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 licensee who holds a Class L1 licence.

Insurance: exemption

(2) A person 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 in By-Law 6 for licensees who hold a Class L1 licence.

Interpretation: "National Excess Plan"

(3) In clause (1) (b), "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 authorized to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law.

Interpretation: "Inter-Jurisdictional Practice Protocol"

(4) In subsection (3), "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.

Application of Act, etc.

37. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the rules of professional conduct for licensees who hold a Class L1 licence apply, with necessary modifications, to a person who practises law in Ontario under this Part, other than a person who practises law in Ontario under this Part,

- (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).

Conflict

(2) In the event of a conflict between the provisions of this Part and the provisions of any other by-law, the provisions of this Part prevail.

Proof of Compliance

38. (1) A person who is not a licensee and who purports to practise law in Ontario under this Part shall, upon the request of the Society and by not later than the day specified by the Society, provide proof to the satisfaction of the Society that he or she is in compliance with this Part.

Deemed failure to comply

(2) If the person fails to provide proof to the Society by the day specified by the Society, the person shall be deemed not to be in compliance with this Part.

Disclosure of information

39. (1) If a licensee 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 licensee'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 licensee 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 licensee necessary to permit the governing body to determine if the licensee 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.

PRIOR PERMISSION TO PRACTISE LAW**Application of section**

40. (1) This section applies to a person if the prior permission of the Society is required for the person to practise law in Ontario under a section in this Part.

Application for permission

(2) A person who requires prior permission to practise law in Ontario under a section in this Part shall apply to the Society.

Application form and fee

(3) An application under subsection (2) shall be contained in a form provided by the Society and shall be accompanied by payment of an application fee, if any.

Documents, explanations, releases, etc.

(4) For the purposes of assisting the Society to consider an application under subsection (2), an applicant shall provide,

- (a) to the Society, such documents and explanations as may be required; and
- (b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Application to be considered by Society

- (5) Every application under subsection (2) shall be considered by the Society.

Decision on application

(5.1) After considering an application under subsection (2), the Society shall determine, in accordance with the relevant section in this Part, that the applicant may practise law in Ontario or may not practise law in Ontario and so notify the applicant in writing.

Terms and conditions

(6) Permission to practise law in Ontario under a section in this Part granted to a person by the Society may include such terms and conditions as the Society considers appropriate.

Application to committee of benchers

(7) If the Society refuses to permit a person to practise law in Ontario under a section in this Part 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 under the section or of whether the terms and conditions are appropriate.

Time for application

(8) An application under subsection (7) shall be commenced by the applicant notifying the Society in writing of the application within thirty days after the day the applicant receives notice of the Society's refusal to permit the applicant to practise law in Ontario under a section in this Part.

Parties

(9) The parties to an application under subsection (7) are the applicant 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 a licence 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, in accordance with the relevant section in this Part, that,

- (a) the applicant may practise law in Ontario or may not practise law in Ontario; or
- (b) the terms and conditions included by the Society in its permission to practise law in Ontario are or are not appropriate.

Terms and conditions

(14) Permission to practise law in Ontario under a section in this Part granted to a person by the committee of benchers, or a decision with respect to the terms and conditions included by the Society in its permission to practise law in Ontario, 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 under a section in this Part granted to a person remains in effect until December 31 of the year in which permission is granted, unless otherwise provided for in this Part.

Permission automatically withdrawn

(17) Permission to practise law in Ontario under a section in this Part 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 under the section;

- (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 under the section;
- (c) does not comply with clause 36 (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 in which the person is authorized to practise law,
 - (i) revoking the person's authorization to practise law, or
 - (ii) suspending the person's authorization to practise law; or
- (e) practises law in Ontario in contravention of this Part.

Permission withdrawn

(17.1) Permission to practise law in Ontario under a section in this Part granted to a person may be withdrawn by the Society if the Society determines that continued permission to practise law in Ontario would be contrary to the public interest.

Application to committee of benchers

(17.2) If the Society, under subsection (17.1) withdraws a person's permission to practise law in Ontario under a section in this Part, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the permission was properly withdrawn.

Application of provisions to application to committee

(17.3) Subsections (8) to (15) apply, with necessary modifications, to an application under subsection (17.2).

Fee to practise law

(18) A person permitted to practise law in Ontario under a section in this Part may be required to, and if required to shall, pay a fee, to practise law in Ontario.

TEMPORARY PRACTICE OF LAW: LAWYERS FROM BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND
LABRADOR AND PRINCE EDWARD ISLAND

Application of ss 42 to 45

41. Sections 42 to 45 apply to a person if the person is authorized to practise law in any of the following provinces:

1. British Columbia.
2. Alberta.
3. Saskatchewan.
4. Manitoba.
5. New Brunswick.
6. Nova Scotia.
7. Newfoundland and Labrador.
8. Prince Edward Island.

Definition: “day”

42. (1) In this section and in sections 43 to 45, “day” means a calendar day or part of a calendar day.

Interpretation: practice of law

- (2) In this section and in sections 43 to 45.1, a person practises law in Ontario if the person,
- (a) performs professional services for others in the capacity of a barrister or solicitor;
or
 - (b) gives legal advice to others with respect to the laws of Ontario, the laws of a province or territory of Canada in which the person is authorized to practise law, the laws of Canada or public international law.

Interpretation: occasional practice of law

(3) In sections 43 to 45, a person practises law in Ontario on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

Occasional practice of law: excluded activities

(4) 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 to practise law in Ontario under subsection 43 (1) or permitted to practise law in Ontario under section 44.

Interpretation: economic nexus

(5) For the purposes of sections 43 and 45, subject to subsection (6), 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 to practise law in Ontario under section 43 or permitted to practise law in Ontario under section 44, if the person is not granted permission to practise law in Ontario under subsection 45 (1) or (2);
- (a.1) practises law in Ontario for more than the maximum number of days the person is permitted to practise law in Ontario under subsection 45 (1) or (2);
- (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 section 45.1;
- (e) becomes a resident in Ontario; or
- (f) acts in any other manner inconsistent with practising law in Ontario only on an occasional basis.

Same

(6) 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 person is authorized to practise law.

Occasional practice of law: prior permission not required

43. (1) A person who is not a licensee 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 named in section 41;
- (b) is not the subject of a criminal proceeding in any jurisdiction;
- (c) is not the subject of a conduct, capacity or competence proceeding in any jurisdiction;

- (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 jurisdiction in which the person is or was authorized to practise law,
 - (i) revoking the person's authorization to practise law, or
 - (ii) permitting the person to surrender his or her authorization to practise law;
- (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 jurisdiction in which the person is authorized to practise law suspending or limiting the person's authorization to practise law, other than for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;
- (f) has no terms, conditions, limitations or restrictions on the person's authorization to practise law in each jurisdiction in which the person is authorized to practise law; and
- (g) does not establish an economic nexus with Ontario.

Same

(2) A person who is not a licensee, if and so long as the person is authorized to practise law in a province mentioned in section 41 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).

Occasional practice of law: prior permission required

44. (1) A person who is not a licensee and who is not entitled to practise law in Ontario on an occasional basis under subsection 43 (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis.

Requirement for permission

(2) Permission to practise law in Ontario on an occasional basis under this section shall not be granted if to grant permission to practise law in Ontario on an occasional basis would be contrary to the public interest.

Practising on more than an occasional basis

45. (1) A person who is entitled under section 43 to practise law in Ontario on an occasional basis may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society, if, and so long as, the person meets the applicable requirements mentioned in section 43.

Same

(2) A person who was permitted under section 44 to practise law in Ontario on an occasional basis may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society.

Practising on more than an occasional basis: economic nexus established

(3) A person who was entitled to practise law in Ontario under section 43 or who was permitted to practise law in Ontario under section 44, subsection (1) or subsection (2), who has established an economic nexus with Ontario and who has applied for a licence to practise law in Ontario as a barrister and solicitor may, with the prior permission of the Society, practise law in Ontario, subject to subsections 40 (17) and (17.1), until the later of,

- (a) the date the person is granted a licence to practise law in Ontario as a barrister and solicitor; and
- (b) the effective date of the final decision and order, with respect to the individual's application for a licence to practise law in Ontario as a barrister and solicitor, of the Hearing Panel or, if there is an appeal from the decision and order of the Hearing Panel, of the Appeal Panel.

Handling of money

45.1 A person who is entitled to practise law in Ontario under section 43 or who is permitted to practise law in Ontario under section 44 or 45 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 mentioned in section 41 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 licensee in accordance with By-Law 9 [Financial Transactions and Records] and the money is handled only by the licensee in accordance with By-Law 9 [Financial Transactions and Records].

TEMPORARY PRACTICE OF LAW: LAWYERS FROM QUEBEC AND THE
TERRITORIES OF CANADA

Application of ss 47 to 50

46. Sections 47 to 50 apply to a person if,

- (a) the person is authorized to practise law in Quebec by the Barreau du Québec; or
- (b) the person is authorized to practise law in any territory of Canada.

Interpretation: practice of law

47. (1) In this section and in sections 48 to 51, a person practises law in Ontario if the person,

- (a) performs professional services for others in the capacity of a barrister or solicitor;
or
- (b) gives legal advice to others with respect to the laws of Ontario, the laws of a province or territory of Canada in which the person is authorized to practise law, the laws of Canada or public international law.

Interpretation: occasional practice of law

(2) In sections 48 and 49, a person practises law in Ontario on an occasional basis if, during a calendar year, the person practises law in Ontario in respect of not more than ten matters.

Occasional practice of law: excluded activities

(3) The practice of law in Ontario 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 ten matters mentioned in subsection (2) for the purposes of subsection 49 (1).

Occasional practice of law: prior permission not required

48. A person who is not a licensee, if and so long as the person is authorized to practise law in a province or territory mentioned in section 46, 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).

Occasional practice of law: prior permission required

49. (1) A person who is not a licensee and who 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 mentioned in section 46;
- (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 in which the person is authorized to practise law; 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.

Additional requirement for permission

(2) Despite subsection (1), permission to practise law in Ontario on an occasional basis under this section shall not be granted if to grant permission to practise law in Ontario on an occasional basis would be contrary to the public interest.

Law specific to Ontario: competence

50. (1) A person who is entitled to practise law in Ontario under section 48 or who is permitted to practise law in Ontario under section 49 shall not practise law specific to Ontario unless the person is competent to practise law specific to Ontario.

Interpretation: "law specific to Ontario"

(2) In subsection (1), "law specific to Ontario" means any substantive or procedural law that applies specifically to Ontario.

Handling of money

51. A person who is entitled to practise law in Ontario under section 48 or who is permitted to practise law in Ontario under section 49 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 mentioned in section 46 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 licensee in accordance with By-Law 9 [Financial Transactions and Records] and the money is handled only by the licensee in accordance with By-Law 9 [Financial Transactions and Records].

PRACTICE OF LAW IN ONTARIO BY NOTARIES FROM QUEBEC**Permission to practise law in Ontario**

52. (1) A person who is not a licensee, who is a member of the *Chambre des Notaires du Québec*, who is authorized to practise the notarial profession in Quebec and who is of good character may, with the prior permission of the Society, do any of the following:

1. Give a person advice with respect to,
 - i. the laws of Quebec,
 - ii. the laws of Canada, and
 - iii. public international law.
2. Select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada, if the laws of Canada expressly authorize the person to represent a party in the proceeding.
3. Represent a person in a proceeding before an adjudicative body with respect to matters concerning the laws of Canada, if the laws of Canada expressly authorize the person to represent a party in the proceeding.

Interpretation: member of the *Chambre des Notaires du Québec*

(2) For the purposes of subsection (1), a member of the *Chambre des Notaires du Québec* does not include a member who qualified for membership under the *Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles*.

Additional requirement for permission

(3) Despite subsection (1), permission to practise law in Ontario under this section shall not be granted if to grant permission to practise law in Ontario would be contrary to the public interest.

Appendix 2**THE LAW SOCIETY OF UPPER CANADA****BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*****BY-LAW 6
[PROFESSIONAL LIABILITY INSURANCE]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCAATION ON NOVEMBER 24, 2011

MOVED BY

SECONDED BY

THAT By-Law 6 [Professional Liability Insurance], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, February 21, 2008 and September 24, 2009, be further amended as follows:

1. Subsection 9 (3) of the English version of the By-Law is revoked and the following substituted:

Interpretation: occasional practice of law

(3) For the purposes of paragraph 2 of subsection (1), in any year, a licensee engages in the practice of law on an occasional basis if, during that year, the licensee engages in the practice of law in respect of not more than ten matters.

2. Subclause 9 (4) (a) (ii) of the English version of the By-law is amended by deleting “until December 31, 2011,”.

RENEWAL OF TERRITORIAL MOBILITY AGREEMENT AND
AMENDMENT TO BY-LAW 6

Motion

11. That Convocation approve the renewal of the Territory Mobility Agreement, set out at Appendix 3.
12. That Convocation urge the Federation of Law Societies of Canada to investigate, within three years, the factors impeding the territories' participation in the temporary mobility provisions of the National Mobility Agreement and consider possible solutions.
13. That Convocation approve the amendment to By-law 6, set out in Appendix 2 in section 2 to reflect the removal of the expiry date for the Territorial Mobility Agreement.

Introduction and Background

14. In 2002 the Federation of Law Societies of Canada approved the recommendations of its National Mobility Task Force for enhanced mobility of lawyers across Canada. The National Mobility Agreement (NMA) has provisions respecting temporary mobility and permanent mobility (transfer). All common law provinces have signed and implemented the NMA. Special provisions are in place respecting mobility for members of the Barreau du Québec and the Chambre des notaires.

15. In 2006 law societies signed the Territorial Mobility Agreement (TMA), which came into force in November 2006. Pursuant to the terms of the TMA the Northwest Territories, Yukon and Nunavut participate in the provisions of the NMA that address transfer, but not the temporary mobility provisions.
16. This special agreement was entered into to reflect the territories' concern that the temporary mobility structure could have a serious effect on the operation of northern law societies and their ability to serve the public in the north. The TMA allowed for the issue to be examined further and had a finite term. It is scheduled to expire on January 1, 2012.
17. The Federation Council has been asked to approve an amended TMA that would remove the limit on the operation of the Agreement. The background and explanation for this proposal and the proposed draft agreement are set out at Appendix 3.
18. The Federation Council has now voted on the proposal and approved it. The Committee has considered the material set out at Appendix 3. The Committee has concerns similar to those raised by some other jurisdictions that because there is no time limit in the Agreement, discussions on the factors impeding the territories' participation in the temporary mobility provisions of the NMA and possible solutions might be forgotten and not addressed. The Committee is of the view that the Federation should be urged to pursue these discussions, but it does not believe that it is necessary or essential for the time limit to be in the TMA for that to occur. Indeed, the time limit in the current TMA did not result in such an examination or discussion occurring.
19. The Committee is of the view that continued certainty respecting the transfer provisions of the TMA is particularly important and should not be jeopardized by concerns over the temporary mobility provisions. The Committee is satisfied that approval of the proposed TMA with a further recommendation as set out above urging the Federation to investigate factors impeding participation in the temporary mobility provisions and consider possible solutions within three years is the balanced approach that should be taken.
20. If Convocation agrees with the Committee's recommendation By-law 6 should be amended to reflect the removal of the expiry date.

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

- (1) Copy of an annotated version of By-Law 4 highlighting the changes.
(Appendix 1, pages 20 – 36)
- (2) Copy of a memorandum from Tim Killeen, Chair, National Mobility Policy Committee to the Council of the Federation Law Society CEOs (for information) dated November 2, 2011 re Territorial Mobility Agreement.
(Appendix 3, pages 40 – 60)

Re: Amendments to By-Laws 4 and 6 Respecting Extension of Mobility Rights under the Québec Mobility Agreement to Québec Notaries and Amended Temporary Mobility Provisions for Lawyers from Québec and from the Northwest Territories, Yukon and Nunavut (the territories)

It was moved by Mr. Conway, seconded by Ms. Matheson, that Convocation approve the proposed amendments to By-Laws 4 and 6, as set out in the motions distributed under separate cover to implement its October 27, 2011 approval of,

- a. the extension of mobility rights under the Québec Mobility Agreement to Québec notaries; and
- b. amended temporary mobility provisions for lawyers from Québec and from the Northwest Territories, Yukon and Nunavut (the territories).

Carried

THE LAW SOCIETY OF UPPER CANADA

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

**BY-LAW 4
[LICENSING]**

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010, October 28, 2010, April 28, 2011, June 23, 2011 and September 22, 2011, be further amended as follows:

1. **Part VII of the English version of the By-Law is revoked and the following substituted:**

PART VII

INTER-PROVINCIAL PRACTICE OF LAW

GENERAL

Insurance and defalcation coverage

36. (1) No person shall practise law in Ontario under this Part 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 licensee who holds a Class L1 licence; 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 licensee who holds a Class L1 licence.

Insurance: exemption

(2) A person 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 in By-Law 6 for licensees who hold a Class L1 licence.

Interpretation: "National Excess Plan"

(3) In clause (1) (b), "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 authorized to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law.

Interpretation: "Inter-Jurisdictional Practice Protocol"

(4) In subsection (3), "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.

Application of Act, etc.

37. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the rules of professional conduct for licensees who hold a Class L1 licence apply, with necessary modifications, to a person who practises law in Ontario under this Part, other than a person who practises law in Ontario under this Part,

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

Conflict

(2) In the event of a conflict between the provisions of this Part and the provisions of any other by-law, the provisions of this Part prevail.

Proof of Compliance

38. (1) A person who is not a licensee and who purports to practise law in Ontario under this Part shall, upon the request of the Society and by not later than the day specified by the Society, provide proof to the satisfaction of the Society that he or she is in compliance with this Part.

Deemed failure to comply

(2) If the person fails to provide proof to the Society by the day specified by the Society, the person shall be deemed not to be in compliance with this Part.

Disclosure of information

39. (1) If a licensee 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 licensee'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 licensee 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 licensee necessary to permit the governing body to determine if the licensee 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.

PRIOR PERMISSION TO PRACTISE LAW**Application of section**

40. (1) This section applies to a person if the prior permission of the Society is required for the person to practise law in Ontario under a section in this Part.

Application for permission

(2) A person who requires prior permission to practise law in Ontario under a section in this Part shall apply to the Society.

Application form and fee

(3) An application under subsection (2) shall be contained in a form provided by the Society and shall be accompanied by payment of an application fee, if any.

Documents, explanations, releases, etc.

(4) For the purposes of assisting the Society to consider an application under subsection (2), an applicant shall provide,

- (a) to the Society, such documents and explanations as may be required; and
- (b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Application to be considered by Society

- (5) Every application under subsection (2) shall be considered by the Society.

Decision on application

(5.1) After considering an application under subsection (2), the Society shall determine, in accordance with the relevant section in this Part, that the applicant may practise law in Ontario or may not practise law in Ontario and so notify the applicant in writing.

Terms and conditions

(6) Permission to practise law in Ontario under a section in this Part granted to a person by the Society may include such terms and conditions as the Society considers appropriate.

Application to committee of benchers

(7) If the Society refuses to permit a person to practise law in Ontario under a section in this Part 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 under the section or of whether the terms and conditions are appropriate.

Time for application

(8) An application under subsection (7) shall be commenced by the applicant notifying the Society in writing of the application within thirty days after the day the applicant receives notice of the Society's refusal to permit the applicant to practise law in Ontario under a section in this Part.

Parties

(9) The parties to an application under subsection (7) are the applicant 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 a licence 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, in accordance with the relevant section in this Part, that,

- (a) the applicant may practise law in Ontario or may not practise law in Ontario; or
- (b) the terms and conditions included by the Society in its permission to practise law in Ontario are or are not appropriate.

Terms and conditions

(14) Permission to practise law in Ontario under a section in this Part granted to a person by the committee of benchers, or a decision with respect to the terms and conditions included by the Society in its permission to practise law in Ontario, 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 under a section in this Part granted to a person remains in effect until December 31 of the year in which permission is granted, unless otherwise provided for in this Part.

Permission automatically withdrawn

(17) Permission to practise law in Ontario under a section in this Part 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 under the section;

- (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 under the section;
- (c) does not comply with clause 36 (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 in which the person is authorized to practise law,
 - (i) revoking the person's authorization to practise law, or
 - (ii) suspending the person's authorization to practise law; or
- (e) practises law in Ontario in contravention of this Part.

Permission withdrawn

(17.1) Permission to practise law in Ontario under a section in this Part granted to a person may be withdrawn by the Society if the Society determines that continued permission to practise law in Ontario would be contrary to the public interest.

Application to committee of benchers

(17.2) If the Society, under subsection (17.1) withdraws a person's permission to practise law in Ontario under a section in this Part, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the permission was properly withdrawn.

Application of provisions to application to committee

(17.3) Subsections (8) to (15) apply, with necessary modifications, to an application under subsection (17.2).

Fee to practise law

(18) A person permitted to practise law in Ontario under a section in this Part may be required to, and if required to shall, pay a fee, to practise law in Ontario.

TEMPORARY PRACTICE OF LAW: LAWYERS FROM BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND
LABRADOR AND PRINCE EDWARD ISLAND

Application of ss 42 to 45

41. Sections 42 to 45 apply to a person if the person is authorized to practise law in any of the following provinces:

1. British Columbia.
2. Alberta.
3. Saskatchewan.
4. Manitoba.
5. New Brunswick.
6. Nova Scotia.
7. Newfoundland and Labrador.
8. Prince Edward Island.

Definition: “day”

42. (1) In this section and in sections 43 to 45, “day” means a calendar day or part of a calendar day.

Interpretation: practice of law

- (2) In this section and in sections 43 to 45.1, a person practises law in Ontario if the person,
- (a) performs professional services for others in the capacity of a barrister or solicitor;
or
 - (b) gives legal advice to others with respect to the laws of Ontario, the laws of a province or territory of Canada in which the person is authorized to practise law, the laws of Canada or public international law.

Interpretation: occasional practice of law

(3) In sections 43 to 45, a person practises law in Ontario on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

Occasional practice of law: excluded activities

(4) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, 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 to practise law in Ontario under subsection 43 (1) or permitted to practise law in Ontario under section 44.

Interpretation: economic nexus

(5) For the purposes of sections 43 and 45, subject to subsection (6), 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 to practise law in Ontario under section 43 or permitted to practise law in Ontario under section 44, if the person is not granted permission to practise law in Ontario under subsection 45 (1) or (2);
- (a.1) practises law in Ontario for more than the maximum number of days the person is permitted to practise law in Ontario under subsection 45 (1) or (2);
- (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 section 45.1;
- (e) becomes a resident in Ontario; or
- (f) acts in any other manner inconsistent with practising law in Ontario only on an occasional basis.

Same

(6) 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 person is authorized to practise law.

Occasional practice of law: prior permission not required

43. (1) A person who is not a licensee 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 named in section 41;
- (b) is not the subject of a criminal proceeding in any jurisdiction;
- (c) is not the subject of a conduct, capacity or competence proceeding in any jurisdiction;

- (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 jurisdiction in which the person is or was authorized to practise law,
 - (i) revoking the person's authorization to practise law, or
 - (ii) permitting the person to surrender his or her authorization to practise law;
- (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 jurisdiction in which the person is authorized to practise law suspending or limiting the person's authorization to practise law, other than for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;
- (f) has no terms, conditions, limitations or restrictions on the person's authorization to practise law in each jurisdiction in which the person is authorized to practise law; and
- (g) does not establish an economic nexus with Ontario.

Same

(2) A person who is not a licensee, if and so long as the person is authorized to practise law in a province mentioned in section 41 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, the Federal Court of Appeal, 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).

Occasional practice of law: prior permission required

44. (1) A person who is not a licensee and who is not entitled to practise law in Ontario on an occasional basis under subsection 43 (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis.

Requirement for permission

(2) Permission to practise law in Ontario on an occasional basis under this section shall not be granted if to grant permission to practise law in Ontario on an occasional basis would be contrary to the public interest.

Practising on more than an occasional basis

45. (1) A person who is entitled under section 43 to practise law in Ontario on an occasional basis may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society, if, and so long as, the person meets the applicable requirements mentioned in section 43.

Same

(2) A person who was permitted under section 44 to practise law in Ontario on an occasional basis may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society.

Practising on more than an occasional basis: economic nexus established

(3) A person who was entitled to practise law in Ontario under section 43 or who was permitted to practise law in Ontario under section 44, subsection (1) or subsection (2), who has established an economic nexus with Ontario and who has applied for a licence to practise law in Ontario as a barrister and solicitor may, with the prior permission of the Society, practise law in Ontario, subject to subsections 40 (17) and (17.1), until the later of,

- (a) the date the person is granted a licence to practise law in Ontario as a barrister and solicitor; and
- (b) the effective date of the final decision and order, with respect to the individual's application for a licence to practise law in Ontario as a barrister and solicitor, of the Hearing Panel or, if there is an appeal from the decision and order of the Hearing Panel, of the Appeal Panel.

Handling of money

45.1 A person who is entitled to practise law in Ontario under section 43 or who is permitted to practise law in Ontario under section 44 or 45 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 mentioned in section 41 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 licensee in accordance with By-Law 9 [Financial Transactions and Records] and the money is handled only by the licensee in accordance with By-Law 9 [Financial Transactions and Records].

TEMPORARY PRACTICE OF LAW: LAWYERS FROM QUEBEC AND THE TERRITORIES OF CANADA

Application of ss 47 to 50

46. Sections 47 to 50 apply to a person if,
- (a) the person is authorized to practise law in Quebec by the Barreau du Québec; or
 - (b) the person is authorized to practise law in any territory of Canada.

Interpretation: practice of law

47. (1) In this section and in sections 48 to 51, a person practises law in Ontario if the person,
- (a) performs professional services for others in the capacity of a barrister or solicitor; or
 - (b) gives legal advice to others with respect to the laws of Ontario, the laws of a province or territory of Canada in which the person is authorized to practise law, the laws of Canada or public international law.

Interpretation: occasional practice of law

- (2) In sections 48 and 49, a person practises law in Ontario on an occasional basis if, during a calendar year, the person practises law in Ontario in respect of not more than ten matters.

Occasional practice of law: excluded activities

- (3) The practice of law in Ontario as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, 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 ten matters mentioned in subsection (2) for the purposes of subsection 49 (1).

Occasional practice of law: prior permission not required

48. A person who is not a licensee, if and so long as the person is authorized to practise law in a province or territory mentioned in section 46, 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, the Federal Court of Appeal, 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).

Occasional practice of law: prior permission required

49. (1) A person who is not a licensee and who 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 mentioned in section 46;
- (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 in which the person is authorized to practise law; 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.

Additional requirement for permission

(2) Despite subsection (1), permission to practise law in Ontario on an occasional basis under this section shall not be granted if to grant permission to practise law in Ontario on an occasional basis would be contrary to the public interest.

Law specific to Ontario: competence

50. (1) A person who is entitled to practise law in Ontario under section 48 or who is permitted to practise law in Ontario under section 49 shall not practise law specific to Ontario unless the person is competent to practise law specific to Ontario.

Interpretation: "law specific to Ontario"

(2) In subsection (1), "law specific to Ontario" means any substantive or procedural law that applies specifically to Ontario.

Handling of money

51. A person who is entitled to practise law in Ontario under section 48 or who is permitted to practise law in Ontario under section 49 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 mentioned in section 46 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 licensee in accordance with By-Law 9 [Financial Transactions and Records] and the money is handled only by the licensee in accordance with By-Law 9 [Financial Transactions and Records].

PRACTICE OF LAW IN ONTARIO BY NOTARIES FROM QUEBEC

Permission to practise law in Ontario

52. (1) A person who is not a licensee, who is a member of the Chambre des Notaires du Québec, who is authorized to practise the notarial profession in Quebec and who is of good character may, with the prior permission of the Society, do any of the following:

1. Give a person advice with respect to,
 - i. the laws of Quebec,
 - ii. the laws of Canada, and
 - iii. public international law.
2. Select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada, if the laws of Canada expressly authorize the person to represent a party in the proceeding.
3. Represent a person in a proceeding before an adjudicative body with respect to matters concerning the laws of Canada, if the laws of Canada expressly authorize the person to represent a party in the proceeding.

Interpretation: member of the Chambre des Notaires du Québec

(2) For the purposes of subsection (1), a member of the Chambre des Notaires du Québec does not include a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles.

Additional requirement for permission

(3) Despite subsection (1), permission to practise law in Ontario under this section shall not be granted if to grant permission to practise law in Ontario would be contrary to the public interest.

2. Part VII of the French version of the By-Law is revoked and the following substituted:

PARTIE VII

EXERCICE INTER-PROVINCIAL DU DROIT

GÉNÉRALITÉS

Assurance et garantie contre les détournements

36. (1) Personne ne peut exercer le droit en Ontario aux termes de la présente partie à moins de satisfaire aux conditions suivantes :

- a) elle a une assurance responsabilité civile professionnelle la protégeant dans l'exercice du droit en Ontario, assurance dont la protection et les limites sont raisonnablement comparables à celles de l'assurance responsabilité civile professionnelle exigée des titulaires de permis de catégorie L1;
- b) elle a une couverture contre les détournements de fonds, autre que le Plan national d'indemnisation supplémentaire, qui protège spécifiquement la personne dans l'exercice du droit en Ontario et qui est au moins équivalente à la protection offerte aux titulaires de permis de catégorie L1.

Assurance : exonération

(2) Quiconque satisfait à l'une des exigences pour l'exemption de la contribution au titre des assurances prévue pour les titulaires de permis de catégorie L1 dans le règlement administratif n° 6 est dispensé de l'exigence décrite à l'alinéa (1) a).

Interprétation : « Plan national d'indemnisation supplémentaire »

(3) À l'alinéa (1) b), « Plan national d'indemnisation supplémentaire » s'entend du plan établi dans le cadre du Protocole sur l'exercice interjuridictionnel du droit dans le but d'indemniser toute personne qui subit une perte financière en raison du détournement de fonds ou d'autres biens par une personne autorisée à exercer le droit dans toute province ou tout territoire du Canada alors que la personne est engagée dans l'exercice du droit interprovincial.

Interprétation : « Protocole sur l'exercice interjuridictionnel du droit »

(4) Au paragraphe (3), « Protocole sur l'exercice interjuridictionnel du droit » signifie le protocole signé en 1994 et entre 1994 et 1996 au sujet de l'exercice interjuridictionnel du droit par le Barreau, le Law Society of British Columbia, le Law Society of Alberta, le Law Society of Saskatchewan, la Société du Barreau du Manitoba, le Barreau du Québec, la Chambre des notaires du Québec, le Barreau du Nouveau-Brunswick, le Law Society of Prince Edward Island, The Nova Scotia Barristers Society et le Law Society of Newfoundland, avec les modifications pouvant y être apportées.

Application de la Loi

37. (1) La Loi, les règlements, les règlements administratifs, les règles de pratique et de procédure et le Code de déontologie applicables aux titulaires de permis de catégorie L1 s'appliquent, avec les modifications nécessaires, à une personne qui exerce le droit en Ontario conformément à la présente partie, autre qu'une personne qui exerce le droit en Ontario conformément à la présente partie :

- a) en qualité d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal établi en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada; ou
- b) en qualité d'avocat ou d'avocate devant une cour ou un tribunal mentionné à l'alinéa a).

Incompatibilité

(2) En cas d'incompatibilité entre les dispositions de la présente partie et les dispositions de tout autre règlement administratif, les dispositions de la présente partie ont préséance.

Preuve de conformité

38. (1) Une personne non titulaire d'un permis qui prétend exercer le droit en Ontario en application de la présente partie doit, à la demande du Barreau et au plus tard le jour indiqué par le Barreau, fournir à ce dernier la preuve qu'il respecte la présente partie.

Présomption

(2) Si la personne n'a pas fourni au Barreau à la date indiquée par ce dernier la preuve demandée, elle est réputée ne pas respecter la présente partie.

Divulgence de renseignements

39. (1) Si des titulaires de permis font l'objet d'une enquête ou d'une instance à l'initiative de l'organisme de réglementation de la profession juridique d'un territoire ou d'une province du Canada autre que l'Ontario en raison de l'exercice du droit interprovincial par ces titulaires de permis dans la province ou le territoire, le Barreau peut, à la demande de l'organisme de réglementation, fournir à ce dernier l'information qu'il est raisonnable de fournir au sujet des titulaires de permis compte tenu des circonstances.

Idem

(2) Le Barreau peut fournir à l'organisme de réglementation de la profession juridique d'un territoire ou d'une province du Canada autre que l'Ontario les renseignements sur des titulaires de permis dont l'organisme a besoin pour établir si ces titulaires de permis sont habilités à exercer le droit à titre occasionnel ou plus souvent qu'à titre occasionnel, mais non de façon régulière, dans cette province ou ce territoire.

AUTORISATION PRÉALABLE D'EXERCER LE DROIT**Champ d'application de l'article**

40. (1) Le présent article s'applique aux personnes qui sont tenues d'obtenir l'autorisation préalable du Barreau pour exercer le droit en Ontario en vertu d'une disposition de la présente partie.

Demande d'autorisation

(2) Quiconque a besoin d'une autorisation préalable pour exercer le droit en Ontario en vertu d'une disposition de la présente partie présente une demande en ce sens au Barreau.

Formulaire de demande et frais

(3) La demande prévue au paragraphe (2) est présentée à l'aide du formulaire fourni par le Barreau et est accompagnée, s'il y a lieu, du paiement des frais liés à la demande.

Documents, explications, renonciations

(4) Pour aider le Barreau à étudier sa demande présentée en application du paragraphe (2), le requérant ou la requérante fait ce qui suit :

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

Examen de la demande par le Barreau

(5) Le Barreau étudie chaque demande présentée en application du paragraphe (2).

Décision

(5.1) Après avoir étudié la demande présentée en vertu du paragraphe (2), le Barreau décide, conformément à la disposition pertinente de la présente partie, que le requérant ou la requérante peut ou ne peut pas exercer le droit en Ontario et en avise le demandeur par écrit.

Conditions

(6) L'autorisation d'exercer le droit en Ontario qu'accorde le Barreau en vertu d'une disposition de la présente partie peut être assortie des conditions que le Barreau estime appropriées.

Demande présentée à un comité de conseillers

(7) Si le Barreau refuse d'autoriser une personne à exercer le droit en Ontario en vertu d'une disposition de la présente partie ou assortit l'autorisation de conditions, cette personne peut demander, par voie de requête, à un comité de conseillers nommé à cet effet par le Conseil de décider si elle peut exercer le droit en Ontario en vertu de cette disposition ou si les conditions sont appropriées.

Délai de présentation de la requête

(8) Une requête au titre du paragraphe (7) doit commencer par l'envoi par le requérant ou la requérante d'un avis écrit au Barreau dans les trente jours suivant la réception par le requérant ou la requérante de l'avis de refus du Barreau empêchant le requérant ou la requérante d'exercer le droit en Ontario en vertu d'une disposition de la présente partie.

Parties

(9) Les parties à une requête présentée en vertu du paragraphe (7) sont le requérant ou la requérante et le Barreau.

Quorum

(10) Au moins trois membres du comité de conseillers examinent la requête présentée en vertu du paragraphe (7) et rendent une décision à cet égard.

Procédure

(11) Les règles de pratique et de procédure s'appliquent, avec les adaptations nécessaires, à l'examen, par le comité de conseillers, d'une requête présentée en vertu du paragraphe (7) comme si l'examen de la requête était une audience portant sur une demande de permis présentée en application de l'article 27 de la Loi.

Idem

(12) Si les règles de pratique et de procédure n'abordent pas un point de procédure, la *Loi sur l'exercice des compétences légales* s'applique à l'examen, par le comité de conseillers, d'une requête présentée en vertu du paragraphe (7).

Décision

(13) Après avoir examiné la requête présentée en vertu du paragraphe (7), le comité de conseillers décide, conformément à la disposition pertinente de la présente partie,

- a) que le requérant ou la requérante peut exercer le droit en Ontario ou ne peut pas le faire;
- b) que les conditions dont le Barreau a assorti l'autorisation d'exercer le droit en Ontario sont ou ne sont pas appropriées.

Conditions

(14) L'autorisation d'exercer le droit en Ontario qu'accorde le comité de conseillers en vertu d'une disposition de la présente partie, ou une décision concernant les conditions dont le Barreau a assorti l'autorisation d'exercer le droit en Ontario, peut être assortie des conditions que le comité estime appropriées.

Décision définitive

(15) La décision du comité de conseillers à l'égard d'une requête présentée en vertu du paragraphe (7) est définitive.

Durée de l'autorisation

(16) L'autorisation d'exercer le droit en Ontario accordée à une personne en vertu d'une disposition de la présente partie reste en vigueur jusqu'au 31 décembre de l'année où l'autorisation a été accordée, sauf dispositions contraires de la présente partie.

Retrait de l'autorisation

(17) L'autorisation d'exercer le droit en Ontario accordée à une personne en vertu d'une disposition de la présente partie est automatiquement retirée à celle-ci dans les cas suivants :

- a) la personne ne satisfait pas, le cas échéant, aux exigences relatives à l'autorisation d'exercer le droit en Ontario en vertu de cette disposition;
- b) elle cesse d'avoir le pouvoir d'exercer le droit dans un territoire ou une province du Canada autre que l'Ontario, pouvoir en raison duquel elle a reçu l'autorisation d'exercer le droit en Ontario en vertu de cette disposition;
- c) elle ne se conforme pas à l'alinéa 36 (1) a);
- d) elle est visée par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada dont elle est membre a rendue à son encontre et qui :
 - (i) révoque l'autorisation de la personne à exercer le droit;
 - (ii) suspend l'autorisation de la personne à exercer le droit;
- e) elle exerce le droit en Ontario à l'encontre d'une disposition de la présente partie.

Idem

(17.1) Le Barreau peut retirer l'autorisation d'exercer le droit en Ontario accordée à une personne en vertu d'une disposition de la présente partie s'il détermine que le maintien de cette autorisation serait contraire à l'intérêt public.

Demande présentée à un comité de conseillers

(17.2) Si le Barreau retire, en vertu du paragraphe (17.1), l'autorisation d'une personne à exercer le droit en Ontario en vertu d'une disposition de la présente partie, cette personne peut demander, par voie de requête, à un comité de conseillers nommé à cet effet par le Conseil de décider si l'autorisation a été retirée à bon droit.

Dispositions applicables à la requête

(17.3) Les paragraphes (8) à (15) s'appliquent, avec les adaptations nécessaires, à une requête présentée conformément au paragraphe (17.2).

Frais d'autorisation d'exercice

(18) Toute personne autorisée à exercer le droit en Ontario en vertu d'une disposition de la présente partie peut être tenue de payer des frais pour y exercer le droit.

EXERCICE DU DROIT À TITRE TEMPORAIRE : AVOCATS ET AVOCATES DE LA
COLOMBIE-BRITANNIQUE, DE L'ALBERTA, DE LA SASKATCHEWAN, DU MANITOBA, DU
NOUVEAU-BRUNSWICK, DE LA NOUVELLE-ÉCOSSE, DE TERRE-NEUVE-ET-LABRADOR
ET DE L'ÎLE-DU-PRINCE-ÉDOUARD

Application des articles 42 à 45

41. Les articles 42 à 45 s'appliquent à une personne si elle est autorisée à pratiquer le droit dans l'une des provinces suivantes :

1. Colombie-Britannique;
2. Alberta;
3. Saskatchewan;
4. Manitoba.
5. Nouveau-Brunswick;
6. Nouvelle-Écosse;
7. Terre-Neuve-et-Labrador;
8. Île-du-Prince-Édouard.

Définition : « jour »

42. (1) Dans le présent article et aux articles 43 à 45, « jour » s'entend d'un jour civil complet ou partiel.

Interprétation : exercice du droit

(2) Dans le présent article et aux articles 43 à 45.1, une personne exerce le droit en Ontario dans les cas suivants :

- a) elle fournit des services professionnels en qualité d'avocat ou d'avocate;

- b) elle offre des conseils juridiques sur le droit ontarien, sur le droit de la province ou du territoire du Canada où elle est autorisée à exercer le droit, sur le droit canadien ou sur le droit international public.

Interprétation : exercice du droit à titre occasionnel

(3) Aux articles 43 à 45, exerce le droit à titre occasionnel en Ontario quiconque n'y exerce pas le droit pendant plus de 100 jours au cours de l'année civile.

Exercice occasionnel du droit : activités exclues

(4) N'entre pas dans le calcul du nombre maximal de jours pendant lesquels une personne est habilitée à exercer le droit en Ontario conformément au paragraphe 43 (1) ou y est autorisée conformément à l'article 44 toute période consacrée à l'exercice du droit en qualité d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal administratif créé en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada.

Interprétation : présence économique

(5) Aux fins des articles 43 et 45, sous réserve du paragraphe (6), une personne établit une présence économique en Ontario dans les cas suivants :

- a) elle exerce le droit en Ontario pendant plus longtemps que le nombre maximal de jours pendant lesquels elle y est habilitée conformément à l'article 43 ou autorisée conformément à l'article 44, si elle n'a pas été autorisée à exercer le droit en Ontario conformément aux paragraphes 45 (1) ou (2);
- a.1) elle exerce le droit en Ontario pendant plus longtemps que le nombre maximal de jours pendant lesquels elle y est autorisée conformément aux paragraphes 45 (1) ou (2);
- b) elle ouvre, en Ontario, un bureau où elle exerce le droit;
- c) elle ouvre ou gère un compte en fiducie dans une institution financière établie en Ontario;
- d) elle reçoit des sommes d'argent en fiducie pour un client ou une cliente d'une autre manière que celle permise aux termes de l'article 45.1;
- e) elle devient une résidente de l'Ontario;
- f) elle agit de toute autre manière incompatible avec l'exercice du droit en Ontario à titre occasionnel seulement.

Idem

(6) N'établit pas une présence économique en Ontario quiconque ne fait qu'exercer le droit en Ontario à partir d'un bureau situé en Ontario qui est affilié à un cabinet d'avocats d'une province ou d'un territoire du Canada autre que l'Ontario où la personne est autorisée à exercer le droit.

Autorisation préalable d'exercice occasionnel non requise

43. (1) Quiconque n'est pas titulaire de permis peut, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel tant qu'il remplit les conditions suivantes :

- a) il est autorisé à exercer le droit dans une province désignée à l'article 41;
- b) il ne fait l'objet d'une instance criminelle dans aucun ressort;
- c) il ne fait l'objet d'une instance en matière de conduite, de capacité ou de compétence dans aucun ressort;
- d) il n'est pas ni n'a jamais été, selon son dossier, visé par une ordonnance qu'un tribunal de chaque organisme de réglementation de la profession juridique d'un ressort où il est ou était autorisé à exercer le droit a rendue à son encontre et qui :
 - (i) révoque son autorisation à exercer le droit;
 - (ii) lui permet de remettre son autorisation d'exercer le droit;
- e) il n'est pas ni n'a jamais été, selon son dossier, visé par une ordonnance d'un tribunal de chaque organisme de réglementation de la profession juridique de chaque ressort où il est autorisé à exercer le droit, ordonnance suspendant ou limitant son autorisation à exercer le droit pour un autre motif que le défaut de paiement des frais à l'organisme de réglementation, l'insolvabilité ou la faillite ou un autre problème administratif;
- f) son autorisation d'exercer le droit dans chaque ressort où il est autorisé à exercer le droit n'est assortie d'aucune condition ni restriction;
- g) il n'établit pas de présence économique en Ontario.

Idem

(2) Quiconque n'est pas titulaire de permis peut, tant qu'il est autorisé à exercer le droit dans une province désignée à l'article 41 et qu'il n'établit pas de présence économique en Ontario, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel en qualité :

- a) soit d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal administratif créé en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada;
- b) soit d'avocat ou d'avocate d'un tribunal judiciaire ou administratif visé à l'alinéa a).

Autorisation préalable d'exercice occasionnel requise

44. (1) Quiconque n'est pas titulaire de permis et n'est pas habilité à exercer le droit en Ontario à titre occasionnel en application du paragraphe 43 (1) peut, avec l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel.

Autorisation requise

(2) L'autorisation d'exercer le droit en Ontario à titre occasionnel conformément au présent article est refusée si elle est contraire à l'intérêt public.

Exercice du droit plus souvent qu'à titre occasionnel

45. (1) Quiconque est habilité en vertu de l'article 43 à exercer le droit en Ontario à titre occasionnel peut le faire plus souvent qu'à ce titre, avec l'autorisation préalable du Barreau et de la manière autorisée par celui-ci, tant qu'il satisfait aux exigences énoncées à l'article 43.

Idem

(2) Quiconque est habilité en vertu de l'article 44 à exercer le droit en Ontario à titre occasionnel peut le faire plus souvent qu'à ce titre, avec l'autorisation préalable du Barreau et de la manière autorisée par celui-ci.

Exercice du droit plus souvent qu'à titre occasionnel : présence économique

(3) Quiconque a été habilité à exercer le droit en Ontario en vertu de l'article 43 ou autorisé à le faire en vertu de l'article 44, du paragraphe (1) ou du paragraphe (2), a établi une présence économique en Ontario et a demandé un permis d'exercice du droit en Ontario à titre d'avocat ou d'avocate peut exercer le droit en Ontario, avec l'autorisation préalable du Barreau et sous réserve des paragraphes 40 (17) et (17.1), jusqu'à la plus tardive des occurrences suivantes :

- a) la date où la personne reçoit un permis d'exercice du droit en Ontario en tant qu'avocat ou avocate; et
- b) la date de prise d'effet de la décision sans appel et de l'ordonnance rendues par le Comité d'audition ou, en cas d'appel de la décision et de l'ordonnance du Comité d'audition, par le Bureau d'appel, relativement à la demande de la personne en vue d'obtenir un permis d'exercice du droit en Ontario à titre d'avocat ou d'avocate.

Opérations touchant des fonds

45.1. Quiconque est habilité à exercer le droit en Ontario en application de l'article 43 ou autorisé à le faire en application de l'article 44 ou de l'article 45 peut, dans le cadre de son exercice du droit en Ontario, recevoir des fonds en fiducie pour un client ou une cliente si, selon le cas :

- a) il dépose les fonds dans un compte en fiducie ouvert auprès d'une institution financière située dans une province désignée à l'article 41 où il est autorisé à exercer le droit;
- b) il dépose les fonds dans un compte en fiducie établi au nom du ou de la titulaire de permis et exploité par ce dernier ou cette dernière, en conformité avec le règlement administratif n° 9 [Transactions financières et registres] et l'argent est manipulé exclusivement par le ou la titulaire de permis en conformité avec le règlement administratif n° 9 [Transactions financières et registres].

**EXERCICE TEMPORAIRE DU DROIT : AVOCATS ET AVOCATES DU QUÉBEC ET DES
TERRITOIRES DU CANADA**

Application des articles 47 à 50

46. Les articles 47 à 50 s'appliquent à une personne dans les cas suivants :

- a) elle est autorisée à exercer le droit au Québec par le Barreau du Québec;
- b) elle est autorisée à exercer le droit dans un territoire du Canada.

Interprétation : exercice du droit

47. (1) Dans le présent article et aux articles 48 à 51, une personne exerce le droit en Ontario dans les cas suivants :

- a) elle fournit des services professionnels en qualité d'avocat ou d'avocate;
- b) elle offre des conseils juridiques sur le droit ontarien, sur le droit de la province ou du territoire du Canada où elle est autorisée à exercer le droit, sur le droit canadien ou sur le droit international public.

Interprétation : exercice du droit à titre occasionnel

(2) Aux articles 48 et 49, exerce le droit à titre occasionnel en Ontario quiconque y exerce le droit à l'égard de dix affaires ou moins au cours de l'année civile.

Exercice occasionnel du droit : activités exclues

(3) Aux fins du paragraphe 49 (1), n'entre pas dans le calcul des dix affaires mentionnées au paragraphe (2) l'exercice du droit en Ontario en qualité d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal administratif créé en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada.

Exercice occasionnel du droit : autorisation préalable non requise

48. Quiconque n'est pas titulaire de permis peut, dans la mesure où il est autorisé à exercer le droit dans une province ou un territoire désigné à l'article 46, exercer le droit en Ontario à titre occasionnel, sans l'autorisation préalable du Barreau,

- a) en qualité d'avocat ou d'avocate dans une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal établi en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada;
- b) en qualité d'avocat ou d'avocate devant un tribunal judiciaire ou administratif mentionné à l'alinéa a).

Exercice occasionnel du droit : autorisation préalable requise

49. (1) Quiconque n'est pas titulaire de permis et n'est pas habilité à exercer le droit en Ontario à titre occasionnel en vertu du paragraphe (1) peut, avec l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel s'il remplit les conditions suivantes :

- a) il est autorisé à exercer le droit dans une province ou un territoire désigné à l'article 46;
- b) il n'est visé par aucune ordonnance qu'un tribunal de chaque organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada où il est autorisé à exercer le droit a rendue à son encontre;
- c) son autorisation d'exercer le droit dans chaque province ou territoire du Canada où il est autorisé à exercer le droit n'est assortie d'aucune condition ni restriction.

Exigence additionnelle

(2) Malgré le paragraphe (1), l'autorisation d'exercer le droit en Ontario à titre occasionnel conformément au présent article est refusée si elle est contraire à l'intérêt public.

Droit propre à l'Ontario : compétence

50. (1) Quiconque est habilité en vertu de l'article 48 ou autorisé en vertu de l'article 49 à exercer le droit en Ontario ne doit pas exercer le droit propre à l'Ontario sauf s'il a la compétence nécessaire pour exercer le droit propre à l'Ontario.

Interprétation : « droit propre à l'Ontario »

(2) Au paragraphe (1), « droit propre à l'Ontario » s'entend des règles juridiques de fond ou des règles de procédure qui s'appliquent spécifiquement à l'Ontario.

Opérations touchant des fonds

51. Quiconque est habilité en vertu de l'article 48 ou autorisé en vertu de l'article 49 à exercer le droit en Ontario peut, dans le cadre de son exercice du droit en Ontario, recevoir des fonds en fiducie pour un client ou une cliente si, selon le cas :

- a) il ne reçoit ces fonds qu'à titre d'honoraires pour des services qui n'ont pas été encore rendus au client ou à la cliente et les dépose dans un compte en fiducie ouvert auprès d'une institution financière située dans une province ou un territoire désigné à l'article 46 où il est autorisé à exercer le droit;
- b) il verse l'argent dans un compte en fiducie établi au nom d'un ou d'une titulaire de permis et exploité par ce dernier ou cette dernière, en conformité avec le règlement administratif n° 9 [Transactions financières et registres] et l'argent est manipulé exclusivement par le ou la titulaire de permis en conformité avec le règlement administratif n° 9 [Transactions financières et registres].

EXERCICE DU DROIT EN ONTARIO PAR LES NOTAIRES DU QUÉBEC**Autorisation d'exercer le droit en Ontario**

52. (1) Quiconque n'est pas titulaire de permis, est membre de la Chambre des notaires du Québec, est autorisé à exercer la profession de notaire au Québec et est de bonnes mœurs peut, avec l'autorisation préalable du Barreau, poser les actes suivants :

- 1. Fournir un avis à une personne :
 - i. sur les lois du Québec,
 - ii. sur les lois du Canada,
 - iii. sur le droit international public.
- 2. Choisir, rédiger, achever ou réviser un document devant servir dans une instance tenue à l'égard d'affaires concernant le droit du Canada, s'il est expressément autorisé par le droit du Canada à représenter une partie à cette instance.

3. Agir pour autrui dans le cadre d'une instance tenue devant un organisme juridictionnel à l'égard d'affaires concernant le droit du Canada, s'il est expressément autorisé par le droit du Canada à représenter une partie à cette instance.

Interprétation : membre de la Chambre des notaires du Québec

(2) Aux fins du paragraphe (1), n'est pas membre de la Chambre des notaires du Québec un membre qui y a été admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles.

Exigence additionnelle

(3) Malgré le paragraphe (1), l'autorisation d'exercer le droit en Ontario conformément au présent article est refusée si elle est contraire à l'intérêt public.

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER

SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

BY-LAW 6

[PROFESSIONAL LIABILITY INSURANCE]

THAT By-Law 6 [Professional Liability Insurance], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, February 21, 2008 and September 24, 2009, be further amended as follows:

1. **Subsection 9 (3) of the English version of the By-Law is revoked and the following substituted:**

Interpretation: occasional practice of law

(3) For the purposes of paragraph 2 of subsection (1), in any year, a licensee engages in the practice of law on an occasional basis if, during that year, the licensee engages in the practice of law in respect of not more than ten matters.

2. **Subsection 9 (3) of the French version of the By-Law is revoked and the following substituted:**

Interprétation : exercice occasionnel du droit

(3) Pour l'application de l'alinéa 2 du paragraphe (1), exercent le droit occasionnellement les titulaires de permis qui, au cours de l'année, traitent un maximum de dix affaires.

3. Subclause 9 (4) (a) (ii) of the English version of the By-law is amended by deleting “until December 31, 2011,”.

4. Subclause 9 (4) (a) (ii) of the French version of the By-law is amended by deleting “jusqu’au 31 décembre 2011,”.

Re: Renewal of Territorial Mobility Agreement and Amendment to By-Law 6

It was moved by Mr. Conway, seconded by Ms. Matheson, that Convocation approve the renewal of the Territorial Mobility Agreement, set out in at Appendix 3 of the Report, urge the Federation of Law Societies of Canada to investigate, within three years, the factors impeding the territories’ participation in the temporary mobility provisions of the National Mobility Agreement and consider possible solutions, and approve the amendment to By-law 6, as set out in the motion distributed under separate cover, to reflect the removal of the expiry date for the Territorial Mobility Agreement.

Carried

FINANCE COMMITTEE REPORT

Ms. Hartman presented the Report.

Report to Convocation
November 24, 2011

Finance Committee

Committee Members
Carol Hartman (Chair)
Alan Silverstein (Vice-Chair)
Bob Aaron
John Callaghan
Mary Louise Dickson
Paul Dray
Larry Eustace
Susan Hare
Vern Krishna
Janet Leiper
Michael Lerner
Dan Murphy
Ross Murray
Judith Potter
Gerald Swaye
Robert Wadden
Peter Wardle

Purpose of Report: Decision

Prepared by the Finance Department
Fred Grady, Manager, Finance, 416-947-3439

TABLE OF CONTENTS

For Decision:

LibraryCo Inc. 2012 Budget.....TAB A

Draft 2012 Law Society Budget.....TAB B

COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on November 10, 2011. Committee members in attendance were Carol Harman (Chair) (teleconference), Alan Silverstein (Vice-Chair), John Callaghan, Larry Eustace, Susan Hare (teleconference), Janet Leiper, Michael Lerner (teleconference), Dan Murphy, Ross Murray, Judith Potter, Gerald Swaye (teleconference), Robert Wadden, and Peter Wardle.
2. Adriana Doyle also attended.
3. Staff in attendance: Malcolm Heins, Fred Grady and Andrew Cawse.

FOR DECISION

2012 LIBRARYCO INC BUDGET

Motion

4. That Convocation approve LibraryCo Inc.'s budget for 2012.
5. LibraryCo's budget process was similar to previous years in that all counties were requested to submit detailed budget requests. The board requested counties to provide explanations for increases in expenditures in excess of 2%. Materials were reviewed by staff and approved by the LibraryCo Board.
6. The draft 2012 budget increases expenditures from \$8.2 million to \$8.3 million. This is a 1.9% increase. In particular:
 - Law Library grants are budgeted to increase by 2.1% to \$6.1 million
 - The costs of electronic products are budgeted to decrease by 2% to \$898,000
 - Administrative and centralized services are budgeted to decrease by a nominal amount.
7. The increases are funded by:
 - an increase of 1,000 in the number of lawyers
 - use of LibraryCo's General Fund. \$317,000 of prior year surpluses in the General Fund has been allocated to finance operations in 2012. LibraryCo has used \$1.2 million in reserves over the last three years. The General Fund and Reserve Fund are virtually at the minimum levels established by board policy.

- the grant from the Law Foundation of Ontario increasing by \$25,000 to \$722,000.
8. The draft 2012 budget results in a per lawyer levy of \$203, an increase of \$7 from 2011.

FOR DECISION

2012 LAW SOCIETY BUDGET

Motion

9. That Convocation approve the 2012 Law Society budget including:

for lawyers, the amount of the annual fee of \$1,826 comprising:

| | |
|-------------------|----------------|
| General Fee | \$1,326 |
| Compensation Fund | 222 |
| LibraryCo | 203 |
| Capital | <u>75</u> |
| Total | <u>\$1,826</u> |

for paralegals, the amount of the annual fee of \$982 comprising:

| | |
|-------------------|--------------|
| General Fee | \$693 |
| Compensation Fund | 214 |
| LibraryCo | 0 |
| Capital | <u>75</u> |
| Total | <u>\$982</u> |

10. The only change to the budget as presented at the Benchers Information Session on October 27, 2011 is an increase in the number of budgeted lawyer Licensing Process candidates, resulting in increased Licensing Process revenues of \$400,000. This amount has reduced the use of the prior year surplus. The increase in candidates is based on the most up to date experience in 2011, attributable primarily to volumes of National Committee on Accreditation candidates.
11. The Society's draft 2012 budget materials are presented in two books:
- 2012 Draft Budget Summary
 - 2012 Draft Budget Detail (in camera)
12. The draft budget proposes an increase in the annual levy for lawyers of \$41 from \$1,785 to \$1,826 or 2.3%.
13. This is the fifth year of including paralegals in the budget. The budget proposes an increase in the annual levy for paralegals of \$25 from \$957 to \$982 or 2.6%.

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

- (1) Copy of LibraryCo Inc. Draft 2012 Budget. (pages 5 – 8, page 7 (in camera))
- (2) Under separate cover, copies of Law Society of Upper Canada, 2012 Draft Budget Summary, Law Society of Upper Canada, 2012 Draft Budget Detail (in camera) and 2012 Draft Budget slides document.

Re: LibraryCo Inc. 2012 Budget

It was moved by Ms. Hartman, seconded by Mr. Silverstein, that Convocation approve LibraryCo Inc.'s budget for 2012.

Carried

Re: Law Society 2012 Budget

1. It was moved by Ms. Hartman, seconded by Mr. Silverstein, that Convocation approve the 2012 Law Society budget including:

for lawyers, the amount of the annual fee of \$1,826 comprising:

| | |
|-------------------|----------------|
| General Fee | \$1,326 |
| Compensation Fund | 222 |
| LibraryCo | 203 |
| Capital | 75 |
| Total | <u>\$1,826</u> |

for paralegals, the amount of the annual fee of \$982 comprising:

| | |
|-------------------|--------------|
| General Fee | \$693 |
| Compensation Fund | 214 |
| LibraryCo | 0 |
| Capital | 75 |
| Total | <u>\$982</u> |

Carried

Ms. Hartman thanked Malcolm Heins, Fred Grady and Andrew Cawse for their work on the budget.

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

Ms. Minor presented the Law Society's *Guide to Developing a Customer Service Accessibility Policy* for information.

Report to Convocation
November 24, 2011

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Susan Hare, Vice Chair
Constance Backhouse
Paul Copeland
Cathy Corsetti
Mary Louise Dickson
Adriana Doyle
Seymour Epstein
Julian Falconer
Howard Goldblatt
Janet Leiper
Dow Marmur
Wendy Matheson
Judith Potter
Susan Richer
Heather Ross
Paul Schabas
Baljit Sikand
Beth Symes

Purpose of Report: Information

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

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (Equity Committee) met on November 9, 2011. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Cathy Corsetti, Adriana Doyle, Julian Falconer, Howard Goldblatt, Susan Hare, Judith Potter and Susan Richer participated. Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Sandra Yuko Nishikawa, Vice-Chair of the Equity Advisory Group/Groupe consultatif en matière d'équité, participated. Staff members Josée Bouchard, Juda Strawczynski and Jim Varro attended.

FOR INFORMATION

ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005 – GUIDE TO
DEVELOPING A CUSTOMER SERVICE ACCESSIBILITY POLICY

2. In 2005, the *Accessibility for Ontarians with Disabilities Act, 2005* (the AODA) was enacted to improve accessibility for persons with disabilities. The goal is to make Ontario accessible by 2025 for everyone, including persons with disabilities.
3. The AODA makes provisions for the development and adoption of regulations that have created or will create ‘accessibility standards’ that law firms must adopt. The ‘accessibility standards’ will include the following five areas:
 - a. customer service;
 - b. transportation;
 - c. information and communications;
 - d. employment; and
 - e. built environment.
4. The *Accessibility Standards for Customer Service* (the *Customer Service Standards*) were adopted in 2007 as the first standards adopted under the AODA, and are effective on January 1, 2012 for providers of goods and services.
5. As part of a series of guides created by the Law Society of Upper Canada to assist law firms in developing their own resources (including providers of legal services, paralegal firms, legal clinics, legal departments and legal non-profit organizations), the Law Society developed the *Guide to Developing a Customer Service Accessibility Policy* (Appendix 1). The *Guide* is meant to assist law firms in developing the resources to comply with the *Customer Service Standards*.
6. The Equity Advisory Group reviewed the *Guide* and comments from the group were integrated into the *Guide*.

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR 2011- 2012

7. The calendar of Public Education Equality and Rule of Law Series is presented at Appendix 2.

Appendix 1

THE LAW SOCIETY OF UPPER CANADA

Accessibility for Ontarians with
Disabilities Act, 2005 - Guide to Developing
a Customer Service Accessibility Policy

October, 2011

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I. Introduction

In 2005, the *Accessibility for Ontarians with Disabilities Act, 2005* (the *AODA*)¹ was enacted to improve accessibility for persons with disabilities. The goal is to make Ontario accessible by 2025 for everyone, including persons with disabilities.²

The *AODA* makes provisions for the development and adoption of regulations that have created or will create 'accessibility standards' that law firms must adopt. The 'accessibility standards' will include the following five areas:

- customer service;
- transportation;
- information and communications;
- employment; and
- built environment.

The *Accessibility Standards for Customer Service Regulation* (the *Customer Service Standards*)³ was adopted in 2007 under the *AODA*⁴, and are effective on January 1, 2012 for providers of goods and services.

As part of a series of guides created by the Law Society of Upper Canada (the Law Society)⁵ to assist law firms in developing their own resources (including providers of legal services, paralegal firms, legal clinics, legal departments and legal non-profit organizations)⁶, the Law Society developed this *Guide to Developing a Customer Service Accessibility Policy (the Guide)*. The *Guide* is meant to assist law firms in developing the resources to comply with the *Customer Service Standards*.

Providers under the *Customer Service Standards* are defined as "every person or organization that provides goods or services to members of the public or third parties and has at least one employee in Ontario". This includes law firms in Ontario.⁷ Law firms and the legal profession are involved in a wide range of services to members of the public, for example,

¹ S.O. 2005, c. 11.

² The purpose of the *AODA* is stated as follows in Section 1: "[r]ecognizing the history of discrimination against persons with disabilities in Ontario, the purpose of this Act is to benefit all Ontarians by, developing (a) developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025; and (b) providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of the accessibility standards."

³ O. Reg. 429/07 [*Customer Service Standards*].

⁴ *AODA*, *supra* note 1.

⁵ Law Society guides are available online at <http://rc.lsuc.on.ca/jsp/equity/policies-publications-reports.jsp>

⁶ The term law firm in this document will be used to include providers of legal services, paralegal firms, legal clinics, legal departments and legal non-profit organizations.

⁷ *Customer Service Standards*, *supra* note 3 at s. 1(1).

- meeting with clients;
- providing corporate legal services to clients;
- representing clients before courts and tribunals;
- maintaining professional relationships with other lawyers and paralegals;
- delivering education programs;
- holding business development and social events.

The *Customer Service Standards* apply to all services provided to the public and third parties.

The *Integrated Accessibility Standards*⁸ were also adopted and have been in force since July 1, 2011. They establish accessibility standards relating to information and communications, employment and transportation. The *Integrated Accessibility Standards* have resulted in a notable change in human rights and accessibility law related not only to human resources practices, but also to how organizations in Ontario conduct business.

Among other things, private sector organizations, such as law firms, must establish accessibility policies and plans, in addition to incorporating accessibility criteria and features in the procurement or acquisition of goods, services or facilities. They will also be responsible for providing training on the Ontario *Human Rights Code* (*Code*)⁹ as it pertains to persons with disabilities.

Private sector organizations, including law firms, must comply with the relevant requirements under the *Integrated Accessibility Standards* at the latest on January 1, 2014, except for a few sections that are effective January 1, 2012.¹⁰ A guide to assist law firms in implementing the *Integrated Accessibility Standards* will also be developed for the profession.

This *Guide* is only up-to-date as at the date of writing. When drafting a policy, firms should ensure that they comply with relevant and current legislation and jurisprudence. Any legislative or jurisprudential changes should be taken into account.

Firms should note that the *AODA* does not replace nor is it a substitute for requirements established under the *Code*. Neither does it negate obligations under *Rules of Professional Conduct*,¹¹ *Paralegal Rules of Conduct* or the *Code*.¹² It is a misconception that adherence to the *AODA* and/or its standards means that the *Rules*, *Paralegal Rules* or the *Code* is not applicable.

⁸ O Reg. 191/11.

⁹ R.S.O. 1990, c. H.19.

¹⁰ The following sections must be complied with by January 1, 2012: "Organizations that prepare emergency procedures, plans or public safety information and make them available to the public must provide the information in an accessible format as soon as practicable, upon request." (*Supra* note 8 at s. 13) Individualized workplace emergency response information must be provided to employees who have a disability, if the disability is such that the individualized information is necessary and the employer is aware of the need for accommodation due to the employee's disability. *Supra* note 8 at s. 27.

¹¹ Adopted by Convocation of the Law Society of Upper Canada on June 22, 2000, effective November 1, 2000 and amendments current to April 28, 2011.

¹² Adopted by Convocation of the Law Society of Upper Canada on March 29, 2007, effective May 1, 2007 and amendments current to April 28, 2011.

The *Guide* is divided as follows:

- Overview of Legal Principles;
- How Law Firms Should Approach the Sample Policy;
- Sample Policy.

II. Overview of Legal Principles

A. Application

The *Customer Service Standards* apply to designated public sector organizations and to “every other person or organization, including law firms, with one or more employee in Ontario that provides goods or services either directly to the public or to other third parties”. They do not apply to services provided internally within a law firm (e.g. services to employees).

The *Customer Service Standards* contain additional requirements for law firms with 20 or more employees that are not imposed on smaller law firms, as described in the section entitled “Requirements for Medium and Large Firms” of this *Guide*.

1. Determining the Number of Employees

For the purposes of determining whether an organization has 20 or more employees, an employee is considered to be a person in an employee-employer relationship with the employer and includes support staff, paralegals, law clerks and associates. Determining whether an individual holds employee status with the firm is dependent on the particular circumstances of that individual. Usually this depends on whether the firm pays the employee wages or a salary, has control over the work assigned to the employee and has a right to control the details of the work.

All full-time, part-time and contract employees should be counted when determining whether the organization has 20 or more employees. Generally, volunteers and independent contractors are not included in the count.

Law firms are encouraged to consult the Ministry of Community and Social Services guides when determining whether they have 20 or more employees, more particularly in the context of partnerships or corporations.¹³

B. Definition of Customer

A customer is generally anyone who accesses the goods and services of a firm. The *Customer Service Standards* provide that the standards apply to organizations that provide goods and services to “members of the public and other third parties”. In the context of legal services, customers are typically referred to as “clients”. In this guide, the term “client” or “clients” will be used to refer to customers with disabilities who access the goods and services of law firms.

¹³ *Guide: Accessibility Standards for Customer Service* (Toronto: Ministry of Community and Social Services, April 2009) at 15. “If you are self-employed, either as a sole proprietor or in a partnership, you should not count yourself as an employee in determining how many employees you have. In this situation you and any business partner that you may have are not employees...If you run your own business and it is incorporated, you may be an employee of the corporation along with other employees you have.” [Guide: Accessibility Standards].

C. *Definition of Disability*

The definition of “disability” in the *AODA*¹⁴ is consistent with the definition of “disability” in the *Code*¹⁵ and is as follows:

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- b) a condition of mental impairment or a developmental disability,
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d) a mental disorder, or
- e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.

The definition includes disabilities of different severity and non-visible and visible disabilities. Disability has been interpreted in case law under the *Code* as including a disability that may be the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all these factors.¹⁶ The focus is on the effects of the distinction, preference or exclusion experienced by the person and not on proof of physical limitations or the presence of an ailment.

D. *Relationship to Other Laws, Rules and Regulations*

The *AODA* complements rather than replaces other laws related to accessibility that may apply to law firms, such as the *Code*.¹⁷ It states that “nothing in this Act or in the regulations diminishes in any way the legal obligations of [...] any person or organization with respect to persons with disabilities that are imposed under any other Act or otherwise imposed by law”. When there is a conflict between laws and/or regulations, the provision that provides the highest level of accessibility prevails.¹⁸

¹⁴ *AODA*, *supra* note 1 at s. 2.

¹⁵ The *Code*, *supra* note 9.

¹⁶ See *The 2010 Annotated Ontario Human Rights Code* (Toronto: Carswell, 2010) for an outline of case law defining “disability” at 93-97.

¹⁷ *Customer Service Standards*, *supra* note 3 at s. 3; the *Code*, *supra* note 9.

¹⁸ *AODA*, *supra* note 1 at s. 38.

E. *Obligations to Adopt Policies, Practices and Procedures*

The *Customer Service Standards* specify that “every provider of goods or services shall establish policies, practices and procedures governing the provision of its goods or services to persons with disabilities”.¹⁹ Law firms that have at least 20 employees in Ontario must prepare documents describing their policies, practices and procedures and, upon request, give a copy of a document to any person.²⁰

The policies, practices and procedures must be consistent with the following principles:

- The goods or services must be provided in a manner that *respects the dignity and independence* of persons with disabilities;
- The provision of goods and services to persons with disabilities must be integrated, unless an alternate measure is necessary to enable a person with disabilities to obtain the goods or services;
- Persons with disabilities must be given an *opportunity equal to that given to others* to obtain the goods or services.²¹

These principles are described by the Ministry of Community and Social Services as follows:

- *Dignity* means to treat persons with disabilities as “customers and clients who are as valued and as deserving of effective and full service as any other client. [...] people with disabilities [should not be treated] as an afterthought or [be] forced [...] to accept lesser service, quality to convenience.”²²
- *Independence* means the “freedom from control or influence of others [...]. In some situations, it may mean the freedom to do things in a manner that is individually suitable.”²³
- *Integrated services* are those “that allow people with disabilities to fully benefit from the same services, in the same place and in the same or similar way as other customers. It means that policies, practices and procedures are designed to be accessible to everyone including people with disabilities.”²⁴
- *Equal opportunity* means “having the same chances, options, benefits and results as others [...]. They should not have to make significantly more effort to access or obtain services. They should also not have to accept less quality or more inconvenience.”²⁵

¹⁹ *Customer Service Standards*, *supra* note 3 at s. 3(1).

²⁰ *Ibid.* at s. 3 (5).

²¹ *Ibid.* at s. 3 (2).

²² *Guide: Accessibility Standards*, *supra* note 13 at 25.

²³ *Ibid.* at 27.

²⁴ *Ibid.* at 28.

²⁵ *Ibid.* at 29.

F. *Use of Personal Assistive Devices and Other Accessibility Measures*

Firm policies must address and “deal with the use of personal assistive devices by persons with disabilities to obtain, use or benefit from the provider’s goods or services or the availability, if any, of other measures which enable them to do so”.²⁶

Personal assistive devices are usually devices that people bring with them, such as a walker or a personal oxygen tank. Depending on the context, they may also include other tools such as a magnifying glass, hearing aid or screen reader software. Generally, these devices are relatively inexpensive.²⁷ A law firm may also provide assistive devices to its clients, such as the use of TTY lines (Text Telephone).

The policies of a firm might be general, such as a policy allowing people to use their personal assistive devices to access the services. If the firm offers any assistive devices that enable persons with disabilities to use its services (such as real-time captioning), the firm may wish to include information about such devices in the policies, practices and procedures.

For general tips about providing legal services to people with disabilities, please consult *Providing Legal Services to People with Disabilities*²⁸ available at: <http://archdisabilitylaw.ca/?q=providing-legal-services-people-disabilities-0>.

G. *Communications*

The *Customer Service Standards* require that organizations take into account a person’s disability in their communications with that person.²⁹

The purpose of this requirement is to promote effective communication by considering how each person with disabilities expresses, receives and processes communication. Some general approaches to promoting accessible communication are described below.³⁰

- *Make the original communication more accessible:* Sometimes communication can be made accessible if the requirements of persons with disabilities are considered during the planning stage of service provision. For example, using plain language can help to make a document easier to read for people with certain learning disabilities. Similarly, if Internet sites are created in a way that considers how assistive devices operate to help persons with disabilities access information online, the sites will likely be more accessible.³¹

²⁶ *Customer Service Standards*, *supra* note 3 at s. 3(3).

²⁷ See Joe Dale, *Six Steps to marketing Employment for People who Have a Disability*, 2002. Over two-thirds of job accommodations cost less than \$500 (<http://www.odenetwork.com/2010/10/page/2/>). M. David Lepofsky, “A Report Card on the Charter’s Guarantee of Equality to Persons with Disabilities after 10 Years – What Progress? What Prospects?” (1997) 7 *National Journal of Constitutional Law* 263.

²⁸ (Toronto: ARCH Disability Law Centre, 2011).

²⁹ *Supra* note 3 at s. 3(4).

³⁰ For a full discussion, see *Guide – Accessibility Standards*, *supra* note 13 at 33.

³¹ The World Wide Web consortium has released a set of guidelines to enhance website accessibility. The Guidelines explain how to make web content accessible to persons with disabilities. For further information see <http://www.w3.org/TR/WAI-WEBCONTENT/>.

- *Change the usual method of communication to meet an individual's requirements:* A alternate method of making communication accessible is to offer information in a different medium. For instance, an organization may offer alternative formats of print documents (e.g. large print and audio format).
- *Use assistive devices or services:* There are a variety of assistive devices or services that a provider might want to consider in communicating with clients with disabilities. For example, an office that provides detailed and sometimes lengthy information by phone might use a TTY to communicate with its clients who are Deaf, hard of hearing, have speech impairments or are deaf-blind.

There is a range of ways in which to communicate with a person with disabilities. A provider should use communication methods that take into account the person's disability in a particular situation in order to meet the requirements of the *Customer Service Standards* and legal obligations pursuant to the *Code*.

H. Support Persons

1. Defining Support Persons

The *Customer Service Standards* define a "support person" in relation to a person with disability as "another person who accompanies him or her in order to help with communication, mobility, personal care or medical needs or with access to goods or services".³² Personal support may include, but is not limited to, physically transferring an individual from one location to another or assisting an individual with eating or using the washroom. Support for medical needs may include, but are not limited to, monitoring an individual's health or providing medical support by being available in the event of a seizure.

A support person may be for example a paid professional, a volunteer, a family member or friend, a case worker or a social worker. Support persons do not necessarily need to have special training or qualifications.

2. Application

Firms must ensure that a person with disabilities who is accompanied by a support person is permitted to enter the premises together and that the person with disabilities has access to the support person while on the premises.³³

³² *Customer Service Standards*, *supra* note 3 at s. 4(8).

³³ *Ibid.* at s. 4(4). If a person with disabilities is accompanied by a support person, the provider of goods or services shall ensure that both persons are permitted to enter the premises together and that the person with disabilities is not prevented from having access to the support person while on the premises."

In some situations, an organization may require persons with disabilities to be accompanied by a support person. However, this is only in instances where a support person is necessary to protect the health or safety of the person with disabilities or the health or safety of others on the premises.³⁴ A determination of whether a support person is “necessary” usually occurs after consulting with a person with disability. A consultation serves as a means to ascertain whether to allow the support person on the premises, while at the same time, fulfilling the firm’s obligations to protect the health or safety of the person with disabilities or of others on the premises.

In deciding whether or not a support person is necessary, the following factors may be taken into consideration:³⁵

- *Personal risk:* Persons with disabilities are free to accept a reasonable risk of injury to themselves when not accompanied by a support person. Different individuals have a different tolerance for risk. Risk should be weighed against any benefit for the person with disabilities.
 - *Assessing health and safety risks:* A support person must be necessary or essential to protect the health and safety of the person with disabilities before a firm requires that a support person accompany the person with disabilities. The provincial government’s *Guide: Accessibility Standards* suggests the following considerations when determining whether a support person is required:
 - o when there is a significant risk to the health and safety of the person with disabilities or others;
 - o that risk is greater than the risk associated with other customers;
 - o that risk cannot be eliminated or reduced by other means;
 - o the assessment of the risk is based on consideration of the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm; and
 - o the assessment of the risk is based on the individual’s actual characteristics, not merely on generalizations, misperceptions ignorance or fears about a disability.³⁶
3. Confidentiality

Support persons often play an essential role in assisting persons with disabilities. Upon consent of the person with disabilities, a support person may be present while information is being exchanged between a lawyer and the client. The support person may also call the lawyer on the client’s behalf, attend at meetings, and assist the client in communicating with the lawyer. The role of the support person may include providing moral support, acting as an interpreter, or assisting the lawyer in formulating questions in a manner best suited to the client.

³⁴ *Ibid.* at s. 4(5). “The provider of goods or services may require a person with a disability to be accompanied by a support person when on the premises, but only if a support person is necessary to protect the health or safety of the person with a disability or the health or safety of others on the premises.”

³⁵ *Guide: Accessibility Standards*, *supra* note 13 at 43-45.

³⁶ *Ibid.* at 44.

The lawyer should ensure that it is the instructions of the client that are being received. A lawyer should also make every effort to assess whether there is a power imbalance between the client and the support person and whether the client has capacity to make independent decision. To assess this, he or she may wish to meet with the client alone for part of the discussion to ensure that he or she is receiving instructions from the client.

Particular care should also be taken by the lawyer to ensure that there is no breach of confidentiality on the part of the support person and should consider the impact of privilege when a client is using a support person. It is the lawyer's responsibility to ensure that information exchanged between the lawyer and client remains confidential.³⁷

I. Service Animals

1. Defining Service Animals

Service animals are used by persons with various types of disabilities, including autism, mental disabilities and physical or dexterity disabilities. Examples of service animals are dogs used by persons who are blind and hearing alert animals for those who are Deaf, deafened or hard of hearing.

The *Customer Service Standards* define a guide dog by reference to section 1 of the *Blind Persons' Rights Act* which states that a guide dog is one that has been trained in facilities listed in the *Guide Dogs* regulation or at any other designated guide dog training facility.³⁸

An animal is deemed to be a "service animal" in cases where it is "readily apparent that the animal is being used by the person for reasons relating to his or her disability" or where the person "provides a letter from a physician or nurse confirming that the person requires the animal for reasons relating to the disability."³⁹

2. Application

Law firms must ensure that a person is permitted to be accompanied by a guide dog or other service animal in the areas that are generally open to the public or third parties.⁴⁰

³⁷ ARCH Disability Law Centre, *Bar Admission Course, Professional Responsibility, Chapter 11: Providing Legal Services to Persons with Disabilities* (Toronto: Law Society of Upper Canada, 2005). Also see *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, 2000) at Rules 2.03 and *Paralegals Rules of Conduct* at Rule 3.03.

³⁸ *Guide Dogs*, R.R.O. 1990, Reg. 58.

³⁹ *Customer Service Standards*, *supra* note 3 at s. 4(9).

⁴⁰ *Ibid.* at s. 4(2). "If a person with disabilities is accompanied by a guide dog or other service animal, the provider of goods or services shall ensure that the person is permitted to enter the premises with the animal and to keep the animal with him or her unless the animal is otherwise excluded by law from the premises."

There is an exception to the general rule. When another statute or regulation specifically states that animals must be excluded or when, by operation of another law, the animal is excluded, the service animal should not be permitted onto the premise or that area of the premise. Two examples of laws that specifically exclude animals are regulations under the *Health Protection and Promotion Act*⁴¹ and the Food Safety and Quality Act, 2001⁴². These laws restrict the use of service animals in areas where food is manufactured or prepared. Similarly, health and safety requirements may restrict the use of service animals.

Where an animal is excluded by law from the premises, the firm must ensure that other measures are available to allow the person with disabilities to obtain the services.⁴³ The firm may wish to explain to the individual why the animal is excluded and explore what other arrangements that can be made to provide the services. This might mean temporarily leaving the animal in a permitted and secure area or offering to serve the person in another location.

J. When does the Rule Apply and Documentation - Support Persons and Service Animals

1. Premises

The *Customer Service Standards* provide that the rules related to service animals and support persons apply only to the premises owned or operated by the provider of the goods or services where the public or third parties have access to the premises.⁴⁴ Organizations are considered to be operating a premise if they have control over it and are responsible for determining who is allowed to enter and exit the premises or areas of those premises. The rules would not apply, for example, to a lawyer who is employed by a law firm when he or she is working from home.

2. Requirement to Document – Firms with 20 or more Employees

Law firms with at least 20 employees in Ontario must prepare documents describing their policies, practices and procedures with respect to service animals and support persons.

K. Notice Regarding Disruptions in Service

The *Customer Service Standards* state “If, in order to obtain, use or benefit from a provider’s goods or services, persons with disabilities usually use particular facilities or services of the provider and if there is a temporary disruption in those facilities or services in whole or in part, the provider shall give notice of the disruption to the public”.⁴⁵ Such facilities or services could include escalators, elevators, accessible washrooms or TTY services. In the context of a law firm, disruption in services could include the disruption of legal services to clients.

⁴¹ R.S.O. 1990, c. H.7.

⁴² S.O. 2001, c. 20.

⁴³ *Customer Service Standards*, *supra* note 3 at s. 4 (3).

⁴⁴ *Ibid.* at s. 4(1). “This section applies if goods or services are provided to members of the public or other third parties at premises owned or operated by the provider of the goods or services and if the public or third parties have access to the premises.”

⁴⁵ *Ibid.* at s. 5.

The notice of disruption must include information about the reason for the disruption, its anticipated duration and a description of alternative facilities or services, if any.

Law firms should post the notice where people are likely to find it, for example, on the door to the premises, on the website, or by any other reasonable method that would get the information to people with disabilities seeking to access your services.

Law firms with at least 20 employees in Ontario must prepare a document that sets out the steps to be taken in connection with a temporary disruption and, upon request, provide a copy to any person.

L. Training

1. Recipients of Training

The *Customer Service Standards* state “Every provider of goods or services shall ensure that the following persons receive training about the provision of its goods or services to persons with disabilities: every person who deals with members of the public or other third parties on behalf of the provider, whether the person does so as an employee, agent, volunteer or otherwise and every person who participates in developing the provider’s policies, practices and procedures governing the provision of goods or services to members of the public or other third parties.”⁴⁶

Determining which employees to train should not simply be based on a person’s job description. It should be based on what the person does in practice on a regular basis. For example, security guards may not have public interactions in their job description, but if they assist with addressing disturbances or providing directions when asked, they interact with the public.

It is anticipated that firms will have to provide training to almost all associates or partners of the firm, as they would interact with clients on a regular basis. Education would also likely be provided to, for example, summer students, law students and administrative staff who provide services to third parties. In this regard, the Ministry of Community and Social Services provides resources to assist private sector organizations.⁴⁷

2. Training Content

The *Customer Service Standards* provide that the training must include,

- a review of the purposes of the AODA and requirements of the *Customer Service Standards*;
- instruction on how to interact and communicate with people with various types of disabilities;

⁴⁶ *Ibid.* at 6(1).

⁴⁷ Ministry of Community and Social Services online: <<http://www.mcscs.gov.on.ca/en/mcscs/programs/accessibility/index.aspx>>

- instruction on how to interact with persons with disabilities who use assistive devices or require the assistance of a guide dog, other service animal or a support person;
- instruction on how to use equipment or devices available on firm premises or that the firm otherwise provides, that may help people with disabilities access services; and
- instruction on what to do if a person with disabilities is having difficulty accessing firm services.⁴⁸

3. Training Format

Other than the content outlined above, the *Customer Service Standards* do not indicate the format of the training. Therefore, law firms could design their own training programs through, for example, orientation sessions, online modules, in a classroom setting.

4. Timing of Training

As the *Customer Service Standards* are applicable to law firms as of January 1, 2012, those who provide services to members of the public or third parties should participate in training before that date. Training must be provided as soon as practicable after an individual has been assigned duties that include interaction with the public, or development of policies, practices and procedures related to customer service.

A law firm must provide training, on an ongoing basis, in connection with changes to policies, practices or procedures on the provision of legal services to persons with disabilities.

M. Feedback Process

The *Customer Service Standards* require that firms establish “a process for receiving and responding to feedback about the manner in which it provides goods or services to persons with disabilities and shall make information about the process readily available to the public.”⁴⁹ The process must specify the actions that the provider of goods or services is required to take if a complaint is received.

All law firms with 20 or more employees must prepare a document describing its feedback process and, upon request, give a copy to any person.

1. Type of Process

The firm can structure its own feedback process as long as it permits persons to provide their feedback in person, by telephone, in writing, or by delivering an electronic text by email or on diskette or otherwise.⁵⁰ The feedback process must specify the actions that the firm is required to take if a complaint is received.⁵¹

⁴⁸ *Customer Service Standards*, *supra* note 3 at s. 6(2).

⁴⁹ *Ibid.* at s. 7.

⁵⁰ *Ibid.* at s.7 (2).

⁵¹ *Ibid.* at s. 7(3).

While the *Customer Service Standards* do not specify the format of the feedback process, the firm should bear in mind that the *Customer Service Standards* require any communication with a person with disabilities to take into account the person's disability.⁵²

N. *Enforcement of Standards*

The AODA sets out the mechanisms by which the accessibility standards will be enforced. Each person or organization bound by accessibility standards is required to file an annual accessibility report with a director appointed under the AODA. These reports must be publicly available.⁵³ With respect to the *Customer Service Standards*, the *Exemption from Reporting Requirements* regulation⁵⁴ exempts providers with fewer than 20 employees, other than designated public sector organizations, from reporting. Only designated public sector organizations and other providers of goods and services that have 20 employees or more are required to file accessibility reports.

The AODA also provides that inspectors will be appointed with the power to enter and investigate. Directors appointed under the AODA may order people or organizations to comply with an accessibility standard, file an accessibility report or pay an administrative penalty for contravening a standard.⁵⁵

O. *Compliance Checklists*

The Ministry of Community and Social Services published a *Compliance Manual*,⁵⁶ which includes checklists to assist service providers in complying with the *Customer Service Standards*. The manual is available on the website at:
http://209.167.40.96/units/unit_cust-serv-reg/doc_workbook/lang_en/files/Compliance-Manual_EN.pdf

P. *Requirements for Medium and Large Firms*

As mentioned earlier, if a law firm has 20 or more employees, it has the following obligations that smaller firms do not have:

- *Document in writing* all policies, practices and procedures for providing accessible customer service and meet other document requirements set out in the standard.
- *Notify customers* that the documents required under the *Customer Service Standards* are available upon request.
- *When giving documents* in response to a request to a person with disabilities, provide the information in a format that takes into account the person's disability.

⁵² *Ibid.* at s.3 (4).

⁵³ AODA, *supra* note 1 at s. 14.

⁵⁴ O Reg. 430/07.

⁵⁵ AODA, *supra* note 1, s. 21(3).

⁵⁶ (Toronto: Ministry of Community and Social Services, October 2008).

Documentation

The documents that are required are as follows:

- one or more documents describing its policies, practices and procedures;⁵⁷
- one or more documents describing its policies, practices and procedures with respect to the use of service animals and support persons;
- a document that sets out the steps to be taken in connection with a temporary disruption;
- a document describing its training policy, including a summary of the contents of the training and details of when the training is to be provided;
- a document describing its feedback process.

1. Notification to Customers

Every firm with at least 20 employees in Ontario must notify persons to whom it provides services that the documents required by the *Customer Service Standards* are available upon request.⁵⁸ There is no specific rule about how the firm should inform the public. The notice may be given by posting the information at a conspicuous place on firm premises, posting it on the firm's website or by any other reasonable method.⁵⁹

2. Provision of Information

If the firm receives a request for a copy of a document from a person with disabilities, the firm must provide the document, or the information contained in the document, in a format that takes into account the person's disability. The firm and the person with disabilities may agree upon the format to be used.⁶⁰

For example, some persons with disabilities may use cassette tapes or digital audio formats to access information.

Some persons with disabilities may be able to use the documents in a variety of formats. For example a person who has low vision and has a digital audio player other electronic device and computer may be able to use several formats. They may be able to read a large print copy of a document or listen to a cassette tape or digital audio version of the document. They may also be able to read an electronic version (such as a version sent by e-mail or a mailed DVD) using a large print program on their computer. Other individuals, depending on their disability and circumstances, may have only one option. For example a person who is deaf-blind and who does not have access to an accessible computer may only use Braille.

⁵⁷ Customer Service Standards, *supra* note 3 at s. 3(5)

⁵⁸ *Ibid.* at s. 8(1).

⁵⁹ *Ibid.* at s. 8(2).

⁶⁰ *Ibid.* at s. 9

Q. Sample Policy

Explanation

The sample policy included in this document is a precedent and is intended to provide guidance, rather than to represent the ultimate or ideal policy. The precedent applies to a legal environment composed of partners, associates and other staff, not subject to a collective agreement. Firms should adapt and tailor the precedents to their own structure and culture.

[Name of Firm]'s Customer Service Accessibility Policy

This policy is consistent with the *Accessibility Standards for Customer Service* (Customer Service Standard) made under the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA).

1. Purpose and Commitment

The Firm is committed to maintaining an accessible environment for persons with disabilities in the delivery of its goods and services.

The Firm will use reasonable efforts to ensure that its policies, practices and procedures governing the provision of its services to persons with disabilities are consistent with the following principles:

- goods and services are provided in a way that respects the dignity and independence of persons with disabilities;
- persons with disabilities are able to benefit from the same services, in the same place and in a similar way as other clients;
- persons with disabilities have opportunities equal to as others to obtain, use and benefit from the Firm's goods or services.

2. Definitions

For the purposes of this policy:

"Disability" means,

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- b) a condition of mental impairment or a developmental disability,
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d) a mental disorder, or
- e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*.

“Guide dog” means a dog trained as a guide for a person who is blind or visually impaired.

“Service animal” means an animal for a person with disabilities where it is readily apparent that the animal is used by the person for reasons relating to his or her disability or where the person provides a letter from a physician or nurse confirming that the he or she requires the animal for reasons relating to the disability.

“Support person” means, in relation to a person with disabilities, another person who accompanies him or her in order to help with communication, mobility, personal care or medical needs or with access to goods and services.

3. Application of Policy

This policy applies to Firm services that are provided externally to the public or third parties.

The policy applies to all lawyers, paralegals and staff at the Firm, agents, volunteers, clients, and visitors to the Firm. All areas of the Firm are accountable for providing accessibility to persons with disabilities.

4. Providing goods and services to persons with disabilities

The Firm is committed to excellence in serving all clients, including persons with disabilities, and will carry out its functions and responsibilities by,

- communicating with persons with disabilities in ways that take into account their disability.
- serving persons with disabilities who use assistive devices. The Firm will provide its staff with training on how to use the assistive devices available on the Firm premises.
- ensuring that persons with disabilities who are accompanied by their guide dog or other service animals are permitted to enter the premises of the Firm with the animal and to keep the animal with them, unless the animal is excluded by law from the premises.
- ensuring that persons with disabilities who are accompanied by a support person are permitted to enter the Firm’s premises with their support person. At no time will persons with disabilities who are accompanied by their support person be prevented from having access to their support person while on the Firm premises.

5. Support Persons

Person with disabilities may enter the Firm’s premises with a support person and have access to the support person while on the premises.

The Firm does not charge fees for support persons or if fees are charged for admission to the premises (e.g. special events), the Firm shall provide notice of the amount in advance.

The Firm may require persons with disabilities to be accompanied by a support person when on the premises, but only if a support person is necessary to protect the health and safety of the person with disabilities or the health or safety of others on the premises.

6. Service Animals

A person with disabilities may be accompanied by a guide dog or other service animal when on the Firm premises. In the event that service animals are excluded by law from the premises, the firm will provide other resources or supports to enable the person with disabilities to access the services and goods offered by the Firm.

7. Notice of temporary disruption

The Firm will notify the public in the event of a planned or unexpected disruption in the facilities or services usually used by persons with disabilities. This notice will include information about the reason for the disruption, its anticipated duration, and a description of alternative facilities or services, if available.

The notices will be posted at all public entrances and service counters of the Firm, or communicated by such method as is reasonable in the circumstances.

8. Training for staff

The Firm will train its staff and other individuals who provide services to the public on the Firm's behalf on the provision of its goods or services to persons with disabilities.

The training will be provided as soon as practicable after a staff commences his or her duties and will include the following topics:

- the purposes of the *Accessibility for Ontarians with Disabilities Act, 2005* and the requirements of the customer service standard;
- how to interact and communicate with persons with various types of disabilities;
- how to interact with persons with disabilities who use an assistive device or require the assistance of a guide dog, service animal or a support person;
- how to use or access the equipment or devices available on the Firm's premises or otherwise that may help with the provision of goods or services to persons with disabilities;
- what to do if a person with a particular type of disability is having difficulty in accessing the Firm's goods and services;
- the Firm's policies, practices and procedures relating to the customer service standard.

The Firm will provide training on an ongoing basis when changes are made to the Firm's policies, practices and procedures governing the provision of goods or services to persons with disabilities.

9. Feedback process

The Firm welcomes any feedback regarding the methods it uses to provide goods and services to persons with disabilities. Individuals may provide their feedback in person, by telephone, in writing, or by delivering an electronic text by email or on diskette or otherwise to [insert contact information, including phone numbers, email and address].

Complaints may be made in writing to [insert contact person]. The [insert contact person] will review and assess every complaint received. Where possible, the [insert contact person] will address the issues. If a complaint cannot be addressed, the [insert contact person] will advise the complainant.

10. Modifications to this or other policies

Changes will not be made to this policy unless the impact of the changes on persons with disabilities has been considered.

Any Firm policy that does not respect and promote the dignity and independence of persons with disabilities will be modified or removed.

11. Questions about this policy

If anyone has a question about the policy, or if the purpose of the policy is not understood, please contact the [insert contact person including phone number, email and address].

12. Maintenance of documents

The Firm will maintain documents describing its policies, practices and procedures and, upon request, shall give a copy of a document to any person. The documents will include policies, practices and procedures with respect to the following:

- use of support persons;
- use of guide dogs or service animals;
- the steps to be taken in connection with a temporary disruption;
- the training policy, including a summary of the contents of the training and details of when the training is to be provided;
- records of the training provided under this policy, including the dates on which the training is provided and the number of individuals to whom it is provided;
- the feedback process.

The Firm will notify persons to whom it provides goods and services of its policies, by posting the information at a conspicuous place on the Firm premises, on the Firm website or by such method as is reasonable in the circumstances.

When required under this policy to give a copy of a document to a person with disabilities, the Firm will provide the document or information in a format that takes into account the person's disabilities.

Addendum

Glossary of Terms

Accessibility - Accessibility is the degree to which persons with disabilities can access a device, service or environment without barriers. Accessibility is also a process - it is the proactive identification, removal and prevention of barriers to persons with disabilities.

Accessibility Standards – Regulations or rules created under the AODA that provide minimum levels for improving accessibility to meet the goals of the AODA across the province.

Public Sector Organizations – These organizations include the Legislative Assembly, ministries of the provincial government of Ontario and Ontario municipalities. Also included are most boards, commissions, authorities and agencies.

Personal Assistive Devices – Devices that a client may bring with them to a meeting.

Support Person - In relation to a person with disability as another person who accompanies him or her in order to assist with communication, mobility, personal care or medical needs or with access to goods or services

Goods and Services - Goods are tangibles things (e.g. laptop), while services are things that someone does for you but are not tangible (e.g. legal advice).

Annual Accessibility Report - A report that a person or organization must file if an accessibility standard applies to the person or organization.

Appendix 2

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR TO JUNE 2012

BLACK HISTORY MONTH

February 7, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

INTERNATIONAL WOMEN'S DAY

March 2, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

LA JOURNEE DE LA FRANCOPHONIE

Wednesday, March 21, 2012

Convocation Hall (6:00 p.m. – 8:00 p.m.)

RULE OF LAW SERIES

March 28 or 29, 2012 (tentative)

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

HOLOCAUST REMEMBRANCE DAY

April 17, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

ASIAN AND SOUTH ASIAN HERITAGE MONTH

May 17, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

ACCESS AWARENESS – LEGAL SYMPOSIUM ON DISABILITY ISSUES

June 6, 2012

Lamont Learning Centre (4:00 p.m. – 8:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

NATIONAL ABORIGINAL HISTORY MONTH

June 19, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

PRIDE WEEK

June 21, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

LAW SOCIETY FOUNDATION

Ms. Boyd presented a report on the Feed-the-Hungry Program.

REPORT FOR INFORMATION**AUDIT COMMITTEE REPORT**

- Law Society of Upper Canada Financial Statements for the nine months ended September 30, 2011
- Investment Compliance Reporting as at September 30, 2011
- LibraryCo Financial Statements for the six months ended June 30, 2011
- Other Committee Work

Report to Convocation
November 24, 2011

Audit Committee

Committee Members
Christopher Bredt (Chair)
Jack Braithwaite
Susan Elliott
Seymour Epstein
Robert Evans
Vern Krishna
Malcolm Mercer
Kenneth Mitchell
Barbara Murchie
Jack Rabinovitch
James Scarfone
Bradley Wright

Purpose of Report: For Information

Prepared by the Finance Department
Fred Grady, Manager, Finance, 416-947-3439

COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on November 9, 2011. Committee members in attendance were Chris Bredt (c), Jack Braithwaite, Seymour Epstein, Susan Elliott (teleconference), Robert Evans, Vern Krishna, Malcolm Mercer, Barbara Murchie, James Scarfone (teleconference), Bradley Wright (teleconference).
2. Also in attendance was Heather Ross.
3. Also in attendance were Sam Persaud and Natasha Wilson from Deloitte LLP, Susan Nickerson from Hicks Morley and Kent Lum from AON Hewitt.
4. Law Society staff in attendance were Malcolm Heins, Laura Cohen, Fred Grady, Brenda Albuquerque-Boutilier, Felicia North and Andrew Cawse.

FOR INFORMATION

LAW SOCIETY FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2011

5. The Audit Committee recommends Convocation receive the financial statements for the Law Society for the third quarter of 2011 for information.

Law Society of Upper Canada Financial Statements
For the nine months ended September 30, 2011

Financial Statement Highlights

The Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit organizations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.

The Financial Statements for the six months ended September 30, 2011 comprise the following statements with comparative numbers for September 30, 2010:

- Balance Sheet
- Statement of Revenues and Expenses. Detailed results of operations for lawyers and paralegals are combined on the Statement of Revenue and Expenses. Summarized results for both lawyers and paralegals are reported on the Statement of Changes in Fund Balances. Supplementary schedules comparing actual results to budget are also provided for lawyers and paralegals.
- Statement of Changes in Fund Balances

Supplemental schedules include Schedules of Revenues and Expenses for the Lawyer and Paralegal General Funds, the Compensation Fund and the Errors and Omissions Insurance Fund.

Balance Sheet

- Current assets at the end of September 2011 have increased to \$87.3 million from \$77.8 million. Cash and short-term investment balances have increased due to a year-to-date surplus in the Lawyer General Fund which is mainly attributable to increased CPD course registration revenues and a higher number of applicants for the licensing process. Accounts receivable balances have increased due to higher member levies and premiums in the current year. Most of the prepaid expense balance relates to annual E&O insurance premiums paid or payable for the year, which are expensed over the full year.
- Portfolio investments are shown at fair value of \$69.3 million, a decrease from \$74.1 million in 2010 due to transfers from the E&O Fund. Approximately 13% of the portfolio is held in equity investments, limiting exposure to the latest stock market volatility.
- Deferred Revenue has increased to \$39.8 million from \$35.5 million. This is largely the result of increased fees and premiums, in the E&O Fund and the General Fund. Full recognition of these revenues will occur over the remaining three months of the year.
- The amount due to LAWPRO has remained stable at \$19.7 million. The payable will decline by year-end as insurance premiums and levies collected are paid to LAWPRO.

- The provision for unpaid grants / claims comprises the provision for unpaid grants – Compensation Fund and the provision for unpaid claims – E&O Fund with balances at the end of September 2011 of \$11.7 million and \$686,000 respectively. Provisions have increased from the prior year balances of \$7.9 million and \$654,000. The provision for unpaid grants in the Compensation Fund represents the estimate for unpaid claims and inquiries against the Compensation Fund, supplemented by the costs for processing these claims and reflects the current year's claims experience. The provision for unpaid claims in the E&O Fund represents claims liabilities for 1995 and prior. Effective 1995, 100% of the risk above the individual member deductible was insured through LAWPRO so the E&O Fund is in run-off mode.
- The Law Society Act permits a member who has dormant trust funds, to apply for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. At the end of September, unclaimed money held in trust amounts to \$2.3 million, compared to \$2.1 million in the prior year.

Statement of Revenues and Expenses

- The General Fund incurred a surplus of \$2.5 million at the end of the third quarter of 2011, compared with a deficit of \$1.7 million in 2010. As discussed below, this is due to an increase in revenues of \$6.2 million partly offset by an increase in net expenses of \$2.0 million. The 2011 budget incorporated the use of \$2.5 million in funding from the Unrestricted Fund and \$920,000 from the Paralegal Fund balances. Actual use of these funds is contingent on a deficit occurring.
- The Society's restricted funds report a deficit of \$3.6 million for the period. The deficit is primarily within the Compensation Fund in the amount of \$1.4 million and in the E&O Fund in the amount of \$1.1 million. In the third quarter of 2011, the Compensation Fund experienced an increase in new claims totaling approximately \$1 million. The deficit in the E&O Fund is due to remittances to LAWPRO exceeding premiums.
- General Fund annual fee revenue is recognized on a monthly basis. Annual fees recognized in the first three quarters of the year have increased to \$34.4 million in 2011 from \$31.1 million in 2010. This is a consequence of the fee increase of \$81 per lawyer and \$26 per paralegal, in 2011, compounded by an increase in the number of lawyers and paralegals billed.
- Restricted fund annual fees decreased slightly to \$13.9 million with decreases in the Compensation Fund and LibraryCo levies offset by an increase in the Capital Allocation levy. Insurance premiums and levies have increased to \$75.5 million from \$68.1 million. This increase is primarily a result of the increase in base premiums charged to lawyers in 2011. The base premium in 2011 is \$3,350 compared to \$2,950 in 2010.
- Professional development and competence revenues have increased to \$11.7 million from \$9.0 million in 2010. This is mainly due to increased continuing education course registration revenue, which, if current trends continue, is projected to reach a total of \$7 million by year-end, against a budget of \$4.7 million and compared to total 2010 revenues of \$3.4 million. A secondary factor in the increased revenues is the higher number of lawyer and paralegal licensing process candidates.

- Total investment income has decreased to \$1.9 million from \$4.1 million in 2010. The interest and dividend income component has decreased slightly from \$2.2 million to \$1.9 million due to bond holdings being exposed to relatively lower interest rates as term renewals occur. Total realized and unrealized gains have decreased from \$1.9 million to nil reflecting capital market conditions experienced during the nine months leading up to the period ended September 30, 2011.
- Other income in the restricted funds has decreased to \$863,000 from \$8.5 million as 2010 saw the settlement of the E&Y/Tillinghast litigation.
- Regulatory expenses of \$15.5 million are higher than the same period in 2010 by \$787,000, consistent with increases anticipated in the 2011 budget. The majority of increased costs are for additional staffing in Investigations.
- Professional development and competence expenses of \$14.3 million are \$1.2 million higher than for the same period in 2010. Increases were budgeted in Continuing Professional Development, where additional resources, including six staff hired in the first quarter, are required to support the newly implemented compulsory CPD requirement. In addition, year-to-date Spot Audit salary expenses are higher than the prior year due to budgeted staffing increases.
- Client Service Centre expenses have increased to \$4.3 million from \$3.8 million. Increases were budgeted in Membership Services, Call Centre and Administrative Compliance to support increased workload, including that arising from administration of the Continuing Professional Development requirement.
- Increased activity in Tribunals has resulted in expenses of \$1.2 million in the first three quarters, compared to expenses of \$759,000 during the same period in 2010. The 2011 budget saw an increase in staffing, by one FTE, plus incremental costs for adjudicator expenses and remuneration; however, the length and complexity of tribunals has resulted in higher than anticipated costs.
- Expenses in the Errors and Omissions Insurance Fund have increased to \$77.3 million from \$70.5 million. This is largely due to the increase in insurance premiums remitted to Lawyers.
- Compensation Fund expenses have increased to \$9.0 million from \$2.2 million. The main contributor to this increase has been the provision for unpaid grants. The 2010 comparative amount is unusually low due to the reversal of a large number of provisions against one lawyer in that period. The provision is adjusted monthly based on the number of new inquiries and open claims and cases closed. Costs for spot audit have also increased over 2010, as budgeted. Maintaining adequate funding for the Compensation Fund while decreasing member fees was facilitated by the budgeted use of \$1.5 million in accumulated fund balances and year-to-date results are in line with this budget.

Statement of Changes in Fund Balances

- This statement reports the continuity of the Society's various funds from the beginning of the year to the end of the current period. Details related to the revenues, expenses and interfund transfers summarized on this statement are reported in detail in the accompanying Statement of Revenues and Expenses as well as supporting schedules relating to the Lawyer and Paralegal General Funds, the Compensation Fund and the Errors and Omissions Insurance Fund.

Compensation Fund – Schedule of Revenues and Expenses & Change in Fund Balances

- Total annual fee revenue has decreased by \$679,000 primarily as a result of a decrease in the lawyer and paralegal levies to \$222 from \$257 and to \$171 from \$183 respectively.
- Expenses have increased by \$6.8 million primarily as a result of the increased provision for unpaid grants. The 2010 comparative amount is unusually low due to the reversal of a large number of provisions against one lawyer in that period. The provision is adjusted monthly based on the number of new inquiries and open claims and cases closed. Also contributing to the increase are spot audit costs and administrative expenses as approved in the 2011 budget.
- Maintaining adequate funding for the Compensation Fund while decreasing member fees was facilitated by the budgeted use of \$1.5 million in accumulated fund balances and year-to-date results are in line with this budget.

Errors and Omissions Insurance Fund – Schedule of Revenues and Expenses & Change in Fund Balance

- Insurance premiums and levies have increased \$7.4 million primarily due to the increased base premium for Ontario lawyers from \$2,950 to \$3,350. Premium revenue comprises base premiums and claims history surcharges prorated for the year and transaction levies.
- Other income is nil, compared with \$8 million in the prior year from a one-time inflow of cash from the settlement of the outstanding E&Y/Tillinghast litigation.
- Administrative expenses have decreased by \$470,000 as the prior year experienced the final litigation expenses incurred in relation to the above-noted settlement.
- The trend in insurance expenses is in line with premium revenues as the E&O Fund acts as a conduit to LAWPRO for this funding. The insurance expense represents the prorated annual policy premium set up in LAWPRO's insurance report to Convocation last September.

SUPPLEMENTAL INFORMATION

Fund Descriptions

General Fund

- The General Fund is the Society's operating fund representing the bulk of its revenues and expenses relating to the licensing and regulation of lawyers and paralegals. At September 30, 2011 the lawyer General Fund balance was \$9.5 million and the paralegal fund balance was \$1.3 million.

Restricted Funds

- The Compensation Fund is restricted by statute. The Fund exists in order to mitigate losses sustained by clients as a result of the dishonesty of a lawyer or paralegal. The fund is financed through annual levies on lawyers and paralegals, investment income and recoveries for grants previously paid. The annual Compensation Fund levy for the 2011 year was set at \$222 for lawyers and \$171 for paralegals. The respective figures for the 2010 year were \$257 and \$183.

At September 30, 2011 the lawyer Compensation Fund balance was \$24.3 million and the paralegal fund balance was \$175,000.

- The Errors and Omissions Insurance (E&O) Fund accounts for the mandatory professional liability insurance program of the Society which is administered by LAWPRO. The insurance premium expense, as well as related levies and income from their investment are tracked within this fund. The base premium is \$3,350 in 2011 (2010: \$2,950). In March 2011, \$2 million in cumulative investment income was transferred to the Law Society General Fund and is reported on the Statement of Changes in Fund Balances. The Society is insured for lawyers' professional liability and recovers annual premium costs from lawyers through a combination of annual base levies and additional levies that are charged based on a lawyer's claims history, status, and real estate and litigation levies.

The current composition of the E&O Fund balance is:

| | |
|---|------------------|
| Investment in LAWPRO | \$35,642,000 |
| Cumulative excess investment income | 2,948,000 |
| Backstop for Endorsement Retention | 15,000,000 |
| E&O Fund Contribution (accrued to 3rd quarter) | 625,000 |
| Available for future operating expenses, transaction levy shortfall and premium contributions etc. | <u>6,972,000</u> |
| TOTAL | \$61,187,000 |

The appropriate size of the Fund balance is being assessed by the Finance Committee.

- The Capital Allocation Fund is the source of funding for the Society's acquisition of major capital assets and the repair and upgrade of Osgoode Hall. The fund is replenished by a dedicated annual levy, on all lawyers and paralegals of \$75 in 2011, increased from \$65 in 2010.

- The Invested in Capital Assets Fund represents the net book value of the Society's physical assets. Additions to the fund are made by the capitalization of assets acquired through the Capital Allocation Fund. Additions are recorded annually by means of an inter-fund transfer on the Statement of Changes in Fund Balances. Amortization is reported as an expense of the fund.
- The County Libraries Fund reports the transactions between LibraryCo Inc. and the Law Society. The Law Society levies an amount on lawyers as approved by Convocation in the annual budget; \$196 in 2011 and \$203 in 2010. This levy is reported as income of the fund and payments to LibraryCo Inc. are reported as an expense of the fund.
- The Working Capital Reserve is maintained by policy of Convocation to ensure cash is available to meet the operating needs of the Society. By policy, the fund is maintained at a balance of up two months' operating expenses.
- Other Restricted Funds:
 - o Under the Parental Leave Assistance Plan (PLAP), which commenced in March 2009 as a three year pilot plan, the Law Society provides parental leave benefits to sole and small firm practitioners. Eligible applicants may receive payments of \$750 per week for up to twelve weeks to cover, among other things, expenses associated with maintaining practice expenses during a maternity, parental or adoption leave. For 2011, as of September 30, \$321,000 has been expensed compared to \$371,000 in the same period last year.
 - o The Repayable Allowance Fund is used to provide financial assistance to those enrolled in the Society's Lawyer Licensing Process. The fund is replenished annually through the budget process by a \$100,000 annual contribution from the lawyer general fund.
 - o The Society's Endowment Fund is the J. Shirley Denison Fund, administered under the terms of Mr. Denison's will by Convocation for the relief of poverty, for lawyers and licensing process lawyer candidates and their spouses.
 - o The Special Projects Fund is used to carry forward funding to a future fiscal period for a program or activity yet to be completed, for which funding is not provided in the future year's budget. For 2011, the fund is primarily comprised of funding for the Civil Needs Project and the Heritage Committee's Diversifying the Bar: Lawyers Make History Project.

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FOR INFORMATION

INVESTMENT COMPLIANCE REPORTING

6. The Audit Committee recommends Convocation receive the Compliance Statements for the General Fund, Compensation Fund, and Errors & Omissions Insurance Fund investment portfolios as at September 30, 2011 for information.

FOR INFORMATION

LIBRARYCO FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2011

7. The Audit Committee recommends Convocation receive the financial statements for LibraryCo Inc. for the second quarter of 2011 for information.

FOR INFORMATION

OTHER COMMITTEE WORK

8. The Committee also conducted other business as summarized below.
 - a) The Committee reviewed their oversight of management's anti-fraud programs.
 - b) Deloitte LLP presented their audit service plan for the financial year ending December 31, 2011 for the Law Society and for the Pension Plan for the Employees of the Law Society.

- c) Convocation has delegated the administrative oversight duties for the Pension Plan for the Employees of the Law Society to the Audit Committee. The Committee approved Pension Plan governance motions including
- revisions to the Statement of Investment Policies and Procedures for the Pension Plan to revise the sample investment mixes based on members' retirement time horizon and risk tolerance level, and
 - updating the default investment option for the above investment mixes
 - housekeeping-type amendments to the Pension Plan Governance Structure and Guidelines.
- The Committee also:
- received a Report from the Pension Committee
 - received the 2011 Review of Compliance with Governance Guidelines, Self-Assessment
 - received the Pension Plan's Legal Advisor's Report to August 15, 2011.
- d) The Committee reviewed Benchers, Paralegal Standing Committee and Treasurer expense summaries.
- e) The Committee discussed the ongoing workings of the joint sub-committee of the Audit Committee and the Finance Committee on their mandates.

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

- | | | |
|-----|---|-----------------|
| (1) | Copy of Law Society financial statements. | (pages 11 – 15) |
| (2) | Copy of Compliance Statements. | (pages 22 – 26) |
| (3) | Copy of LibraryCo Inc. Financial report and statements. | (pages 28 – 34) |

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CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 26th day of January, 2012.

Treasurer