

MINUTES OF CONVOCATION

Friday, 28th June, 2002
9:00 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q. C., FCGA), Arnup, Banack, Bindman, Bobesich, Braithwaite, Campion, Carey, Carpenter-Gunn, Cass, Chahbar, Cherniak, Coffey, Copeland, Crowe, Divinsky, T. Ducharme, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Gottlieb, Laskin, Lawrence, MacKenzie, Manes, Marrocco, Martin, Millar, Minor, Mulligan (by telephone), Murray, Pilkington, Porter, Potter, Puccini, Ruby, Simpson, Swaye, Topp, Wardlaw and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer congratulated Mr. Bindman and his wife on the recent birth of their daughter Tova Hannah.

The Treasurer and Benchers thanked the Finkelsteins who hosted the end of term Benchers' party at their home.

On a sad note the Treasurer spoke of the death of Donald Lamont, a colleague and friend who died on June 16th at the age of 89. The funeral was held at St. Clement's Anglican Church. The Treasurer noted that the church was filled with people of all generations who had great affection and respect for Mr. Lamont.

The Treasurer advised that a tribute to Mr. Lamont will be held sometime in the fall.

The Treasurer spoke about the swearing-in ceremony in Chatham of former Bencher, Edward Ducharme who was appointed a judge of the Superior Court of Justice and commented on the eloquent speech made by Justice Ducharme. The speech will be published shortly.

Lastly the Treasurer noted that the "Doors Open" event was a great success and that 9,000 people visited Osgoode Hall. The Treasurer thanked Benchers and staff, with special thanks to Elise Brunet, who organized the event.

DIRECTORS, BAR ADMISSION REPORTTO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADAIN CONVOCATION ASSEMBLED

The Directors, Bar Admission ask leave to report:

B.

ADMINISTRATION

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

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, June 28th, 2002:

Khushhal Singh Bains	Bar Admission Course
Tshimanga Tshilumba Bukasa	Bar Admission Course
William Duncan Dempster	Bar Admission Course
David Richard Donnelly	Bar Admission Course
Jeff Evan Doren	Bar Admission Course
Brent Alexander Fulton	Bar Admission Course
Bittu Kurian George	Bar Admission Course
Lakhwinder Singh Gill	Bar Admission Course
Louis-Pierre Grégoire	Bar Admission Course
Alissa Anne Hamilton	Bar Admission Course
Kakomire Kashongwe	Bar Admission Course
William George Krys	Bar Admission Course
Malcolm Lawrence MacLaren	Bar Admission Course
Robert Keith McQueen	Bar Admission Course
Chirasthi Chathurthika Mendis	Bar Admission Course
Brian Kevin Murphy	Bar Admission Course
Sean Safa	Bar Admission Course
Karry Anne Sandy	Bar Admission Course
Stephen Robert Bennington Weatherhead	Bar Admission Course
Alton Alphonso Williams	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, June 28th, 2002:

Johnathon William Burke	Province of Manitoba
Marie-Luce Electra Fortier	Province of Quebec
James Andrew Hea	Province of Alberta
Michael Leonard Hynes	Province of New Brunswick
Thomas Patrick Kehler	Province of Alberta
Patricia Claire MacPhee	Province of Nova Scotia
Samuel Jeffrey Sniderman	Province of British Columbia

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

B.2.1. The following apply to be certified as foreign legal consultants in Ontario:

Jonathan M. Wisebrod	State of New York Shearman & Sterling
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Thomas Patrick Kehler
 Patricia Claire MacPhee
 Samuel Jeffrey Sniderman

Transfer, Province of Alberta
 Transfer, Province of Nova Scotia
 Transfer, Province of British Columbia

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CONVOCATION NOTICES

The Treasurer spoke to the Notice of Motion guidelines set out in Tab 2.

An amendment by Mr. MacKenzie was accepted that the first two lines of the first paragraph up to the word “notice” be deleted.

Set out below are the guidelines:

NOTICE OF MOTION

~~Following the rule set out in the Standing Orders of the Legislative Assembly of Ontario (Section 5 or By Law 8) which has been adapted for the purposes of Convocation,~~ notice of a motion shall be given at the Convocation preceding the Convocation at which the motion will be debated.

FORM OF MOTION

The cardinal principle in submitting a motion for consideration by Convocation is that the motion must be clear and unambiguous. It is preferable to have all motions (other than amendments) in writing, as the language of motions submitted orally from the floor is not always as clear as it should be. The following guidelines excerpted and summarized from Jenkins “Conduct of Canadian Meetings,” (Butterworths, Toronto pages 42-43) should be used in drafting motions.

1. The motion should be framed in terms that are definite, lucid and free from ambiguity, so that all who are attending may clearly understand the import of the language.
2. The motion should not be negative in form; that is, it should be in the affirmative form.
3. The motion should be worded in a manner that Convocation can arrive at a definite decision.
4. The motion should be within the scope of the notice convening the meeting and within the powers of the meeting to decide.
5. A motion should be confined to one proposition only. Where a motion deals with more than one matter, the chair, in his or her discretion may divide the propositions in two or more parts and thus, present each as separate questions.
6. The chair has the right to reject a motion that is vague and equivocal in its terms (see: Henderson v. Bank of Australasia, 45 Ch.D. 330 [1886-90] All E.R. Reports 1190 (C.A.))

MOTION – ELECTION OF REGIONAL BENCHER

It was moved by Mr. Topp, seconded by Mr. Chahbar that

WHEREAS Edward W. Ducharme, who was elected from the Southwest Electoral Region on the basis of votes cast by electors residing in that electoral region, has been appointed a judge of the Superior Court of Justice; and

WHEREAS upon being appointed a judge of the Superior Court of Justice, Edward W. Ducharme became unable to continue in office as a bencher, thereby creating a vacancy in the office of bencher elected from the Southwest Electoral Region on the basis of votes cast by electors residing in that electoral region;

THAT under the authority contained in By-Law 5, Robert I. Martin, having satisfied the requirements contained in subsections 49 (2), 49 (3) and 52 (1) of the By-Law, and having consented to the election in accordance with subsection 52 (2) of the By-Law, be elected by Convocation to fill the vacancy in the office of bencher elected from the Southwest Electoral Region on the basis of votes cast by electors residing in that electoral region.

Carried

The Treasurer advised that Holly Harris would be elected a Bencher in the fall.

ROSS/DIAMOND NOTICE OF MOTION

The Ross/Diamond Notice of Motion was withdrawn.

MOTION – MERGING OF COMMITTEES

It was moved by Mr. Cherniak, seconded by Mr. MacKenzie that the Admissions Committee and Professional Development and Competence Committee be merged into one committee.

Carried

MOTION – COMMITTEE APPOINTMENT LIST

It was moved by Mr. Cherniak, seconded by Mr. Banack that the following list of Committee appointments be approved:

ACCESS TO JUSTICE COMMITTEE

Ronald Manes, Chair
 Marion Boyd, Vice-Chair
 Barbara Laskin, Vice-Chair
 Larry Banack
 Stephen Bindman
 Paul Copeland
 Seymour Epstein
 Charles Harnick
 George Hunter
 Robert Lalonde
 Derry Millar
 Ian Scott

ADMISSIONS & PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE

Earl Cherniak, Chair
 Kim Carpenter-Gunn, Vice-Chair
 George Hunter, Vice-Chair
 William Simpson, Vice-Chair
 Gordon Bobesich
 Carole Curtis

Todd Ducharme
Susan Elliott
Abraham Feinstein
Barbara Laskin
Janet Minor
Gregory Mulligan
Helene Puccini
Richmond Wilson

CONTINUUM OF LEGAL EDUCATION TASK FORCE

George Hunter, Chair
Barbara Laskin
Gregory Mulligan
Niels Ortved

EQUITY & ABORIGINAL ISSUES COMMITTEE

Paul Copeland, Chair
Derry Millar, Vice-Chair
Helene Puccini, Vice-Chair
Stephen Bindman
Thomas Carey
Gary Gottlieb
Robert Lalonde
Janet Minor
Judith Potter
Bradley Wright

EMERGING ISSUES COMMITTEE

George Hunter, Co-Chair
Niels Ortved, Co-Chair
Stephen Bindman
Earl Cherniak
Susan Elliott
Seymour Epstein
Abraham Feinstein
Allan Lawrence
Harvey Strosberg

FINANCE & AUDIT COMMITTEE

Clayton Ruby, Chair
Seymour Epstein, Vice-Chair
Marshall Crowe, Vice-Chair
Ronald Cass
Abdul Chahbar
Andrew Coffey
Gillian Diamond

Pamela Divinsky
Neil Finkelstein
Laura Legge
Allan Lawrence
Gavin MacKenzie
Marilyn Pilkington
Julian Porter
Harvey Strosberg
Gerald Swaye
Robert Topp
Donald White
Bradley Wright

Audit Sub-Committee

Bradley Wright, Chair
Neil Finkelstein, Vice-Chair
Donald White, Vice-Chair
Abdul Chahbar
Allan Lawrence

GOVERNMENT RELATIONS & PUBLIC AFFAIRS COMMITTEE

Frank Marrocco, Chair
John Champion, Vice-Chair
Marion Boyd
Leonard Braithwaite
Abdul Chahbar
Andrew Coffey
Paul Copeland
Charles Harnick
Allan Lawrence
Julian Porter
William Simpson
Michelle Strom, LPIC

HERITAGE COMMITTEE

Thomas Carey, Chair
Pamela Divinsky, Vice-Chair
Patrick Furlong
Allan Lawrence
Derry Millar
Gregory Mulligan
Helene Puccini

INTER-JURISDICTIONAL MOBILITY COMMITTEE

Derry Millar, Chair
Gavin MacKenzie, Vice-Chair
John Champion
Gillian Diamond
Abraham Feinstein

George Hunter
Niels Ortved

LAW FOUNDATION OF ONTARIO

Ron Manes, Chair
Larry Banack
Bradley Wright

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Robert Topp, Chair
Larry Banack, Vice-Chair
Abdul Chahbar, Vice-Chair
Robert Aaron
Andrew Coffey
Marshall Crowe
Gillian Diamond
Marilyn Pilkington
Helene Puccini
Gerald Swaye
Donald White
Richmond Wilson

LPIC BOARD

Frank Marrocco, Chair
Kim Carpenter-Gunn
Abdul Chahbar
Marshall Crowe
Derry Millar
Donald White

LITIGATION COMMITTEE

Kim Carpenter-Gunn, Co- Chair
Julian Porter, Co-Chair
Larry Banack
Earl Cherniak
Neil Finkelstein
Ronald Manes
Frank Marrocco
Clayton Ruby
Gerald Swaye
Donald White

ONTARIO LAWYERS= GAZETTE ADVISORY BOARD

Julian Porter, Chair
Robert Topp, Vice-Chair
Stephen Bindman

Gregory Mulligan
Bradley Wright

PROCEEDINGS AUTHORIZATION COMMITTEE

Earl Cherniak, Chair
Todd Ducharme
Neil Finkelstein
Heather Ross

PROFESSIONAL REGULATION COMMITTEE

Todd Ducharme, Chair
Carole Curtis, Vice-Chair
Neil Finkelstein, Vice-Chair
Judith Potter, Vice-Chair
Heather Ross, Vice-Chair
Robert Aaron
Stephen Bindman
John Campion
Thomas Carey
Gillian Diamond
Patrick Furlong
Avvy Go
Gary Gottlieb
Holly Harris (upon her election)
Robert Martin
Derry Millar
Ross Murray
Marilyn Pilkington
Joanne St. Lewis
Roger Yachetti

SUMMARY DISPOSITION BENCHER

Todd Ducharme

Carried

The Treasurer advised that he had accepted, with reluctance, the resignation of Mr. MacKenzie as Chair of the Professional Regulation Committee. He thanked Mr. MacKenzie for his enormous contribution to the Law Society.

MOTION – DRAFT MINUTES

It was moved by Ms. Pilkington, seconded by Mr. Bindman that the Draft Minutes of Convocation of May 23rd, 2002 be approved.

Carried

MOTION – APPOINTMENT OF SECRETARY

It was moved by Ms. Pilkington, seconded by Mr. Bindman that Zeynep Onen be appointed the Secretary for the purposes of the *Law Society Act*, and the regulations, by-laws and rules of practice and procedure made under the *Law Society Act*.

Carried

MOTION – APPOINTMENT OF SECRETARY

It was moved by Ms. Pilkington, seconded by Mr. Bindman that Katherine Corrick be appointed Secretary for the purposes of the *Corporations Act*.

Carried

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LL.D. CANDIDATES

The Treasurer announced that an honorary Doctor of Laws degree would be conferred upon each of the following individuals at the September and October 2002 calls to the Bar:

Professor Constance Backhouse, LSM
 The Honourable Madame Justice Claire L'Heureux-Dubé
 Professor Alistair MacLeod
 The Honourable Robert P. Armstrong
 Harvey T. Strosberg, Q.C.

FINANCE & AUDIT COMMITTEE REPORT

Mr. Ruby presented the Finance & Audit Committee Report for approval by Convocation.

Finance and Audit Committee

Report to Convocation

Purpose of Report: Decision

Prepared by the Finance Department
 Andrew Cawse (947-3982)

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on June 13, 2002. Committee members in attendance were: Ruby C. (c), Epstein S. (vc), Crowe M. (vc), Cass R., Chahbar A., Coffey A., Diamond G., Divinsky P., Ducharme T., Lawrence A., Swaye G., White D., Wright B.. Staff attending were Heins M., Tysall W., Knott T., Grady F., Miller J., McKillop D., Daiter J., Cawse A..

The Committee is reporting on the following matters:

Decision

X Payments to Federation of Law Societies

Information

X First Quarter Financial Statements
 X Budget Process

FOR DECISION

PAYMENTS TO THE FEDERATION OF LAW SOCIETIES

1. Law Societies in Canada provide funding to the Federation of Law Societies in proportion to their respective membership bases. In 2003 an amount of \$13.80 per member or approximately \$365,000 (26,450 members) is being requested for the General Assessment and National Excess Plan from the Law Society of Upper Canada as detailed below.

	2000 Actual Per Member	2001 Actual Per Member	2002 Actual Per Member	2003 Requested Per Member
General Assessment	\$8.00	\$8.00	\$8.00	\$11.80
National Excess Plan	\$2.00	\$2.00	\$2.00	\$2.00
Contingency (mobility, litigation)		\$1.08	\$5.94	
TOTAL	\$10.00	\$11.08	\$15.94	\$13.80

2. In addition, any contingencies for issues such as special litigation, CanLII or other funding requests will be included in the Law Society's 2003 budget. The Federation, with the Treasurer as the Law Society's representative, will be considering a business plan at their annual meeting in August that supports the request for \$13.80 per member. A draft budget has been provided by the Federation.

The Finance and Audit Committee recommends that Convocation authorize the Treasurer to commit the Law Society of Upper Canada to pay up to \$13.80 per full time equivalent member for the Federation of Law Societies' General Assessment and National Excess Plan.

FOR INFORMATION

FINANCIAL STATEMENTS FOR THE QUARTER ENDED MARCH 31, 2002

3. The first quarter financial statements for the General Fund (page 4 and 5) and Lawyers Fund for Client Compensation (page 6 and 7) are attached for information.

BUDGET PROCESS

4. A selective system of operational reviews are an integral part of the 2003 Budget Process approved by Convocation in January 2002. The operational reviews comprise examinations of program delivery to gain assurance that selected programs are achieving Convocation's mandate. The three selected operational reviews for the 2003 budget, the Client Service Centre, Lawyers Fund for Client Compensation and Great Library were presented to the Committee and will be incorporated into the ongoing 2003 budget process.

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

- (1) Copy of the financial statements for the General Fund for the quarter ended March 31, 2002. (pages 4 – 5)
- (2) Copy of the financial statements for the Lawyers Fund for Client Compensation for the quarter ended March 31, 2002. (pages 6 – 7)

Re: Payments to Federation of Law Societies

It was moved by Mr. Ruby, seconded by Mr. MacKenzie that the Treasurer be authorized to commit the Law Society of Upper Canada to pay up to \$13.80 per full time equivalent member for the Federation of Law Societies' General Assessment and National Excess Plan.

Carried

Items for Information Only

- First Quarter Financial Statements
- Budget Process

ADMISSIONS COMMITTEE REPORT

Mr. Campion presented the Admissions Committee Report for approval by Convocation.

Admissions Committee
June 28th 2002

Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS2

POLICY-FOR DECISION

AMENDMENTS TO BY-LAW 112

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee (“the Committee”) considered the proposed by-law changes by fax and e-mail during June 2002. Committee members participating were: George Hunter (Vice-Chair), John Campion, Gillian Diamond and Pamela Divinsky.
2. The Committee is reporting on the following matter:

Policy - For Decision:

Proposed Amendments to By-Law 11.

POLICY - FOR DECISION

PROPOSED AMENDMENTS TO BY-LAW 11

Request to Convocation

3. Convocation is requested to approve the motion at Appendix 1.

Background

4. Amendments to by-law 11 are required to reflect the new model of the Bar Admission Course and to bring the by-law into conformity with current practice. Some of these changes were approved in principle by Convocation in October 2001. However, the formal motion to amend by-law 11 was not presented to Convocation at that time as it became apparent that further changes to by-law 11 were required. The materials in front of Convocation in October are attached at Appendix 2.
5. An annotated version of the motion is attached at Appendix 3, showing which changes have already been approved and which are before Convocation for the first time.
6. For purposes of comparison, the existing by-law 11 is attached at Appendix 4.
7. The proposed amendments will not have any significant financial implications.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 23, 2002

MOVED BY

SECONDED BY

THAT By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor], made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999 and April 26, 1999, be further amended as follows:

BY-LAW 11
[CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR]

1. Subsection 3 (2) of By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor] is deleted and the following substituted:

Bar Admission Course completed more than three years prior to date of completion

(2) If a person presents a certificate of successful completion of the Bar Admission Course dated earlier than three years prior to the date on which the person applies under subsection 2 (1) to be called to the bar and admitted and enrolled as a solicitor, the person may be called to the bar and admitted and enrolled as a solicitor only after he or she has completed such further experience and studies as the director of the Bar Admission Course considers are necessary to ensure that the person is familiar with current law and practice.

2. Subsection 4 (1) of the By-Law is amended by deleting “qualified” and substituting “entitled”.
3. Paragraphs 2, 3, 4 and 5 of Subsection 4 (1) of the By-Law are deleted and the following substituted:

2. The person has passed the transfer examinations prescribed by Convocation and, unless otherwise permitted by a Society official, the person has passed each transfer examination within the three-year period immediately before the date on which the person applies under subsection (2) to be called to the bar and admitted and enrolled as a solicitor.
3. The person is of good character.
4. For a period or periods totalling at least fourteen months within the three-year period immediately before the person passed the final transfer examination of the transfer examinations mentioned in paragraph 2, the person was engaged in one of the following activities, or any combination of them:
 - i. The active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside Ontario.
 - ii. The pre-call education program of a governing body of the legal profession of any province or territory of Canada outside Ontario.
 - iii. Service under articles of clerkship in Ontario.

4. Subsection 4 (2) of the By-Law is deleted and the following substituted:

Application

(2) A transfer applicant who wishes to qualify under subsection (1) for call to the bar and admission and enrolment as a solicitor shall apply to a Society official for a determination as to whether he or she satisfies the conditions in subsection (1).

5. Subsection 4 (3) of the By-Law is deleted and the following substituted:

Application form and fee

(3) An application under subsection (2) shall be in a form provided by the Society and shall be accompanied by an application fee in an amount determined by Convocation from time to time.

6. Subsection 4 (5) of the By-Law is deleted and the following substituted:

Certificate of standing

(5) A person who makes an application under subsection (2) shall provide to the Society a certificate of standing from the governing body of the legal profession in each province and territory of Canada outside Ontario in which the person is or was entitled to practise law that was issued during the three-month period immediately before the person passed the final transfer examination of the transfer examinations mentioned in paragraph 2 of subsection (1).

7. Subsection 4 (6) of the By-Law is deleted and the following substituted:

Interpretation: active practice of law

(6) In subsection (1), “active practice of law” includes service in a legal capacity with a department or agency of the Government of Canada or with the Canadian Military Prosecution Service under the Director of Military Prosecutions of the Canadian Forces.

8. Subsection 4 (7) of the By-Law is amended by deleting “law society or equivalent body” wherever it occurs and substituting “governing body of the legal profession”.

9. Section 4 of the By-Law is amended by adding the following:

Interpretation: “Society official”

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

Other documents

(5.1) A person who makes an application under subsection (2) shall provide any other document required by a Society official.

10. Subsection 6 (3) of the By-Law is deleted and the following substituted:

Same: order of presentation to Convocation

(3) At a meeting of Convocation, persons who are entitled to be called to the bar and admitted and enrolled as solicitors shall be presented to Convocation by a bencher or an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of so doing in the alphabetical order of their surnames.

11. Paragraph 2 of subsection 6 (6) of the By-Law is amended by deleting “tournerez” and substituting “détournerez”.

APPENDIX 3

ANNOTATED VERSION OF MOTION TO BE MOVED AT CONVOCATION

BY-LAW 11

[CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR]

1. Subsection 3 (2) of By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor] is deleted and the following substituted:

Bar Admission Course completed more than three years prior to date of completion

(2) If a person presents a certificate of successful completion of the Bar Admission Course dated earlier than three years prior to the date on which the person applies under subsection 2 (1) to be called to the bar and admitted and enrolled as a solicitor, the person may be called to the bar and admitted and enrolled as a solicitor only after he or she has completed such further experience and studies as *the director of the Bar Admission Course* considers are necessary to ensure that the person is familiar with current law and practice.

NEW Replaces “Convocation” with “the director of the Bar Admission Course” as the party deciding on the further necessary studies for the student.

2. Subsection 4 (1) of the By-Law is amended by deleting “qualified” and substituting “entitled”.

NEW technical wording change, to reflect the categories used in other jurisdictions. Transfer candidates in a “non-practising” category in their home jurisdiction may be “entitled” to practise law once they change their status.

3. Paragraphs 2, 3, 4 and 5 of Subsection 4 (1) of the By-Law are deleted and the following substituted:

2. The person has passed the transfer *examinations* prescribed by Convocation and, *unless otherwise permitted by a Society official, the person has passed each transfer examination within the three-year period immediately before the date on which the person applies under subsection (2)* to be called to the bar and admitted and enrolled as a solicitor.

3. The person is of good character.

4. For a period or periods totalling at least *fourteen* months within the three-year period immediately before the person passed the final transfer examination of the transfer examinations mentioned in paragraph 2, the person was engaged in one of the following activities, or any combination of them:
- i. The active practice of law as a member of a *governing body of the legal profession* of any province or territory of Canada outside Ontario.
 - ii. The pre-call education program of a *governing body of the legal profession* of any province or territory of Canada outside Ontario.
 - iii. Service under articles of clerkship in Ontario.

Approved by Convocation in October 2001: reflects that there is more than one transfer examination and imposes a three year time limit on when the person can be called to the bar, consistent with the limit for BAC students.

4. Subsection 4 (2) of the By-Law is deleted and the following substituted:

Application

(2) A transfer applicant who wishes to qualify under subsection (1) for call to the bar and admission and enrolment as a solicitor shall apply to a *Society official* for a determination as to whether he or she satisfies the conditions in subsection (1).

NEW Technical wording change only.

5. Subsection 4 (3) of the By-Law is deleted and the following substituted:

Application form and fee

(3) An application under subsection (2) *shall be in a form provided by the Society and* shall be accompanied by an application fee in an amount determined by Convocation from time to time.

NEW Adds reference to the form to be provided by the Society.

6. Subsection 4 (5) of the By-Law is deleted and the following substituted:

Certificate of standing

(5) A person who makes an application under subsection (2) shall provide to the Society a certificate of standing from the governing body of the legal profession *in each province and territory of Canada outside Ontario in which the person is or was entitled to practise law that was issued during the three-month period immediately before the person passed the final transfer examination* of the transfer examinations mentioned in paragraph 2 of subsection (1).

NEW Requires a certificate from every jurisdiction where the applicant has practised, not just the jurisdiction where the person has most recently practised. This will permit the Law Society to have a more complete picture of a candidate's professional history. Also requires all such certificates to be up to date (not more than three months old).

7. Subsection 4 (6) of the By-Law is deleted and the following substituted:

Interpretation: active practice of law

(6) In subsection (1), "active practice of law" includes service in a legal capacity with a department or agency of the Government of Canada or with the *Canadian Military Prosecution Service under the Director of Military Prosecutions* of the Canadian Forces.

NEW Replaces reference to the Judge Advocate General's Branch with reference to the Military Prosecution Service.

8. Subsection 4 (7) of the By-Law is amended by deleting "law society or equivalent body" wherever it occurs and substituting "governing body of the legal profession".

NEW Technical wording change only.

9. Section 4 of the By-Law is amended by adding the following:

Interpretation: “*Society official*”

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

NEW Technical wording change only.

Other documents

(5.1) A person who makes an application under subsection (2) shall provide any other document required by a Society official.

NEW Adds authority for the requirement to submit documents.

10. Subsection 6 (3) of the By-Law is deleted and the following substituted:

Same: order of presentation to Convocation

(3) At a meeting of Convocation, persons who are entitled to be called to the bar and admitted and enrolled as solicitors shall be presented to Convocation by a bencher or an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of so doing in the alphabetical order of their surnames.

Approved by Convocation in October 2001

11. Paragraph 2 of subsection 6 (6) of the By-Law is amended by deleting “*ournerez*” and substituting “*détournerez*”.

NEW This corrects a translation error.

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

- (1) Copy of excerpt from Admissions Committee Report re: Amendments to by-law 11 which were approved in principle by Convocation in October 2001.

(Appendix 2, pages 6 – 7)

- (2) Copy of the existing by-law 11.

(Appendix 4, pages 11 – 16)

Re: By-Law 11

It was moved by Mr. Campion, seconded by Mr. Bindman that By-Law 11 with French translations as circulated be adopted.

THE LAW SOCIETY OF UPPER CANADA

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

THAT By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor], made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999 and April 26, 1999, be further amended as follows:

BY-LAW 11
[CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR]

4. Subsection 3 (2) of By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor] is deleted and the following substituted:

Bar Admission Course completed more than three years prior to date of completion

(2) If a person presents a certificate of successful completion of the Bar Admission Course dated earlier than three years prior to the date on which the person applies under subsection 2 (1) to be called to the bar and admitted and enrolled as a solicitor, the person may be called to the bar and admitted and enrolled as a solicitor only after he or she has completed such further experience and studies as the director of the Bar Admission Course considers are necessary to ensure that the person is familiar with current law and practice.

Réussite du Cours de formation professionnelle plus de trois ans avant la date de la demande

(2) Quiconque présente un certificat de réussite du Cours de formation professionnelle qui date de plus de trois ans avant la date de présentation de la demande prévue au paragraphe 2 (1) ne peut être reçu au barreau et admis comme procureur qu'après avoir acquis l'expérience et fait les études que le directeur ou la directrice du Cours de formation professionnelle juge nécessaires à une bonne connaissance du droit et de la pratique du droit actuels.

5. Subsection 4 (1) of the By-Law is amended by deleting “qualified/ a les qualités requises pour” and substituting “entitled/ est habilité à”.

6. Paragraphs 2, 3, 4 and 5 of Subsection 4 (1) of the By-Law are deleted and the following substituted:

2. The person has passed the transfer examinations prescribed by Convocation and, unless otherwise permitted by a Society official, the person has passed each transfer examination within the three-year period immediately before the date on which the person applies under subsection (2) to be called to the bar and admitted and enrolled as a solicitor.

3. The person is of good character.

5. For a period or periods totalling at least fourteen months within the three-year period immediately before the person passed the final transfer examination of the transfer examinations mentioned in paragraph 2, the person was engaged in one of the following activities, or any combination of them:

i. The active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside Ontario.

ii. The pre-call education program of a governing body of the legal profession of any province or territory of Canada outside Ontario.

iii. Service under articles of clerkship in Ontario.

2. Elle a réussi l'examen de transfert prescrit par le Conseil et, à moins d'avis contraire d'un ou d'une responsable du Barreau, elle a réussi tous les examens de transfert au cours des trois ans qui précèdent la date à laquelle elle fait sa demande en vertu de la disposition 2 pour être reçue au barreau et admise comme procureur.

3. Elle est membre en règle.

4. Pendant une période totale, continue ou non, d'au moins quatorze mois au cours des trois ans qui précèdent la date à laquelle elle a réussi le dernier de tous les examens de transfert visés à la disposition 2, elle a exercé une ou plusieurs des activités suivantes :
 - i. l'exercice actif de la profession d'avocat à titre de membre d'un organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,
 - ii. la participation au programme de formation professionnelle d'un organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,
 - iii. un stage en Ontario.

4. Subsection 4 (2) of the By-Law is deleted and the following substituted:

Application

(2) A transfer applicant who wishes to qualify under subsection (1) for call to the bar and admission and enrolment as a solicitor shall apply to a Society official for a determination as to whether he or she satisfies the conditions in subsection (1).

Demande

(2) Quiconque demande un transfert et souhaite être reçu au barreau et admis comme procureur en vertu du paragraphe (1) présente à un ou une responsable du Barreau une demande de confirmation du fait qu'il remplit les conditions énoncées au paragraphe (1).

5. Subsection 4 (3) of the By-Law is deleted and the following substituted:

Application form and fee

(3) An application under subsection (2) shall be in a form provided by the Society and shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Frais et formulaire de demande

(3) Toute demande présentée aux termes du paragraphe (2) est faite sur le formulaire fourni par le Barreau et accompagnée du paiement des frais fixés par le Conseil.

6. Subsection 4 (5) of the By-Law is deleted and the following substituted:

Certificate of standing

(5) A person who makes an application under subsection (2) shall provide to the Society a certificate of standing from the governing body of the legal profession in each province and territory of Canada outside Ontario in which the person is or was entitled to practise law that was issued during the three-month period immediately before the person passed the final transfer examination of the transfer examinations mentioned in paragraph 2 of subsection (1).

Certificat de membre

(5) Quiconque fait une demande aux termes du paragraphe (2) présente au Barreau un certificat de membre de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario où il est ou était habilité à exercer le droit, délivré au cours des trois mois qui précèdent la date à laquelle il a réussi le dernier des examens de transfert visés à la disposition 2 du paragraphe (1).

7. Subsection 4 (6) of the By-Law is deleted and the following substituted:

Interpretation: active practice of law

(6) In subsection (1), “active practice of law” includes service in a legal capacity with a department or agency of the Government of Canada or with the Canadian Military Prosecution Service under the Director of Military Prosecutions of the Canadian Forces.

Définition de l’expression «exercice actif de la profession d’avocat»

(6) Au paragraphe (1), «exercice actif de la profession d’avocat» s’entend en outre de la prestation de services juridiques au sein d’un ministère ou d’un organisme du gouvernement du Canada ou du Service canadien des poursuites militaires, Directeur – poursuites militaires.

8. Subsection 4 (7) of the By-Law is amended by deleting “law society or equivalent body/ du Barreau ou d’un organisme équivalent” wherever it occurs and substituting “governing body of the legal profession/ de l’organisme de réglementation de la profession juridique”.
9. Section 4 of the By-Law is amended by adding the following:

Interpretation: “Society official”

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

Interprétation : « responsable du Barreau »

(0.1) « responsable du Barreau » s’entend de la personne que le directeur général ou la directrice générale charge d’appliquer les dispositions du présent règlement administratif.

Other documents

(5.1) A person who makes an application under subsection (2) shall provide any other document required by a Society official.

Autres documents

(5.1) Quiconque fait une demande aux termes de la disposition (2) présente les autres documents requis par un ou une responsable du Barreau.

10. Subsection 6 (3) of the By-Law is deleted and the following substituted:

Same: order of presentation to Convocation

(3) At a meeting of Convocation, persons who are entitled to be called to the bar and admitted and enrolled as solicitors shall be presented to Convocation by a bencher or an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of so doing in the alphabetical order of their surnames.

Idem : ordre de présentation au Conseil

(3) Lors de la réunion du Conseil, le conseiller ou la conseillère ou la personne que le directeur général ou la directrice générale charge de ce faire lui présente les personnes qui ont le droit d’être reçues au barreau et d’être admises comme procureurs par ordre alphabétique.

11. Paragraph 2 of subsection 6 (6) of the By-Law is amended by deleting “tournerez” and substituting “détournerez”.

Carried

NOTICE OF MOTION

MOVED BY: Judith Potter

SECONDED BY: Abraham Feinstein

That the Emerging Issues Committee set up a working group, including sole practitioners and lawyers from small firms, to examine and report to Convocation the ongoing survival of small firms and sole practitioners.

The Potter/Feinstein Notice of Motion will be discussed in the fall.

ACCESS TO JUSTICE COMMITTEE REPORT

Mr. Manes presented the Report of the Access to Justice Committee for approval by Convocation.

Access to Justice Committee
June 28th, 2002

Report to Convocation

Purpose of Report: Decision Making and Information

Prepared by the Policy Secretariat

TABLE OF CONTENTS

SECTION ONE

CONTEXT SETTING FOR ACCESS TO JUSTICE	<u>2</u>
PART ONE ~ DEFINITION OF ACCESS TO JUSTICE	<u>3</u>
PART TWO ~ CONSTITUTIONAL RIGHTS TO ACCESS TO JUSTICE.....	<u>8</u>
PART THREE ~ ONTARIO'S CURRENT ACCESS TO JUSTICE ACTIVITIES IN THE INTERNATIONAL CONTEXT	<u>11</u>
PART FOUR ~ ROLE OF THE LAW SOCIETY OF UPPER CANADA.....	<u>22</u>
PART FIVE ~ THE COMMITTEE'S DELIBERATIONS.....	<u>25</u>

SECTION TWO

TERMS OF REFERENCE/COMMITTEE PROCESS	<u>33</u>
--	-----------

FOR DECISION

ACCESS TO JUSTICE SYMPOSIUM.....	<u>34</u>
----------------------------------	-----------

INFORMATION ITEMS

LAWYER REFERRAL SERVICE	<u>36</u>
-------------------------------	-----------

PUBLIC LEGAL INFORMATION	<u>39</u>
LEGAL SERVICES INSURANCE/PREPAID LEGAL PLANS	<u>45</u>
PRO BONO LAW ONTARIO UPDATE	<u>49</u>

SECTION ONE

CONTEXT SETTING FOR ACCESS TO JUSTICE

1. The Law Society, as the regulatory body for the legal profession, is committed to access to justice, and the mandate of the Access to Justice Committee is to develop proposals for Convocation's consideration to further this goal. To properly develop such proposals, the Committee has spent considerable time in defining the context necessary for an informed discussion of access to justice to occur.
2. This report outlines the essential features of this context. It is provided to Convocation for two reasons:
 - 1) to familiarize Convocation with the nature of the Committee's discussions, and
 - 2) more especially, to ensure that Convocation has an understanding of the context necessary to inform the decisions Convocation will be asked to consider in the coming months.

Introduction

3. The Committee has held several meetings including a lengthy round-table discussion with other stakeholders in the Ontario legal system facilitated by Dr Elaine Todres, in addition to a number of meetings of the Committee Chairs. The Committee heard from a large number of speakers involved in access to justice initiatives from all parts of the access to justice landscape, both public and private. A list of speakers is attached at Appendix 1.
4. The Committee regarded it as important to bring together all these stakeholders to develop a dialogue between them, as well as between them and the Law Society, and to position the Law Society within this dialogue.
5. In the course of these meetings it became apparent that the term 'access to justice' covers an overly ambitious range of issues. A list of the issues identified by the Committee to date is attached at Appendix 2.
6. Accordingly, the following information attempts to provide some definition to the concept of access to justice and to place the work of the Committee in context.
7. This section of this report reflects the Committee's view that access to justice is fundamental to a free and democratic society under the rule of law, and is an integral part of the values of the Law Society as the governing body of an independent, self-governing profession, acting in the public interest.
8. This section of the report is organized in five parts as follows:
 - 1) Part One considers various definitions of the term 'access to justice'.
 - 2) Part Two considers the idea of a constitutional right to access to justice.
 - 3) Part Three reviews some of the major features of access to justice programmes in Ontario and attempts to set them in an international context, although a complete review of all other jurisdictions has not been attempted.
 - 4) Part Four considers the Law Society's current role and activities with regard to access to justice, including a preliminary consideration of current budgeted expenditures.
 - 5) Part Five sets out some options for the Law Society's role in access to justice.

PART ONE ~ DEFINITION OF ACCESS TO JUSTICE

9. There is no universally accepted definition of the term 'access to justice'. For example, after a comprehensive review in 1988, Prof M J Mossman concluded:

It is evident that the idea of access to justice connotes no precise meaning. Rather, the idea of access to justice is one that may include a number of different objectives¹

10. The term is most often used to mean ready access to legal services and the courts, especially the ability to obtain representation by counsel, for the purposes of asserting a person's rights under the law. For example, "*Access to justice means access to all forums in which legal rights are determined*"²

11. In a seminal international study in 1978 which popularised the idea of access to justice, Cappelletti and Garth commented,

The words "access to justice" are admittedly not easily defined, but they serve to focus on two basic purposes of the legal system - the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state. First, the system must be equally accessible to all; second, it must lead to results that are individually and socially just...³

12. Cappelletti and Garth's study identified three 'waves' of the access to justice movement:

- 1) Making legal aid and advice more available to the poor, primarily through legal aid programmes;
- 2) Development of representative and class actions to address 'diffuse' or group claims;
- 3) Broader reforms to the legal system such as Alternative Dispute Resolution ('ADR'), court reform and other procedural changes

13. Recently, the federal Department of Justice held a conference called 'Expanding Horizons', to discuss the expanding concept of access to justice described by Cappelletti and Garth as the 'third wave'. The presentations included the following remarks:

The third wave contemplates a much greater range of access to justice approaches...legal strategies are not enough to solve the problems of the poor. This reflects the increased emphasis on multi-disciplinary approaches to access to justice problems in which the justice system develops partnerships with other institutional sectors such as health care and social services.⁴

14. Another speaker at the same conference noted,

Access to justice means empowering a diverse citizenry to make, decide and enforce their own law in the multiple sites where they actually find normative commitment . . . The most significant concerns about justice felt by Canadians have little to do with narrowly cast legal rights; they have

¹ Mossman and Ritchie, *Canadian Access to Civil Justice: A Review of Canadian Legal Academic Scholarship 1977-1987* in 'Access to Civil Justice' edited by Allan Hutchinson, Carswell 1990.

² Statement of Principles of the State of Washington Access to Justice Board

³ Access to Justice: A World Survey (the Florence Access to Justice Project)

⁴ A. Currie, 'Riding the Third Wave', background paper for 'Expanding Horizons', 2000

to do rather with recognition and respect . . . disparities in social power, and not procedural glitches in the processes of litigation, are the root of injustice.⁵

15. Some commentators go further, asserting that, far from access to justice meaning access to the legal system, the legal system is part of the problem to be addressed, suggesting:

given the inability of individual citizens to prevent a dispute from occurring, that insofar as possible it be resolved spontaneously by society. . . If the dispute occurs despite all these precautions, the first step must be to try and resolve it through procedures that are less formal and severe than court proceedings. . . in order of application, conciliation, mediation and arbitration . . . Under these conditions, only disputes that absolutely could not be settled by other means. . . would go to court.⁶

16. In this context, access to justice is taken to mean the facilitation of fair resolution of societal disputes.
17. At the same time, in the United States the term has come to be used quite differently, as a virtual synonym for civil legal aid services to the poor.⁷
18. Most US states now have an 'Access to Justice' Committee (or Commission), defined as:
"a formal state-level body dedicated to expanding and improving civil legal assistance in the state, composed of appointed representatives of the bar, the judiciary, and providers. Some include other stakeholders as well, including clients, business and labor leaders, and representatives of community agencies and faith-based organizations. Typically these bodies were created by state Supreme Court rule."⁸
19. These organizations were generally formerly known as "State Planning Commissions", referring to their role in allocating and supplementing US federal funding for civil legal aid under the Legal Services Corporation (a federal programme with an independent board). The low level of such funding in the US, by comparison with other industrialised jurisdictions, has led to significant efforts to supplement budgets from other sources such as interest on lawyers trust accounts, filing fee surcharges, etc. The prevalence of these "Access to Justice" organizations in the US context has leant the term 'access to justice' a relatively specific meaning in the US.
20. In the UK, access to justice has often been taken to mean access to civil justice, as for example in the important report by Lord Woolf, Master of the Rolls: Access to Justice, Final Report to the Lord Chancellor on the Civil Justice System in England and Wales.⁹
21. In this report, Lord Woolf defined the necessary characteristics of a legal system which offers access to justice as follows:

⁵ Roderick A. Macdonald *Justice is a Noun, But Access isn't a Verb*, from 'Expanding Horizons'

⁶ Jacques Dufresne, *From the Rule of Law to Philia*, from 'Expanding Horizons'

⁷ In the US, unlike Canada, Australia and England, criminal legal aid and civil legal aid are organized entirely separately.

⁸ Robert Echols, 'SPAN Report on Access to Justice Partnerships, State by State', 2001

⁹ Lord Chancellor's Department, London, July 1996

- 1) Just results
 - 2) Fair treatment
 - 3) Reasonable cost
 - 4) Reasonable speed
 - 5) Understandable to users
 - 6) Responsive to needs
 - 7) Provides certainty
 - 8) Effective, adequately resourced and organised.
22. Using these principles he concluded that the English system suffered from the following defects:
- 1) Too expensive
 - 2) Too slow
 - 3) Too unequal as between the wealthy and the under-resourced
 - 4) Too uncertain
 - 5) Too hard to understand
 - 6) Too fragmented
 - 7) Too adversarial
23. While the sweeping English legislation passed in 1999 as the *Access to Justice Act*, covered a wide range of issues including the creation of a Legal Services Commission to fund both the Community Legal Service and the Criminal Defence Service, it focused on the legal system itself, including the imposition for the first time in Britain of limits on legal aid funding.
24. Many commentators have remarked on the fact that, “the vast majority of legal problems encountered by members of the public are civil legal problems” although typically greater resources in legal aid programmes are devoted to criminal matters.¹⁰
25. This review of the use of the term ‘access to justice’ shows that it has no simple, generally agreed-upon definition. It can perhaps be thought of as encompassing a hierarchy of approaches,
- 1) Helping the largest number of people to use the system as it is (by such means as legal aid);
 - 2) Changing the justice system to make it more responsive and more user-friendly;
 - 3) Helping people to find other ways to avoid or resolve problems such that they do not require access to the justice system.

PART TWO ~ CONSTITUTIONAL RIGHTS TO ACCESS TO JUSTICE

26. A number of jurisdictions have recognized some aspects of access to justice as a constitutional right.

Access to the Courts

27. In the UK, a “common law constitutional right” to access to the courts has been recognized. In *R v Lord Chancellor, ex p. Witham*¹¹, the Court of Queen’s Bench held government regulations setting court fees to be unconstitutional on the grounds that they prevented an impecunious litigant from bringing an action, since:

¹⁰Ab Currie, *Riding the Third Wave*, in ‘Expanding Horizons’

¹¹[1997] 2 All ER 779 (Q.B.D.)

Access to the courts is a constitutional right; it can only be denied by the government if it persuades Parliament to pass legislation which specifically - in effect by express provision - permits the executive to turn people away from the court door.

28. Comparing the right of access to justice with the right of free expression, Laws J. commented:

I cannot think that the right of access to justice is in some way a lesser right than that of free expression; the circumstances in which free speech might justifiably be curtailed in my view run wider than any in which the citizen might properly be prevented by the state from seeking redress from the Queen's courts. Indeed, the right to a fair trial, which of necessity imports the right of access to the court, is as near to an absolute right as any which I can envisage.¹²

29. In Ontario, a case on a similar point is now before the courts as an appeal from a ruling that a Small Claims Court Judge does not have the jurisdiction to waive the Small Claims Court fees on the basis of poverty.¹³ There are Canadian cases in other jurisdictions recognising the right of a litigant to proceed *in forma pauperis*.¹⁴

30. Access to the courts has been recognized by the Supreme Court of Canada:

We have no doubt that the right to access the courts is under the rule of law one of the foundational pillars protecting the rights and freedoms of our citizens.¹⁵

31. The preamble to the Canadian *Constitution Act, 1982* reads, "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law".

Access to Counsel

32. An access to justice right which has received constitutional recognition in most common law jurisdictions is the right to counsel in criminal prosecutions.

33. In Canada, the right to counsel in criminal proceedings is enshrined in Section 10 of the *Charter of Rights and Freedoms*:

Everyone has the right on arrest or detention... to retain and instruct counsel without delay and to be informed of that right;

34. In the United States, the 6th Amendment to the US Constitution reads in part:

In all criminal prosecutions, the accused shall ... have the assistance of counsel for his defense.

35. This wording has been interpreted in a series of cases from *Powell v Alabama* to *Gideon v Wainwright*, to recognize an almost unrestricted right to counsel of one's choice in criminal matters.

¹² Ibid.

¹³ *Polewsky v. Home Hardware Stores Ltd.* (1999), 40 C.P.C.(4h) 330 (Ont. S.C.J.)

¹⁴ For example, *Reid v. Canada*, [1995] 2 C.T.C. 2926 (T.C.C.).

¹⁵ Per Dickson, CJC, in *British Columbia Government Employees' Union v. British Columbia (Attorney General)* (1998), 53 D.L.R. (4th) 1 (S.C.C.)

36. However, there is no corresponding constitutional right to counsel in civil cases anywhere. The degree to which different jurisdictions recognize the right to counsel in civil matters varies considerably, as discussed below. In most North American jurisdictions the extent of civil legal aid has either been reduced in the last decade or is facing reductions. For example, in BC the new Liberal government has recently announced major reductions in funding for legal aid. In Ontario, legal aid funding was reduced by \$26 million in 1993/1994, and a new regime of 'hard caps' in funding was established by a Memorandum of Understanding in 1994. This required a number of reductions in eligible matters as well as changes to eligibility guidelines for clients.
37. In the UK, although the civil legal aid system is probably still the most generous in the world, the 1999 *Access to Justice Act*, which has been described by Prof Michael Zander as being 'ironically entitled'¹⁶, introduced a limit to the legal aid budget for the first time.
38. In the US, the recent 30% reduction in funding for the US Legal Services Corporation was accompanied by new restrictions on the scope of the work which could be undertaken, especially in the field of advocacy.¹⁷
39. The constitutional view of access to justice can thus be seen to be generally limited up to this point to access to the courts and access to counsel in criminal cases. However, the nature and extent of common law constitutional rights to access to justice are still evolving in Canadian jurisprudence.

PART THREE ~ ONTARIO'S CURRENT ACCESS TO JUSTICE ACTIVITIES IN THE INTERNATIONAL CONTEXT

Legal Aid

40. As many commentators have pointed out, "Legal aid is by far the largest of the access to justice programs in Canada."¹⁸ A number of attempts have been made to establish benchmarks to provide international comparisons of legal aid programmes, despite the definitional challenges involved. These generally indicate that Ontario falls in the middle range in terms of per capita expenditures by comparable jurisdictions.
41. In a paper entitled 'Comparative Commitment to Equal Justice: Some New Statistical Indicators'¹⁹, Earl Johnson Jr of the California Court of Appeal sets out data on civil legal aid spending in 10 industrialized jurisdictions on a variety of bases. (A summary chart is attached at Appendix 3.) It shows that whether calculated per capita or per \$10,000 of GNP, Ontario ranks in the middle range not far from Quebec, BC, New South Wales and France, while the two outlying values are always the US at the bottom and England & Wales at the top. On a per capita basis, Ontario spends \$7.06, the US \$2.25 and England & Wales \$26 (all figures in US dollars). On the basis of GDP, which the author concludes is a more meaningful measure, Ontario spends \$3.60, the US \$0.70 and England & Wales \$12. The author comments, "Small wonder that in the US, most jurisdictions report anywhere from 30 to 85 percent of litigants appear without counsel in family law, landlord-tenant, and many other categories of cases."
42. While ranking in the middle range on such comparisons, Ontario is regarded as innovative in terms of its combination of a certificate or 'judicare' system (typical of British approaches) and the extensive clinic system (typical in the limited civil legal aid system in the US). An English expert comments:

¹⁶ "The State of Justice": The Hamlyn Lectures 1999, Sweet & Maxwell, London, 2000

¹⁷ A. W. Houseman, *Can Legal Services Achieve Equal Justice?*, Center for Law & Social Policy, 2002.

¹⁸ A. Currie, *Some Aspects of Access to Justice in Canada*, from 'Expanding Horizons'

¹⁹ Paper presented to the International Legal Aid Group Conference, Melbourne, Australia, 2001

“Ontario’s clinics are, in my experience, among the best examples of this sort of provision in the world”²⁰

Certificate System

43. The largest portion of Legal Aid Ontario’s operations are in the certificate system, operated from 51 area offices throughout the Province. Over 100,000 certificates are issued per year. Criminal law accounts for the largest proportion of cases (58%), while family, immigration and other civil cases account for the other 42%. The certificate programme has an annual operating budget of about \$173 million.

Clinic System

44. Community legal clinics are independent non-profit organizations which receive annual funding from Legal Aid Ontario. Each clinic has its own volunteer board of directors from the community and each clinic determines its own operational policies within the established policy framework set out by LAO. There are 57 general service clinics in Ontario, together with 15 specialty clinics providing services to a more defined clientele, for example, the elderly, the disabled or members of a particular cultural or racial community.²¹ The clinics also serve as resources to the private bar, community agencies and political representatives. The clinic programme has an annual budget of about \$50 million.
45. There is extensive debate about the respective merits of a ‘judicare’ model, in which private lawyers are paid to represent low-income clients either per hour or per case, and a clinic or staff model, in which full time staff lawyers, often working in a specialised field, provide legal services. While much of the research in the US has focussed on the cost implications of these models, Ontario has developed a more client-centred approach in which it is recognised that a mix of delivery mechanisms is required to provide the best services to clients. For example, a clinic environment is better suited to outreach activities towards clients who are unfamiliar with the legal system. In a recent paper, the Chair and CEO of Legal Aid Ontario comment:
- ...there is a deliberate intent at Legal Aid Ontario to minimize the competitive nature established in comparisons between staff models and judicare or per diem models. There is instead a focus on the service aspect of the model regardless of how personnel are remunerated. The underlying assumption is that comparable costs are associated with each delivery method; therefore, the decision to use a particular model is based on a comprehensive understanding of the type of need and is not decided solely on the basis of cost.²²
46. Ontario has also developed a system of quality assurance for the legal clinic system that has had a beneficial effect on the operation of individual clinics and the system as a whole.²³
47. Since April, 1999, the legal aid system in Ontario has operated as an independent body, Legal Aid Ontario, reporting to the Attorney General of Ontario. Prior to that time, it reported to the Law Society of Upper Canada.
48. In Ontario, as in most comparable jurisdictions, the last decade saw steep reductions in the funding for legal aid and attempts to end the open-ended nature of the programme. This has also led to a policy debate about the best approaches to make use of the available funding.

²⁰Prof. Roger Smith, University of Kent, *You are not alone: Legal Aid in England & Wales*, in Zemans and Monahan ‘From Crisis to Reform: A New Legal Aid Plan for Ontario’ 1997.

²¹CLEO (Community Legal Education Ontario) was set up as a ‘clinic’ although it now receives most of its funding from the federal Department of Justice.

²²Linden and Longo, *LAO: Experimentation, Reform and Issues in Staff Service Delivery Models*, 2001

²³F.H. Zemans, *The Community Clinic Quality Assurance System*, UBC Law Review 2000

Pro Bono Legal Services

49. In Ontario, as in most comparable jurisdictions, the public-funded legal aid system grew out of an earlier volunteer-based system whereby private lawyers provided services to the poor *pro bono*, or without fee.
50. In the US, partly due to the limited nature of the legal aid system, there has been a particular focus on the continued development of *pro bono* services, and innovative approaches have been developed to supplement the legal aid system with volunteer assistance from the bar.
51. A debate has arisen in some jurisdictions as to whether the expansion of *pro bono* services constitutes a threat to, or a useful supplement to, publicly-funded legal aid. This is a particularly sensitive area given the recent tendency for legal aid budgets to be reduced. The issue is canvassed in a paper in which the situation in Sweden and Australia is analysed²⁴ by Professor Francis Regan of Flinders University in Australia. He concludes:

Perhaps the profession should always maintain vigorous *pro bono* even where the most sophisticated state legal aid schemes exist. It is as I have shown good for the citizens of our societies, it is good for the profession's role in society, it is also good for gaining experience and legal firms profitability, and it is good for the public's confidence in lawyers and the legal system more generally. From each of these perspectives the presence of *pro bono* is desirable.

52. The Law Foundation of New South Wales comments,

“The primary responsibility for ensuring access to justice for all people, regardless of their means, rests with government. *Pro bono* legal services complement, and do not replace, publicly funded legal services.”²⁵

Pro Bono Law Ontario

53. While surveys of the profession in Ontario show quite widespread participation in *pro bono* work (about a quarter of all lawyers participate), there is no really complete source of information on the amount of *pro bono* work provided by Ontario lawyers. The Law Society has recently participated in the creation of a new organization, *Pro Bono Law Ontario* (‘PBLO’), to facilitate the promotion of *pro bono* and encourage the adoption of best practices. PBLO has attracted significant support from the legal community, including notably the Chief Justice of Ontario, and has a high profile board of directors.
54. PBLO has developed a business plan for the regional promotion of *pro bono*, involving the creation of regional operations across Ontario, and as discussed below, is developing a number of programmes.

Community Access to Justice Project

55. In 2000, the Law Society established a programme called Connecting Communities with Counsel (CCWC), to help members of equity seeking groups to obtain access to *pro bono* counsel in specific situations. In keeping with the development of PBLO on a regional basis, in the fall of 2001 the programme was integrated with PBLO as part of the Toronto regional operations.

Volunteer Lawyers Service

56. Volunteer Lawyers Service (VLS) is a programme that assists non-profit and charitable organizations by finding *pro bono* lawyers to assist them with legal advice. When created, VLS was the first partnership of this kind between the legal and charitable sectors in North America. VLS is administered through the Ontario Bar Association and is funded by the Law Foundation of Ontario in partnership with the Law

²⁴entitled ‘Legal Aid without the State: Assessing the Rise of *pro bono* schemes’ presented at the International Legal Aid Conference, UBC, 2001

²⁵New South Wales Law Foundation 1998 a:iv, quoted in Regan, *supra*.

Society of Upper Canada, the United Way and the Volunteer Centre of Toronto. Recently, it has been integrated with the operations of Pro Bono Law Ontario.

Public Legal Education and Information

57. Public Legal Education and Information (PLEI) is information designed for lay persons, to help them understand their rights and to avoid or resolve legal problems. A national initiative of the federal Department of Justice from 1984 to 1987 completed a national network of PLEI organizations ensuring that such a body existed in every province. (In Ontario, the identified body was CLEO, discussed below). These programmes are relatively small: total expenditures by the core PLEI bodies in 1996/97 amounted to about \$7.5million, less than one percent of the expenditures of the 12 legal aid plans.
58. Additional forms of PLEI are provided by many other organizations and bodies (eg, multicultural service organizations, victims' rights groups, consumer groups, environmental groups, etc) though no statistics are available about their total expenditures. As discussed more fully in the information item below, the Law Society at present has no direct involvement in public legal education.

Law Foundation of Ontario

59. The Law Foundation was created to receive interest accruing on monies held in lawyers' mixed trust accounts and to establish and maintain a fund to be used for the purposes of legal education and research, legal aid and legal libraries. 75% of its net revenue must be paid to Legal Aid Ontario.
60. The Law Foundation currently supports a number of initiatives with access to justice implications, including *Volunteer Lawyers Service*, *Pro Bono Law Ontario*, *Pro Bono Students Canada*, the Education Network, the Law Day activities of the Ontario Bar Association, and the Canadian Civil Liberties Education Trust among others.
61. The Law Foundation has made access to justice a priority. The Foundation's annual report for the year 2000 includes the following:

The Board of Trustees has determined that priority in granting should be given to initiatives which advance access to justice in the Province the Trustees are committed to expanding the Law Foundation of Ontario's contribution in *pro bono* and public legal education initiatives to embrace the wider subject of access to justice. Accordingly, we are encouraging our stakeholders to share our commitment to access to justice and invite them and other potential grantees to focus all or part of their proposals on the creation of innovative ways to promote and advance access to justice in Ontario.

62. Total grants to non-legal aid recipients exceed \$6 million annually.

Lawyer Referral Service

63. The Law Society operates a Lawyer Referral Service that members of the public can call when they need legal advice. The Law Society maintains a roster of lawyers' names with their location and areas of practice, and the lawyers offer a half hour of information and advice (not technically legal advice) free of charge.
64. While the Law Society charges a \$6 service fee, (except for calls from minors and those in crisis, which are processed on a different line), the lawyers involved do not charge for the initial consultation. There are roughly 2,000 lawyers on the list, and roughly 70,000 calls are referred per year. Although not all the referrals result in the lawyer being contacted and providing the free initial half hour, this constitutes a considerable level of *pro bono* assistance to the public. This service is discussed further in the information item below.

Contingent Fees

65. Contingent fees are often viewed as increasing access to justice, since they permit an impecunious plaintiff to retain counsel without having to pay legal fees unless a successful judgment is obtained. They are permitted in every province except Ontario; they have been regarded as prohibited in Ontario by wording in the *Solicitors Act*. However, two recent Ontario Superior Court of Justice decisions (one under appeal) support the argument that contingent fee arrangements are not prohibited by the *Solicitors Act*. For many years, the Law Society has favoured a policy of allowing contingent fees in litigation other than criminal and (most) matrimonial proceedings.
66. The Ontario government has not yet developed a regulatory scheme for contingent fees, although this was recommended in June 2000 by a joint committee of the Advocates' Society, the Ontario Bar Association, the Law Society and staff from the Ministry of the Attorney General. This effectively leaves the matter in the Law Society's hands insofar as the *Rules of Professional Conduct* are concerned, and with the courts for interpretation of the legislation.
67. The Ontario Court of Appeal has reserved its decision on the appeal noted above. In the interim, Convocation has asked that a proposal for the regulation of contingent fees be developed so that the Law Society is prepared to engage the Ontario government in discussions about reform when the Court of Appeal decision is released.

Class Proceedings Act

68. As discussed under the definitional section above, in many cases the only way in which an individual can afford to use the court system is to join together with others with the same or a similar grievance in a class proceeding (or 'class action'). In Ontario, a party may apply to have the case designated as a class proceeding under the *Class Proceedings Act, 1992*. This act was preceded by a study of class actions by the Ontario Law Reform Commission, which identified three goals of a class proceeding: judicial economy, access to justice, and behavioural modification.²⁶
69. To assist representative plaintiffs and protect them from the implications of an adverse cost award, the Law Foundation established the Class Proceedings Fund. (The possibility of an adverse cost award has been seen to be a particular barrier to class proceedings since the cost awards can be very large in major cases against corporate defendants). The fund receives 10% of damage awards in cases that it supports, and has in fact been growing in size and significance.

Public Interest Advocacy

70. Public interest advocacy uses the legal system to address social, consumer and environmental problems, permitting parties who might not otherwise be able to afford to litigate their cases to have access to the court system. Such cases are often in the form of class proceedings.
71. In Ontario there are a wide range of such advocacy organizations, ranging from the local to the national, for example:
 - 1) Canadian Environmental Law Association
 - 2) LEAF (Legal Action and Education Fund), regarding women's rights
 - 3) Charter Committee on Poverty Issues
 - 4) Toronto Environmental Alliance (TEA)
 - 5) Urban Alliance on Race Relations
72. Lawyers who provide *pro bono* assistance to such organizations may have the opportunity to assist a larger group of clients than in an individual file.

²⁶ Ontario Law Reform Commission, *Report on Class Actions* (Toronto: Queen's Printer, 1982)

Alternative Dispute Resolution

73. 'Alternative Dispute Resolution' is a term used to describe various methods of resolving disputes between parties without resorting to a trial. These methods include mediation, arbitration, private 'courts' and more community-based approaches. They reflect the concern that a full judicial proceeding can be expensive, complex and time consuming, and also has the potential to exacerbate the already poor relations between the parties.
74. In Ontario, forms of ADR such as mediation and arbitration have been in use since the 1940's. However,
- More recently, ADR has been given a higher profile as a result of the advent of a court-annexed mandatory mediation system. This push to make ADR a true alternative solution has been aided by the Law Society of Upper Canada and its policy requiring lawyers to advise clients of the availability of ADR as a means of settling litigation.²⁷

Law Reform

75. The Ontario Law Reform Commission, a body with a wide mandate to consider legal changes in the public interest, was wound up by the Ontario government in 1996. It has not been replaced in this role.
76. Several other provinces still have such bodies and there is also a federal body, the Law Commission of Canada, founded in 1996. The founding President of the Commission, Roderick A. Macdonald, comments,
- Besides the usual duty to identify anomalies and obsolescence in the statute book and to propose reforms to keep legislation up to date, the Law Commission is directed to . . . build networks and partnerships with other organizations interested in law reform . . . adopt a multi-disciplinary perspective . . . develop new concepts of law and new approaches to law more appropriate to contemporary society.²⁸

Pre-paid legal Plans

77. Pre-paid legal plans, whereby members of the public pay a fixed monthly fee for coverage for the legal costs of routine transactions, are considered a promising avenue for promoting access to legal services for the middle class. It is relatively under-developed in Ontario and Canada generally, compared to the US and several European jurisdictions. This has been variously ascribed to:
- 1) a lack of perceived need;
 - 2) The fact that the most successful plan in Canada is trade-union based, and there are stronger competing objectives of collective bargaining; and
 - 3) definitional problems as to whether such plans constitute a form of insurance and are therefore subject to the regulatory regime for the insurance industry in Canada.
78. However, the principal US providers have started to promote the availability of their plans in Canada and the market is slowly starting to develop. This topic is discussed in further detail in the information item below.

Paralegals

79. The term 'paralegal' is used to describe a variety of different job descriptions indicating a certain amount of legal training, ranging from law clerks to former police officers. The growth of the industry whereby paralegals offer services directly to the public has led to concerns about unregulated persons taking advantage of vulnerable members of the public. However, to the extent that some paralegals offer good quality services for a lower fee than a lawyer is able to, the issue also has access to justice implications.

²⁷Winkler, J. *Class Proceedings and ADR: Synergies in a Civil Action*, Advocates Society Journal, December 2001

²⁸ Access to Justice and Law Reform (2001) 19 Windsor Yearbook of Access to Justice

80. The Law Society is currently considering a proposal whereby paralegals would be regulated by the Law Society.

Coordination

81. As can be seen from this brief overview of the Ontario access to justice landscape, there are many organizations and institutions involved, although there is no comprehensive coordination of their activities.

PART FOUR ~ ROLE OF THE LAW SOCIETY OF UPPER CANADA

Law Society's Role and Mandate

82. The mandate of the Law Society is as follows:

The Law Society of Upper Canada exists to govern the legal profession in the public interest by:

- ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and
- upholding the independence, integrity and honour of the legal profession;

for the purpose of advancing the cause of justice and the rule of law.

83. The rule of law is intimately linked to the concept of access to justice, since the premise for denying the right to self-help redress of grievances is that the state will vindicate its citizens' rights. Without access to justice, it is not possible to 'advance the cause of justice'.
84. The Law Society's Strategic Plan affirms the Law Society's "responsibility ... to govern and lead the profession by ... addressing the issues that relate to professionalism, the rule of law, access to justice, and the independence of the legal profession".
85. In addition, the concepts of 'the public interest' and 'the cause of justice' clearly link the Society to many aspects of access to justice. This role was until recently clearly expressed in the Law Society's role in operating the Legal Aid system in Ontario, through the Society's Legal Aid Committee. (The Legal Aid system itself grew out of the *pro bono* activities of members of the Law Society). Since 1999, Legal Aid Ontario has been independent, although the Law Society is represented on its board of directors.
86. The immediate context for the creation of the Access to Justice Committee was as a replacement for the Legal Aid Committee, but with an expanded focus on access issues in general. With the creation of independent status for the legal aid system in Ontario there was nevertheless a general view that legal aid and access to justice in general remains closely related to the mandate of the Law Society.
87. Many of the Law Society's programmes have an access to justice component, although how broadly this is defined is a matter of opinion (since it could be argued that most of the Law Society's programmes are connected to access to justice in some way).
88. The principal programmes that the Law Society has referred to as relating to access to justice include:
- a. Lawyer Referral Service;
 - b. Equity Initiatives, including the Discrimination & Harassment Counsel;
 - c. Compensation fund;
 - d. Specialist Certification;
 - e. Client Service Centre, and
 - f. Government Relations, as regards such access-related issues as legal aid.
89. Some information on the current budgetary expenditures associated with these aspects of the Law Society's operations is set out at Appendix 4.

90. The Law Society is also currently developing an on-line member directory to help provide the public with information about lawyers in their communities.
91. The Law Society's most significant recent activities in the access to justice field are the important degree of support for *Pro Bono Law Ontario*, including *Volunteer Lawyers Service*, and the creation of the Access to Justice Committee as a standing Committee of Convocation, although these have not as yet entailed significant net costs. (The Law Society has provided significant in-kind support including providing accommodation).
92. The Law Society made a number of announcements in connection with the formation of the Committee and to emphasize the Society's commitment to access to justice, including devoting a whole issue of the *Ontario Lawyers' Gazette* to the access theme. This included a statement by the Treasurer that:

All people in Ontario are entitled to fair and equal access to the law, and therefore, they require access to competent, professional and affordable legal services.
93. In an interview, the Treasurer went on to comment that access issues cover a wide range, including educational access to becoming a lawyer, contingent fees and the need to increase legal aid tariffs.
94. Not all of the Law Society's programmes are well understood by the public; a recent survey showed that fewer than 60% of respondents were aware of the Compensation Fund²⁹.
95. Recently, there has been a growth in public interest in access to justice and *pro bono*, seen in the increased media coverage on these themes. Of significance, the announcement of PBLO was the feature story and headline in a major newspaper in January (attached at Appendix 5).

PART FIVE ~ THE COMMITTEE'S DELIBERATIONS

96. The Committee Chairs have proposed some general themes for the Law Society's approach to access to justice, based on the Committee's discussions to date, as follows:
 - a. The approach should exemplify Canadian values of the public good and 'peace, order and good government';
 - b. We should build on the values of an independent, self-governing profession with a tradition of public service and an obligation to act in the public interest;
 - c. Access to justice requires a holistic approach – the health parallel is with promoting wellness, not with acute treatment;
 - d. There is a need to address the pervasive cynicism about lawyers and legal system – and poor morale among lawyers;
 - e. The Law Society needs to communicate better with the public, so that a communications strategy should be an integral part of the Committee's work;
 - f. There is a public need for easy to reach/understandable information about legal rights;
 - g. The Law Society's work on access should be done in close association with Legal Aid Ontario, *Pro Bono Law Ontario* and other major stakeholders, and

²⁹Strategic Counsel, *Impressions of the Law Society and Legal Profession*, 2001

- h. The Committee should strive to identify, and work towards eliminating, current barriers to access to justice.
97. As mentioned above, many US jurisdictions have established Access to Justice Commissions or Committees for the principal purpose of increasing civil legal aid funding. These Commissions are an example of involving a broad coalition in access-related issues and receive funding from a number of sources.
98. Based on the materials reviewed by the Committee and the discussions to date, some options for consideration are set out below.
99. In reviewing possible steps for the Law Society to take, it is important to bear in mind the necessary resources, both financial and organizational, required for a project or initiative to be effectively undertaken. The relevant criteria include:
- a. Is the proposal financially feasible for the Law Society?
 - b. Are there possible partners who are likely to be interested in the proposal?
 - c. Would outside sources of funding be available?
 - d. Would it require amendment of existing policies, or of Law Society by-laws?
 - e. Is the proposal substantive or symbolic?
 - f. What is a realistic time-frame for the initiative?

Definition of Access to Justice

100. Convocation is requested to consider the definition of 'Access to Justice' it wishes to adopt. While all of the approaches to access to justice discussed above may have merit, the Law Society's effectiveness on access to justice issues is likely to be greatest in areas that most closely relate to the Law Society's mandate. It is accordingly recommended that the Law Society focus initially on issues where the Society can be most effective acting either alone or in partnership with other organizations.

Civil or Criminal

101. As discussed above, while criminal law issues are of great importance, the majority of the public are more likely to be affected by issues of civil justice. Accordingly it is recommended that the Law Society initially focus on issues relating to access to civil justice.

Options for the Law Society relating to the Law Society's Core Functions

102. There are a number of available approaches that relate to the core mandate of the Law Society. These would involve championing the proposition that all aspects of the Law Society's work should be imbued with the concepts of access to justice, especially for the less fortunate, and that this should be seen as inherent in the Society's mandate. Examples of this might include:
- a. identifying access to justice as a core concern of the Law Society, and amending the Society's Role Statement accordingly;
 - b. Focusing the Law Society's government relations policy on those issues of most importance to access, such as investment in the legal aid system;
 - c. In keeping with the Law Society's mandate, examining issues of public policy touching on access to justice and taking public positions on such issues where appropriate. The Committee could play a role in outreach to the community to identify issues of concern as they arise;
 - d. Commissioning an opinion survey of members of the Law Society to identify their concerns;

- e. Commissioning research projects on access to justice as it relates to the society's core functions;
- f. promoting awareness of the special legal needs of the poor and disenfranchised in the Law Society's Continuing Legal Education programmes, including work with Legal Aid Ontario to promote the importance of legal aid work;
- g. Using the Law Society's Continuing Legal Education programmes to promote simplified language and eradicate jargon;
- h. Adopting an 'Access to Justice Impact Statement' which could be used to assess all policy initiatives considered by the Society; and
- i. Broadening the awareness of the Lawyer Referral Service to include better public promotion of the service and further coordination with other service providers.

Approaches for the Law Society Within the Legal Profession

103. There are a number of possible approaches open to the Law Society for working on access to justice issues within the profession as a whole. These would involve championing the proposition that as an independent, self-governing profession, lawyers should consider service to others and a concern for the vulnerable and socially excluded as an essential part of professionalism and social responsibility. Possible approaches include:
- a. Building on the initial level of support for *Pro Bono Law Ontario*, to make the promotion of community involvement a high profile element of the Law Society's access to justice strategy, including the encouragement of such activities as service on community boards and agencies as well as the provision of *pro bono* legal services;
 - b. Working with *Pro Bono Law Ontario* to remove barriers to the participation of the profession in the donation of services and to establish best practices and programmes for the donation of lawyers' time;
 - c. Working with all legal professional bodies and partnerships available to the Law Society to promote the importance of access issues to the profession. Decisions on many legal-related issues may have an impact on access to justice; the Law Society could play a role in seeing that these implications are taken into account;
 - d. Adopting a policy of applying to intervene in litigation touching on access to justice issues, using *pro bono* counsel arranged by the Law Society in conjunction with *PBLO*;
 - e. Examining access to lawyers and legal services for Ontarians, including:
 - i. Commissioning a study of whether smaller towns and rural areas are at risk of losing their access to legal services due to an aging population of lawyers and a lack of younger talent being recruited;
 - ii. Examining the operation of pre-paid legal plans and Legal Expense Insurance in other jurisdictions to determine the advisability of encouraging the development of such services in Ontario;
 - iii. Working with Legal Aid Ontario to determine current issues involving gaps in service.

- f. Hosting a high level, international symposium on the legal profession and access to justice, to raise the profile of the public interest aspect of the Law Society's mandate, and to promote the concept of a constitutional right to access to justice (see decision item below).

Approaches for the Law Society to work with the public in general

104. There are a number of approaches available to the Law Society to work for access to justice in the broader social context, in keeping with the Society's public interest mandate, for example:
 - a. In the context of the need for better information for the people of Ontario about their rights and how to assert them, examine new approaches to public legal education, such as,
 - i. using new media and/or television, in which the Law Society could partner with other organizations, either governmental or private, in offering easily-understandable, useful information to the public, as advocated in the pioneering study by ML Friedland undertaken in 1975, in which he recommended the creation of "a new source of law for non-lawyers",³⁰
 - ii. Examining ways to use PLEI in a community development context.
 - b. Examining the availability of telephone information services. The Law Society's former Dial-a-Law programme represented an innovative outreach to the public in need of legal help. The Law Society could investigate whether this need is being effectively met (this issue is discussed further below).
 - c. Reviewing existing public opinion research and as appropriate commissioning further public opinion surveys to determine the views of the public on the legal system and their ability to access relevant information about the law and their legal rights.
105. In order to raise the profile of the legal profession in general and the Law Society in particular in the promotion of access to justice, the Law Society could work with partners to establish an independent 'Access to Justice Institute'. Such a body could:
 - a. commission research and advocate policies to promote the public's knowledge of the law and access to justice;
 - b. Participate in public legal education programmes (possibly in collaboration with other partners);
 - c. Seek to extend its effectiveness by obtaining diverse sources of funding (e.g. government, private foundations, corporations);
 - d. Seek partnerships with, and provide coordination to, other relevant organizations. This could include outreach to potential partners outside the legal profession as well as collaboration with existing organizations such as Legal Aid Ontario and *Pro Bono Law Ontario*;
 - e. Examine the future of the legal profession in the context of a growing recognition of law as a social institution rather than a set of rules, and of the need for holistic solutions to societal disputes going beyond litigation;
 - f. Be incorporated with a board of directors including the participation of the Law Society and other partner organizations.

³⁰ Friedland, Jewett and Jewett, *Access to the Law*, study for the Law Reform Commission of Canada, 1975

106. Creation of such a body would allow the Law Society to focus on access to justice issues related to its core mandate and refer broader issues to the institute. The Law Society might wish to transfer some existing access-related functions to such a body, excluding those relating to the Law Society's core programmes.
107. Functions that could be considered for assignment to such a body could include:
- a. Research programmes of a broad nature (outside the scope of the policy research required for the Law Society's operations), for example, to work with Legal Aid Ontario to research current gaps in legal aid funding;
 - b. The Law Society's involvement in programmes such as *Pro Bono Law Ontario*, CCWC, etc.;
 - c. Undertaking broad public legal education initiatives, for example the creation of a legal information service for the public;
 - d. The hosting of conferences, symposia and other events;
 - e. Facilitating the development of pre-paid legal plans, Legal Expenses Insurance or other strategies for improving access to justice for the middle-class;
 - f. Commissioning opinion polls both within and outside the profession on justice related topics;
 - g. Establishing a legal information programme;
 - h. Developing and promoting a Plain Language initiative.
108. Since such a body would require ongoing financial support, it may be appropriate to investigate possible sources of funding outside the Law Society and whether outside assistance should be retained to manage such a process.

Appendices

1.	Invited Guests.....	53
2.	List of Topics Considered	54
3.	Legal Aid Expenditures Chart.....	55
4.	Law Society Budget re: Access to Justice	57
5.	Toronto Star Clipping re: ProBono Law Ontario	58
6.	Symposium – Grant Application to the Law Foundation of Ontario.....	60
7.	Legal Line	75
8.	The Ontario Justice Education Network.....	85
9.	Community Legal Education Ontario	88
10.	Professor M. Friedland; submission to the Law Foundation of Ontario.....	89

11.	Convocation Minutes, Report of the Special Committee on Access to Legal Services, January 29, 1993	93
12.	Pre-Paid Legal Services Inc, US	100
13.	Le Barreau du Qu9bec, Legal Protection Insurance: For a Greater Access to Justice	109
14.	CAW Canada, Legal Services Plan	135
15.	Legal Outfitters	147
16.	STERLON Legal Expense Insurance	156
17.	Pro Bono Policy of New South Wales, Australia	161

SECTION TWO

TERMS OF REFERENCE/COMMITTEE PROCESS

109. The Access to Justice Committee (“the Committee”) is reporting on the three most recent meetings of the Committee:
- a. February 21st
 - b. May 10th and
 - c. June 11th.
110. Committee members who have taken part in all or part of these meetings are: Ron Manes (Chair), Marion Boyd and Barbara Laskin (Vice Chairs) Stephen Bindman, Paul Copeland, Todd Ducharme, Seymour Epstein and Charles Harnick. The Treasurer also attended for some of the meetings. Staff in attendance at various times were Malcolm Heins, Terry Knott, Lucy Rybka-Becker and Julia Bass. In addition there were several guest speakers, discussed below.
111. The Committee is reporting on the following matters:
- For Decision
- 1) Symposium on Access to Justice
- Information
- 2) Lawyer Referral Service
 - 3) Public Legal Information/Education
 - 4) Prepaid Legal Services
 - 5) *Pro Bono Law Ontario* update

FOR DECISION

ACCESS TO JUSTICE SYMPOSIUM

Request to Convocation

112. Convocation is requested to approve the submission of a proposal to the Law Foundation of Ontario for a Symposium on Access to Justice in Ontario.

Introduction

113. The Committee believes that an important contribution for the Law Society to make to access to justice in Ontario would be the hosting of a high profile conference on the current state of access to justice in the province, with the participation of international authorities from other jurisdictions.

Background

114. Two of the most important elements of access to justice are going through a period of significant change in many jurisdictions: public legal aid plans are under considerable stress, while there has been a renewal of interest in *pro bono* work including the founding of a number of new organizational bodies. (This has in fact led to concerns that an increase in *pro bono* work will be seen as an alternative to a properly funded legal aid system). These are all issues of great concern both to the profession and to the public at large.
115. The Law Society has a critical role to play in stimulating debate on these issues and in seeing that important developments in other jurisdictions are brought to the attention of the profession and public policy makers in Ontario.
116. In some areas, Ontario is considered world leader, while on other issues there is much to be learned from the experience in other jurisdictions.
117. The Committee believes that a major public Symposium could address the following objectives:
- 1) encouraging a collaborative approach to the coordination, delivery and promotion of legal services to low and modest income individuals in Ontario. Judges, lawyers, community-based organizations, law students, law firms, and others in the justice system will come together to discuss a broad range of issues affecting access to justice in Ontario;
 - 2) encouraging all members of the profession to do their part to ensure access to justice. Legal Aid Ontario needs more lawyers to accept legal aid certificates, lawyers in large firms are needed to volunteer their time, sole practitioners are needed to provide advice and counseling in community legal clinics;
 - 3) examining mechanisms to enhance access to justice for the middle class;
 - 4) highlighting the achievements and challenges of access to justice in Ontario;
 - 5) providing an opportunity for considering innovative programmes and best practices from other jurisdictions;
 - 6) establishing and reinforcing relationships with other Ontario stakeholders to ensure the Law Society is part of the access to justice landscape;
 - 7) exploring constructive ways to deal with unrepresented and self-represented persons in the courts, not at the expense of legal aid or any other part of the system, but to ensure that all members of the profession are working in partnership to ensure access to justice for all; and
 - 8) considering the manner in which different vehicles delivering access to justice in Ontario can complement each other. Legal Aid Certificates, Legal Aid Clinics, and *pro bono* legal assistance for

- those that are ineligible for legal aid all contribute and work together to make the justice system a reality to all low and modest income individuals in Ontario.
118. The Law Society's Symposium on the future of the legal profession in November, 2000 was very successful and enhanced the image of the Law Society and the profession.
 119. The Committee is of the opinion that funding assistance for such a project may be available, from the Law Foundation of Ontario and other sponsors, so that the Law Society's contribution would be in the form of staff time and other in-kind support.
 120. A draft submission has been forwarded to the Law Foundation's external analyst with the proviso that the application has not yet been approved by Convocation. A copy is attached at Appendix 6.

FOR INFORMATION

LAWYER REFERRAL SERVICE

Issue

121. The Lawyer Referral Service is one of the existing Law Society programmes which the Committee has identified as having an important access to justice role. The Committee has reviewed,
 - 1) what the impact of introducing a fee for the service has been, and
 - 2) whether the service could be more widely promoted.

Background

122. The Lawyer Referral Service was created in 1970, to connect members of the public looking for a lawyer with a local Law Society member in the appropriate practice area.
123. To join the service, Law Society members pay a listing fee, currently set at \$250 plus tax. There are almost 2,000 lawyers listed by location and practice area. The lawyers undertake to provide a free half-hour consultation to each person referred. For some lawyers, the service is an important source of clients.
124. The half-hour consultation does not constitute legal advice, but rather identification as to whether there is a legal issue to be resolved and advice as to the appropriate way to proceed. Technically, legal advice is not provided until the client has retained the lawyer to act on the matter. Nevertheless, the provision of such free information represents a useful public service, as many clients find that the consultation resolves the issue for them. Since there were 26,500 initial consultations in 2001, this represents a significant contribution of time by the profession.
125. The service is much more informative to the public than the Yellow Pages, as LRS can provide the name of a lawyer,
 - 1) In the right geographic area
 - 2) In the relevant area of practice
 - 3) Who will accept legal aid certificates
 - 4) Able to speak a desired language
126. The service was initially free to the public. However, over time concerns developed that there were a large number of inappropriate calls to the service, including,
 - 1) The same people calling many times in order to obtain enough information to represent themselves in court or draft their own legal documents,
 - 2) Irrate callers venting about issues not relevant to the LRS, and

- 3) Callers seeking general information about such services as Legal Aid, Court times, Employment Insurance matters and other agencies.
127. In addition, there was a high 'blockage' rate, meaning callers received a busy signal and could not be helped. To address this level of calls without busy signals would require a considerable increase in staffing.
128. To address this situation, a fee of \$6.00 per call was introduced in October 2000. The amount was selected as being high enough to reduce 'nuisance' calls but not to deter those seeking legal help.
129. After the fee was introduced, the percentage of calls where a referral could be given rose significantly from 49% to 62%, possibly because of a higher percentage of 'relevant' calls. The percentage of referrals which resulted in the caller contacting the member remained relatively constant, rising from 50% to 52%.
130. Busy signals were also significantly reduced, avoiding a situation where callers could not get through.
131. To address the concern that disenfranchised callers may not have access to a private phone, a 1-800 number continues to provide free service to institutionalized callers, victims of domestic abuse, minors and those in shelters. While it cannot be demonstrated that the fee does not prevent some legitimate callers from using the service, about 30% of all calls are received on the free 1-800 crisis line.
132. The LRS also continues to assist other agencies such as Duty Counsel and the Courts by providing a free 'Lawyer Assist' line (for example when criminal Duty Counsel find that a case is too long or complex for them to handle).
133. The \$6.00 fee generates roughly \$3.50 per call in revenue to the Law Society after telephone charges, etc. This amounted to about \$322,600 in 2001, while the fees paid by the lawyers generated about \$507,000 in gross revenue. Taking the expenses of operating the service into account, the service generated a small surplus of \$34,000.

Promotion

134. The service is promoted through mail-outs, advertising campaigns, Yellow Pages listings and information to the public listed on the Law Society's web-site. There were also some promotional activities in connection with Law Day in April.
135. Legal Aid Ontario and all legal aid clinics receive LRS marketing material. The regular requests for replacements show that this material is being well used by the public. In addition, links to LRS are provided by many community organizations.

Action

136. Staff have followed up with proposals to enable the LRS to work more closely with CLEO. The staff have CLEO have been invited to brief the LRS staff on the informational brochures available and a supply of material will be made available to send out to callers. In addition, CLEO will assist in informing the public about the LRS.

The Committee's Deliberations

137. The Committee's review of the issue led to the following conclusions:
1. The LRS is an important entry-point for access to justice in Ontario;
 2. recent restructuring has placed the programme on a sound financial footing;
 3. the programme has growth potential both as to the number of lawyers participating and as to number of persons helped;
 4. an estimate should be made of the approximate dollar value of the free advice offered by the lawyers involved;
 5. further promotional activities should be considered with a view to:

1. Increasing the number of participating lawyers
2. Increasing public awareness of the programme
3. Increasing public knowledge of the *pro bono* contribution made by the lawyers involved.
6. The Committee wishes to receive another report on the programme at the end of 2002.

PUBLIC LEGAL INFORMATION

Issue

138. The Law Society has a potential role in the provision of legal information to the public. Since the Law Society is independent of government, it may be seen as a more objective source of legal information. However, the Law Society's current activities in this area are limited.

Background

139. For a number of years, the Law Society operated a telephone-based service called Dial-a-Law, which members of the public could call for basic legal information on a number of listed topics.
140. In 1997, as part of the budget debate, it was decided to discontinue Dial-a-Law, mainly owing to financial pressures. There is now a service called 'Legal Line', run by a private, non-profit corporation called Legal Information Ontario, which provides a similar service. Information on Legal Line, which is discussed further below, is attached at Appendix 7.
141. Since the termination of Dial-a-Law, the Law Society has not been directly involved in the provision of legal information to the public.
142. There are a number of bodies in Ontario that have improving public legal information in their mandate, including:
1. CLEO;
 2. Community legal clinics, which often offer public information sessions;
 3. the new Ontario Justice Education Network, which runs the 'Courtrooms and Classrooms' programme;
 4. The Law Foundation of Ontario;
 5. The Ministry of the Attorney General;
 6. Many other local community organizations.
143. At its previous meetings, the Access to Justice Committee has identified access to legal information as a key aspect of access to justice, as articulated in the pioneering study on the subject by Professor Martin Friedland, published in 1975³¹. At that time, Prof. Friedland concluded there was a need for a new source of information on the most common legal issues: "Many of the persons to whom we talked suggested that they would find a readable, easy-to-use, up-to-date, quick reference source very useful".
144. At the time Dial-a-Law was discontinued, there was some debate as to whether the provision of legal information was within the core mandate of the Law Society.

Presentations to the Committee

145. The Committee received presentations from three organizations in the legal information field: The Ontario Justice Education Network (OJEN), Community Legal Education Ontario (CLEO) and Legal Line, and from Professor Martin Friedland.

Ontario Justice Education Network/Réseau ontarien d'éducation juridique

146. OJEN is a cooperative initiative of the principal stakeholders in the Ontario justice system including the Law Society, led by the Chief Justice of Ontario. Details of its structure and participants are provided at

³¹*Access to the Law*, a study for the Law Reform Commission of Canada, Carswell, 1975.

Appendix 8. The focus of OJEN is to facilitate collaboration and not to duplicate programmes already in existence. The first full meeting of OJEN's partners since its incorporation will be on September 10th, 2002.

147. The principal programme of the OJEN to date has been 'Courtrooms and Classrooms' which brings together lawyers, judges and high school teachers and helps to raise the standards of teaching about the law and legal institutions in the province's high schools. It is a challenge for teachers to access suitable, up-to-date materials on the law.

Action

148. This August, OJEN is planning to hold a Summer Institute for high school teachers. The Law Society is assisting with the plans, including the provision of speakers, and the sessions will take place at Osgoode Hall. Recently, a Vice Chair of the Access to Justice Committee, Marion Boyd, was appointed to the OJEN board.
149. Discussions with OJEN have suggested a number of possible avenues for cooperation between the legal profession and high school teachers. For example, year-old copies of the Criminal Code are no longer useful to practitioners but would be useful to teachers.

CLEO

150. CLEO is an important resource in the provision of public legal education materials in Ontario, especially for the low income and disadvantaged. Originally funded as a 'clinic' in the Legal Aid Ontario clinic system, CLEO now receives as much funding from the federal Department of Justice as from LAO.
151. CLEO materials are distributed by legal clinics and, to an even greater extent, by community organizations.
152. While all CLEO materials are available for down-loading from their web-site, the widest distribution continues to be in hard copy - 1.3 million brochures in 2001.
153. CLEO is currently conducting a review of their services. One proposal under consideration is the creation of a "clearinghouse" of materials on topics of province-wide interest.

Action

154. Since the meeting, there has been further staff contact to coordinate useful information sharing between CLEO and the Law Society. CLEO staff have been invited to address the staff in the Call Centre, and CLEO publications will be made available for them to send out. In addition, the Law Society Communications Department will help to promote CLEO publications and the two organizations will investigate sharing mailing costs. Staff liaison will be maintained to examine further collaboration.
155. To facilitate such further cooperation, discussions are underway to arrange to add a benchler to CLEO's volunteer board of directors. Further information on CLEO is provided at Appendix 9.

Legal Line

156. Legal Line operates a telephone-based legal information system similar to the Law Society's previous Dial-a-Law programme. It is run by a private, non-profit Ontario corporation called Legal Information Ontario and receives its funding from advertising and sponsors including Canada Post, the federal Department of Justice, Bell Canada and Nortel Networks. The Legal Line brochure, which describes the service and lists the topics available, has a circulation of 1.4 million copies.
157. The sophisticated technology used by Legal Line ensures that callers virtually never receive a busy signal. Although there are no 'live' operators, the service offers a number of options to callers, such as receiving an instant fax reply or being linked to other services, and is developing the function of passing calls on directly to lawyers' offices, under what is called the *Lawyer Referral Program*®. Some members of the Committee expressed the concern that this could lead to confusion with the Lawyer Referral Service.

158. The Legal Line brochure lists useful telephone numbers in the legal system including many government departments and the Law Society.
159. Legal Line also operates a web-site but has had difficulty keeping it up-to-date.
160. The officers of Legal Line were pleased to be invited to meet with the Committee and have requested that the Law Society distribute the Legal Line guide to the membership with a letter of support.
161. There is debate about whether telephone recordings have been replaced by the internet as the best vehicle for conveying information to the public. While the internet is a more powerful medium, it is less accessible to low income persons who lack a home computer or do not have the necessary literacy skills. While many public libraries provide internet access, and this is quite a popular service, the operators of Legal Line regard the telephone as much more user-friendly, for the foreseeable future.

Action

162. The Committee will be continuing its consideration of the effectiveness of current legal information services.

Professor Martin Friedland

163. The Committee also received a presentation from Professor Martin Friedland on his project for "Access to the Law". The main feature would be a web-site with "comprehensive and comprehensible legal information as required by citizens", especially annotated versions of the most commonly used federal and provincial statutes. The submission regarding this project is now before the Ontario Law Foundation for consideration. Details of this project are attached at Appendix 10.

Options

164. There are many formats available for the dissemination of public legal information which the Law Society could consider, working alone or in collaboration with one or more of the partners mentioned above, including for example,
1. A speakers' bureau
 2. Telephone information services
 3. Web-sites
 4. Radio and television programmes
 5. Libraries and reference services.

Action

165. The Committee reviewed the above options and requested staff to develop proposal for a Law Society speakers' bureau, in partnership with OJEN and any other appropriate partners, including the resource and staffing implications. The Ontario Bar Association (formerly Canadian Bar Association - Ontario) no longer operates a speakers' bureau and concentrates out-reach activities on Law Day/Law Week.
166. The Committee does not favour the Law Society serving as a funding resource for other organizations. Rather, the Committee is of the opinion that the appropriate role for the Law Society is to work with partners by providing policy and in-kind support.
167. The Committee will be continuing its consideration of these issues.

LEGAL SERVICES INSURANCE/PREPAID LEGAL PLANS

Issue

168. The Committee has identified prepaid legal plans as being a potential vehicle for improving access to justice in Ontario, but the market in Ontario is rather under-developed compared to a number of other jurisdictions.

Background

169. In January, 1993, Convocation adopted the report of the Special Committee on Access to Legal Services, which recommended *inter alia* “that the Law Society actively promote and encourage the establishment of prepaid legal plans in Ontario . . .” The full report is attached at Appendix 11.
170. An attraction of prepaid legal plans is that they offer a means of making legal services more affordable to the middle class, who are generally at a disadvantage in that while they may find private legal assistance expensive, they do not qualify for legal aid.
171. The best-known prepaid legal plan in Ontario is that operated by the Canadian Auto Workers Union (CAW) which opened in 1984. This was negotiated as part of the collective bargaining process and is paid for by the employer.
172. Apart from this plan, prepaid legal services in Ontario have developed more slowly in Ontario than, for example, the US, Quebec and Europe.
173. In the US, *Pre-Paid Legal Services, Inc.* of Ada, Oklahoma has become a major presence, using an aggressive marketing campaign based on ‘Multi-Level Marketing’ (meaning sales agents are asked to recruit additional sales agents as well as customers). It now claims to have over a million clients. Further information on this company is attached at Appendix 12.
174. In June, 1999, *PPL Legal Care of Canada Corporation*, a subsidiary of PPL, started offering prepaid plans in Ontario, using the services of the Toronto law firm of Mills & Mills.
175. *PPL Legal Care* was required to change the content of their plans in Ontario after the Financial Services Commission found that the plans constituted insurance and were therefore subject to the regulatory regime for insurance. While they could have chosen to bring their plans into conformity with these requirements such that they were technically selling insurance, they preferred to redesign their plans to take them outside this regime. In many other jurisdictions such as Quebec and the UK, insurance products tend to predominate.
176. In Quebec, more than 150,000 households are covered by ‘legal protection insurance’. This is offered by a number of large insurance companies, often as a rider to a home insurance policy. While *Le Barreau du Québec* does not endorse any specific provider, they have endorsed the concept and helped to publicize the existence of such plans on their website. A page from their website and a position paper prepared for them is at Appendix 13.
177. There is also a large market for legal services insurance in Europe. In some countries, legal services insurance is compulsory as an add-on to car insurance (Germany) or home insurance (Finland). The profits from the compulsory legal insurance in Finland are used to subsidize their legal aid plan.

Presentations to the Committee

178. The Committee has received presentations from:
 1. the Executive Director of the CAW Legal Services Plan, Mr Stephen Ginsberg;
 2. two partners from the firm of Mills & Mills, Mr Donald Mills and Mr Edward Mills;
 3. Mr Kevin Le Messurier-Girling, STERLON Insurance, and
 4. Ms Meredith Cartwright, Legal Outfitters
179. As explained to the Committee, the law firm of Mills & Mills has no involvement in the marketing and promotional aspects of PPL. Rather, it seeks to provide a high quality of service to the clients generated by the plan.
180. While the business structure of their plans is very different, the services provided by Mills & Mills, Legal Outfitters and by the CAW plan are relatively similar, while they are in fact rather different from a typical

- legal practice. For example, a large percentage of the 'free' work under the plans is provided over the telephone. In addition, many calls concern matters that would not routinely be seen by a conventional legal practice, such as car leases or other standard form documents sent in for advice before signing.
181. Mr Donald Mills made the point that, as a long-established family run legal firm, they do not find that the PPL service offered by their firm is in competition with the existing services of the firm, owing to the different nature of the work.
182. Mr Ginsberg provided some statistics on the work provided by his service, as follows:
1. Wills and estates related: 30%
 2. Real estate related: 40%
 3. Family law: 15%
 4. Consumer law 10%
183. Not all the work under the CAW plan is done in-house:
1. Staff lawyers: 45%
 2. Panel law firms 45%
 3. Opt-out 10% (client chooses to use an unrelated firm).
184. While the number of companies that will adopt a CAW-style plan (where all employees are covered) may be limited, employment-based plans may become more common with the growth of "cafeteria" style benefit plans, where legal coverage may be one of many benefit choices.
185. Mr Ginsberg argued that the fact that legal plan premiums are currently a taxable benefit to the employee is an obstacle to the growth of such plans. He also recommended that the definition of 'insurance' in provincial insurance legislation be amended. These issues are discussed in the paper by Mr Ginsberg attached at Appendix 14, together with some further information on the CAW plan.
186. Ms Meredith Cartwright gave a presentation on the services of Legal Outfitters. This company offers a similar service to PPL, but is a small Canadian-owned business and does not use multi-level marketing. About 20% of their plans are sold to small businesses, sometimes on the recommendation of financial advisers. The personal plans sell best in a suburban market where consumers are less likely to be acquainted with a lawyer than in a big city or a small town. Legal Outfitters has conducted some research on the nature of the market, some excerpts from which are attached at Appendix 15.
187. Mr Girling gave presentation on the insurance products offered by STERLON, and discussed the fact that this form of insurance has been well received in Quebec. Further information on STERLON is attached at Appendix 16.
188. According to Mr Girling, the European services provide a better model for the Canadian market than the American model, owing to differences in the legal and social context, and the success in Quebec has been partly due to the presence of companies with French experience. The US industry uses 'negative-option billing' to add legal expenses insurance to existing policies but this approach has been rejected by the Insurance Bureau of Canada.
189. Mr Girling was recently invited to speak to the Law Society of British Columbia where there is growing interest. He also made the point that the form of legal insurance offered by STERLON (which covers the legal fees resulting from catastrophic events) is complementary to the prepaid legal plans offered by Legal Outfitters (which cover routine solicitors' work).
- Action
190. The Committee requested staff to obtain further background on the possible advantages and regulatory concerns about legal services insurance by:
- a. Conferring with the Law Societies in BC and Quebec, and
 - b. contacting the Insurance Bureau of Canada and the Financial Services Commission of Ontario.

191. The Committee will be returning to Convocation with recommendations on the nature and extent of Law Society involvement in the promotion of these services.

PRO BONO LAW ONTARIO UPDATE

Issue

192. *Pro Bono Law Ontario* (PBLO) is a new organization with the mandate to encourage the provision of *pro bono* legal services by lawyers in Ontario. The Law Society is assisting PBLO with accommodation and in-kind support and the CEO of the Law Society sits on the PBLO Board. PBLO has started working with legal organizations in the province to identify current barriers to the provision of *pro bono* services.

Background

193. PBLO has started work assisting legal organizations and law firms. For example, PBLO is able to help pair charities and non-profits with law firms who can provide a range of legal services. Justice for Children and Youth is working with the Advocates Society, while Blakes is currently partnered with the Family Services Association of Toronto. Other relationships between firms and non-profits are actively being brokered by PBLO.
194. PBLO would like to encourage competition among the large law firms as to who can provide the most *pro bono* help. This form of competition has proved helpful in the US.
195. The Committee is considering possible means of obtaining better information about the current level of *pro bono* work being performed by Ontario lawyers, whether by use of the Member's Annual Report (MAR) or otherwise. (To address concerns that have been raised by a number of members, this will include a comment that the Law Society opposes making *pro bono* service mandatory.)

Action

196. A number of jurisdictions have policies for the promotion of *pro bono*. As an example, the policy in effect in New South Wales, Australia is attached at Appendix 17. The Committee will be bringing forward a proposed policy for Convocation's consideration this fall.

Pro Bono Work by In House Counsel, Government Lawyers and Retired Lawyers

197. Some jurisdictions have attempted to remove barriers to the provision of *pro bono* services by lawyers not usually available for such work, such as government lawyers, in-house counsel and retired lawyers. This generally requires modification to the status of such lawyers under the professional liability regime. PBLO has approached the Lawyers' Professional Indemnity Corporation with regard to this topic and it was discussed June meeting of the LawPro (LPIC) board. The board asked for a proposal to be developed for their meeting in September.
198. In addition, the removal of other regulatory barriers and the development of appropriate communications initiatives may need to be addressed to make this initiative possible.

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

- | | | |
|-----|--|-----------------------------|
| (1) | list of speakers involved in access to justice initiatives. | (Appendix 1, page 53) |
| (2) | Examples of Access to Justice Issues. | (Appendix 2, page 54) |
| (3) | Copy of Comparative Civil Legal Services Investments. | (Appendix 3, pages 55 – 56) |
| (4) | Copy of Law Society Programmes with Access to Justice-Related Costs. | |

(Appendix 4, page 57)

- (5) Copy of article in newspaper re: Pro Bono Law Ontario.
(Appendix 5, pages 58 - 59)
- (6) Copy of a draft submission of proposal to Law Foundation of Ontario.
(Appendix 6, pages 60 – 74)
- (7) Copy of information re: Legal Line.
(Appendix 7, pages 75 – 84)
- (8) Copy of the details structure and participants re: The Ontario Education Network.
(Appendix 8, pages 85 –87)
- (9) Copy of information re: CLEO (Community Legal Education Ontario).
(Appendix 9, page 88)
- (10) Copy of a letter from Professor Martin Friedland, Professor of Law Emeritus, University of Toronto addressed to The Law Foundation of Ontario dated April 4, 2002 re: Application for a grant for Access to the Law.
(Appendix 10, pages 89 – 92)
- (11) Copy of the Report to Convocation re: Special Committee on Access to Legal Services.
(Appendix 11, pages 93 – 99)
- (12) Copy of information re: Prepaid Legal Services Inc.
(Appendix 12, pages 100 – 108)
- (13) Copy of information re: legal protection insurance (Quebec).
(Appendix 13, pages 109 – 134)
- (14) Copy of a paper by Mr. Stephen Ginsberg re: CAW plan.
(Appendix 14, pages 135 – 146)
- (15) Copy of excerpts from Legal Outfitters.
(Appendix 15, pages 147 – 155)
- (16) Copy of information re: STERLON.
(Appendix 16, pages 156 – 160)
- (17) Copy of the policy for the promotion of *pro bono* in effect in New South Wales, Australia.
(Appendix 17, pages 161 – 163)

It was moved by Mr. Manes, seconded by Ms. Laskin that the submission of a proposal to the Law Foundation of Ontario for a Symposium on Access to Justice in Ontario be approved and if the Law Foundation of Ontario approves the funding of \$150,000, the Symposium be planned.

Carried (unanimously)

Mr. Manes thanked Julia Bass, Barbara Laskin, Marion Boyd and members of the Committee for all their hard work.

Items for Information Only

- Lawyer Referral Service

- Public Legal Information
- Legal Services Insurance/Prepaid Legal Plans
- Pro Bono Law Ontario Update

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

Mr. Cherniak presented the Report of the Professional Development & Competence Committee for approval by Convocation.

Professional Development & Competence Committee
June 28, 2002

Report to Convocation

Purpose of Report: Policy - For Decision
Information

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

TABLE OF CONTENTS

Terms of Reference	1
Policy – for Decision	
Electronic Registration	2
Overview to Report	2
The Report.....	3
Appendix 1: Joint Committee Report.....	14
Competence Model: Practice Guidelines.....	58
Overview to Report	58
Appendix 1: Practice Management Guidelines (draft)	62
Appendix 2: Excerpt from March 2001 Report to Convocation.....	154
Appendix 3: Report on Reviewer Response	157
Competence Model: Specialist Certification Component.....	174
Overview to Report	174
Appendix 1: Excerpt from March 2001 Report to Convocation.....	180
Appendix 2: Specialist Certification Business Plan	184
Appendix 3: Report from Wendy Tysall to Finance	230
Private Practice Refresher Program.....	234
Overview to Report	234
Appendix 1: Guide to PPRP Modules	239
Information	
Report on Specialist Certification Matters Finalized by the Committee	244

Sale of Quicklaw to LexisNexis Butterworths Canada.....	245
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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Committee met on June 13, 2002. Committee members in attendance were Earl Cherniak (Chair), Kim Carpenter-Gunn (Vice-Chair), Bill Simpson (Vice-Chair), Janet Minor, Greg Mulligan and Helene Puccini. Gerald Swaye also attended the meeting. Staff in attendance were Diana Miles, Sophia Sperdakos and Ursula Stojanowicz.
2. The Committee is reporting on the following matters:

Policy - For Decision

- Recommendations on Implementation of Electronic Registration
- Consultation on Proposed Practice Management Guidelines
- Proposed Design of Reformulated Specialist Certification Program
- Private Practice Refresher Program – Proposed Guide to Modules

Information

- Report on Specialist Certification Matters Finalized by the Certification Working Group on April 24, 2002 and Approved by the Committee on June 13, 2002
- Information on Sale of Quicklaw Inc. to LexisNexis Butterworths Canada.

POLICY - FOR DECISION

Electronic Registration

OVERVIEW TO REPORT

Request to Convocation

1. Convocation is requested to consider the report of the Law Society of Upper Canada and Ontario Bar Association Joint Committee on Electronic Registration (the “Joint Committee”), set out at Appendix 1, and, if appropriate approve the following:
 - a. The Professional Development and Competence Committee be the Law Society standing committee primarily responsible for acting as Law Society liaison with the Joint Committee;
 - b. The following guidelines, set out at pages 48 - 57 of *Appendix 1* be approved:
 - i. Practice Guideline #1 – Maintaining Integrity of Access and Accounts
 - ii. Practice Guideline #2 – Obligations Regarding Document Preparation
 - iii. Practice Guideline #3 – The Acknowledgement and Direction
 - iv. Practice Guideline #4 – Electronic Closings and the Document Registration Agreement
 - v. Practice Guideline #5 – Electronic Closings and Mortgage Transactions
 - vi. Practice Guideline # 6 – Use of Compliance with Law Statements
 - c. The following Rules of Professional Conduct and commentaries be amended
 - i. Rule 5.01 be amended by adding subrules (7) and (8) and related commentary , set out at pages 8-9;
 - ii. The commentary to subrule 6.03(8) be amended as set out at page 10;

- iii. The commentary to subrule 5.01(2) and subrule 5.01(3)(m) be amended as set out at pages 11 and 13.

Summary of Issue

1. In September 1996, the Law Society and the Ontario Bar Association (then the CBAO) formed a Joint Committee on Electronic Registration of Title Documents ("e-regTM"), with representatives from a broad cross-section of the real estate bar. Its mandate is to consider the impact of electronic registration upon conveyancing practice in Ontario and make recommendations about what practice standards should be implemented to deal with e-regTM. E-regTM is now mandatory in 8 areas within the province and is optional in one other.
2. Following a lengthy period testing the system, the Joint Committee is now seeking Convocation's approval of a number of recommendations, set out above, as well as a continued relationship among the Joint Committee, the Law Society and the OBA. The OBA has also considered the Joint Committee's report and approved its continued involvement with the Joint Committee.
3. The steps set out in the recommendations are essential to the continued implementation of e-regTM, to ensure consistent practice in the interests of the public and to assist practitioners in adapting their practices to meet the requirements of the new system.

THE REPORT

Background

5. In September 1996, the Law Society and the Ontario Bar Association (then the CBAO) formed a Joint Committee on Electronic Registration of Title Documents ("e-regTM"), with representatives from a broad cross-section of the real estate bar. Its mandate is to consider the impact of electronic registration upon conveyancing practice in Ontario and make recommendations about what practice standards should be implemented to deal with e-regTM.
6. In April 1997, the Joint Committee issued a preliminary report that was presented to Convocation, CDLPA, and the OBA Executive. The preliminary report was followed by a subsequent report to Convocation in June 1997, which included a number of recommendations.
7. The Joint Committee was of the view that the e-regTM system should be beta-tested¹ and that recommended practice guidelines should be evaluated based on input from user groups. Convocation agreed and in 1999, in furtherance of this approach, approved the content for the practice directions that would form part of the testing.
8. Since 1999, e-regTM has been introduced in 9 jurisdictions: Dufferin, Durham, Halton, Hamilton, Middlesex, Ottawa, Peel, and York. It is optional in Simcoe County. It will eventually be implemented throughout the province.
9. The Joint Committee has continued to be involved in the process, proposing changes to the system and making changes to the guidelines along the way to reflect the valid concerns and issues raised by users.
10. It has now prepared a report of its activities, provided to Convocation for information in May 2002 and reproduced at Appendix 1.
11. The Joint Committee's report makes recommendations that require a number of Law Society considerations and decisions as expeditiously as possible to reflect the rapidly expanding scope of e-regTM.

¹A beta test is the second phase of software testing. A sampling of the ultimate audience uses the product and changes are often made based on input received.

- a. Proposed Role of the Professional Development and Competence Committee
- 12. The Joint Committee recommends that the Professional Development and Competence Committee be the primary Law Society committee with which it liaises, since much of the implementation of e-regTM is related to professional development. When it becomes necessary to deal with certain specific recommendations, such as proposed amendments to the Rules of Professional Conduct, other committees or law society departments would also be consulted. All policy decisions will be brought to Convocation for approval.
- 13. The Committee has considered the Joint Committee's recommendation and agrees with it. With the Law Society's adoption of the professional development competence model in March 2001, the scope of the Committee's role has expanded in a number of ways, including addressing the importance of a coherent approach to professional development. Given its involvement with practice guidelines and continuing legal education generally, it is fitting that it be the committee to liaise on similar issues related to e-regTM practice.
- b. Approval of Practice Guidelines for E-regTM
- 14. Practice guidelines are an essential component of the e-regTM system and, as mentioned above, have been in place since 1999 for testing and evaluation. The Joint Committee has been involved in the analysis of the guidelines and has made changes over the years to reflect comments and observations about more effective ways to conduct the e-regTM process. The e-regTM practice guidelines are now ready for final approval. They reflect the considered input of many people and groups involved directly with the use of the e-regTM system.
- 15. The Committee has reviewed the guidelines and has had the benefit of discussing them with Maurizio Romanin and James Leal, co-chairs of the Joint Committee, and is satisfied that they are realistic, useful and important to the effective practice of real estate conveyancing in the e-regTM system.
- 16. The Committee recommends their approval to Convocation.

Amendment to Rules of Professional Conduct

- 17. The Joint Committee has recommended amendments to the Rules of Professional Conduct and commentaries to address particular aspects of the e-regTM process.
 - 18. The Professional Regulation Committee ("PRC") has considered the Joint Committee's proposal and has also had the benefit of a presentation by the Joint Committee's co-chairs. PRC has advised the Professional Development and Competence Committee that it considers the proposed additions to the rules and commentaries to be appropriate. The approved amendments were referred for review to Paul Perell, principal drafter of the new Rules adopted in November 2000. The proposed wording of the amendments was approved by PRC at its meeting on June 13, 2002.
- The Amendments
- 19. The first amendment relates to security of access to the e-regTM system. Every person using the e-regTM system must become a subscriber with Teranet, and establish a Teranet account from which access and on line charges will be debited. Each user under the Teranet account, that is, each person in a law firm that accesses the e-regTM system, must obtain a personalized, specially encrypted floppy diskette and corresponding pass phrase. This is known as the Personal Security Package, or "PSP". Both are required to access the system. The integrity and security of the system is achieved through Teranet maintaining an audit trail of all transactions and the parties (identified by the pass phrases used) who performed them.
 - 20. The Joint Committee suggests that a rule be drafted to prohibit a lawyer from sharing his or her PSP, although it recognizes that the rule may be drafted in more general language to cover situations on the sharing of credentials to access electronic systems in other areas of practice. As further research is necessary respecting these other areas, for the time being, the amendment to the rule focuses on e-regTM.
 - 21. The Joint Committee suggests that such a rule be added to rule 5.01 on delegation to non-lawyers.

22. The proposed amendment appears below as subrules (7) and (8) to Rule 5.01 and related commentary. The entire section on “delegation” is reprinted for ease of reference. Relevant additions and amendments are in bold print.

5.01 Supervision

...

Delegation

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

Commentary

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

- (f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a support role to the lawyer appearing in such proceedings,
- (g) be named in association with the lawyer in any pleading, written argument, or other like document submitted to a court,
- (h) be remunerated on a sliding scale related to the earnings of the lawyer, except where the non-lawyer is an employee of the lawyer,
- (i) conduct negotiations with third parties, other than routine negotiations where the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken,
- (j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose,
- (k) sign correspondence containing a legal opinion, but the non-lawyer who has been specifically directed to do so by a supervising lawyer may sign correspondence of a routine administrative nature, provided that the fact the person is a non-lawyer is disclosed, and the capacity in which the person signs the correspondence is indicated,
- (l) forward to a client any documents, other than routine documents, unless they have previously been reviewed by the lawyer, or

- (m) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do.

Commentary

A lawyer may, in appropriate circumstances, render service with the assistance of non-lawyers of whose competence the lawyer is satisfied. Though legal tasks may be delegated to such persons, the lawyer remains responsible for all services rendered and for all written materials prepared by non-lawyers.

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

Collection Letters

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

Affiliations Between Lawyers and Affiliated Entities

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

[New - May 2001]

Electronic Registration of Title Documents

- (7) When a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents ("e-reg"™), the lawyer
 - (a) shall not permit others, including a non-lawyer employee, to use the lawyer's diskette, and
 - (b) shall not disclose his or her personalized e-reg™ pass phrase to others.
- (8) When a non-lawyer employed by a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents, the lawyer shall ensure that the non-lawyer
 - (a) does not permit others to use the diskette, and
 - (b) does not disclose his or her personalized e-reg™ pass phrase to others.

Commentary

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

23. The second amendment relates to escrow closings and undertakings. Lawyers using the e-reg™ system may in advance of registration exchange documents, funds, keys, etc. which are held under strict escrow terms until electronic registration takes place. A Document Registration Agreement, or DRA, has been developed for the escrow agreement that will be signed by the lawyers acting for the parties (with their consent) before closing in such circumstances. The DRA can also form the basis for a closing protocol, to which the parties agree to adhere. As the DRA contains undertakings pursuant to the agreement, strict compliance with the undertakings is a professional responsibility that lawyers must observe.
24. The Joint Committee suggests an addition to the commentary to subrule 6.03(8) dealing with undertakings. Paul Perell agreed with the placement of this commentary and made some changes, reflected in the following proposed language:

Undertakings

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

Commentary

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

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

25. The third amendment relates to delegation of certain tasks to non-lawyers in a law office. Individual users - lawyers and non-lawyers - will be allowed access to the e-reg™ system through the firm’s Teranet account.

Knowledge of and control over the activities of members and employees of the firm rests with the lawyers. Each electronically registered document must contain prescribed information, including in some cases statements that call for an application of legal expertise based on legal judgments (known as “compliance with law statements”). These statements must be made by a lawyer. Further information is set out in Practice Guideline #6 at pages 56-57.

26. The joint committee suggests that an addition be made to the commentaries in subrules 5.01(2) and 5.01(3) dealing with delegation of tasks to non-lawyers. Proposed language, including Paul Perell’s changes, appears below.

Direct Supervision Required

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

Commentary

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

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

A lawyer may permit a non-lawyer to perform tasks delegated and supervised by a lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work. Generally, subject to the provisions of any statute, rule, or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which in the public interest, must be exercised by the lawyer whenever it is required.

A lawyer may permit a non-lawyer to act only under the supervision of a member of the Society. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer who uses a non-lawyer to educate the latter concerning the duties that may be assigned to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.

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

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

...

[Amended - May 2001]

Delegation

- (3) A lawyer shall not permit a non-lawyer to

- (a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer is advised before any work commences,
- (b) give legal opinions,
- (c) give or accept undertakings, except with the express authorization of the supervising lawyer,
- (d) act finally without reference to the lawyer in matters involving professional legal judgment,
- (e) be held out as a lawyer,

Commentary

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

- (f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a support role to the lawyer appearing in such proceedings,
- (g) be named in association with the lawyer in any pleading, written argument, or other like document submitted to a court,
- (h) be remunerated on a sliding scale related to the earnings of the lawyer, except where the non-lawyer is an employee of the lawyer,
- (i) conduct negotiations with third parties, other than routine negotiations where the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken,
- (j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose,
- (k) sign correspondence containing a legal opinion, but the non-lawyer who has been specifically directed to do so by a supervising lawyer may sign correspondence of a routine administrative nature, provided that the fact the person is a non-lawyer is disclosed, and the capacity in which the person signs the correspondence is indicated,
- (l) forward to a client any documents, other than routine documents, unless they have previously been reviewed by the lawyer, or
- (m) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do.

Commentary

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

**COMPETENCE MODEL
PRACTICE GUIDELINES**

OVERVIEW TO REPORT

Request to Convocation

Convocation is requested to authorize the Professional Development and Competence Committee to seek input from the profession on the draft Practice Management Guidelines, set out at Appendix 1 at the end of this report.

Summary of Issue

In March 2001 Convocation approved a professional development competence model, which includes, as one of its components, the development of practice guidelines to assist the profession. The Committee recommended and Convocation directed that the first guidelines to be prepared should address practice management issues.

In October 2001 the Committee provided Convocation with a status report on the development of the guidelines. The development process to be followed was set out as follows:

- The preliminary draft would be prepared.
- The preliminary draft would be circulated to an initial group for comments and suggestions.
- Following the initial review the proposed guidelines would be provided to legal organizations and made available to the profession at large for input, comments, and suggestions.
- Following the consultation period a further draft would be prepared.
- The final draft would be provided to Convocation for approval.

The preliminary draft has been circulated to the initial group for comment. The Committee now seeks approval to obtain the input of the profession.

THE PROPOSED GUIDELINES

Background

1. In March 2001 Convocation approved a competence model consisting of five components. One component is the development of practice guidelines. Appendix 2 to this report contains the section of the March 2001 report that deals with practice guidelines.

Guideline Development In General

2. The purpose of practice guidelines is to assist lawyers to assess, maintain, and enhance the quality of service they provide to clients. Guidelines may serve as a preventive tool in the subject areas in which they are developed to,
 - a. assist lawyers in avoiding errors;
 - b. assist those who practise poorly to know what they can do to improve; and
 - c. provide those who practise competently with tools to stay abreast of changing approaches.
3. Guidelines are not intended to replace a lawyers' professional judgment or to establish a one-size-fits-all approach to the practice of law.
4. Failure to use the guidelines will not, in and of itself, indicate that a member has not provided quality service. Conversely, use of the guidelines may not ensure that a member has provided quality service. Whether a member has provided quality service will depend upon the circumstances of each case.
5. Guidelines in each area will be based on the appropriate mix of legislative and regulatory requirements, case law developed standards, and professional consensus.
6. They will reflect acceptable practice approaches and experience throughout the province and in a variety of settings, by taking into account geographic diversity, practice specific realities, available resources, and complexity of client files.
7. The guidelines will
 - a. point out essential features in the subject area;
 - b. direct lawyers' attention to the importance of taking certain steps and the risks of not taking certain steps; and
 - c. where the profession has already widely adopted certain procedures or there are requirements that members act a certain way, refer to this fact.
8. Guidelines will not replace any legislative provisions or regulations that governs the legal profession or any area of law. They will not replace provisions of the Rules of Professional Conduct. They will provide links to applicable legislation and Rules of Professional Conduct.
9. When finalized, each set of guidelines will be available in both paper and electronic form. The electronic format will have direct "links" to Law Society and other sources and resources. The paper format will contain the references that will allow a member to access the same resources. The links and resource supports will be a critical feature of the guidelines. They will constitute a form of ongoing professional development to provide tools that elaborate on particular guideline points. They will direct a user to relevant aspects of the *Law Society Act*, By-laws, the Rules of Professional Conduct, and other legislation. They will also include references to helpful articles, practice tips on client relations and running a law office, and other tools that elaborate on topics addressed in the guidelines. The links will also direct practitioners to sample documents and precedents to assist them in enhancing their practice management activities. These links will be useful for all lawyers, in particular sole practitioners and newly-called lawyers.
10. To ensure the ongoing relevance of the guidelines they will be regularly updated.

Practice Management Guidelines

11. There are eight parts to the Practice Management Guidelines:
 - a. Client Service and Communications
 - b. File Management
 - c. Financial Management

- d. Technology
 - e. Professional Management
 - f. Time Management
 - g. Personal Management
 - h. Closing Down Your Practice
12. The initial draft was sent to 25 practitioners in private practice throughout the province for their comments. They work in practices of various sizes and practise in a wide range of areas of law. A summary of their comments is set out at Appendix 3. The comments are detailed and thorough. They include suggestions for changes and additions to the guidelines, some of which are contradictory from one commenter to another. The Committee is of the view that the comments are sufficiently favourable that it is now appropriate to seek input on the guidelines from the profession at large. The detailed comments of the initial reviewers can then be considered more fully in the context of all the input to be received in the coming months.
13. The Committee requests Convocation's approval to seek input from the profession on the draft Practice Management Guidelines. Information and comments will be considered and a further draft prepared. The final draft will be submitted to Convocation for approval.

APPENDIX 2: Excerpt from March 2001 Report on Implementing the Law Society's Competence Mandate

VI. PRACTICE GUIDELINES

75. The Report of the Second Competence Task Force, approved by Convocation in 1999, emphasized that the clear articulation of competence standards or guidelines is essential to fulfilling the Law Society's competence mandate. As noted above, the Report also emphasized the importance of the definition of the "competent lawyer" as the underpinning to the development of such standards or guidelines and, additionally, to competence-related activities. Since consideration of that Report, the definition of the "competent lawyer" has been incorporated into the Rules of Professional Conduct. Individual lawyers' practice skills and delivery of legal services may now be assessed against that definition.
75. The Consultation Document, approved by Convocation in March 2000, stated that whatever approach to competence is adopted it would include the development of practice guidelines. As outlined in the Consultation Document, the general goal of practice guidelines is to,
- 1. articulate "acceptable performance" in identified practice areas;
 - 2. articulate "best practices" or recommended performance with a view to enhancing overall levels of performance across the profession including for lawyers who function regularly on a competent basis; or
 - 3. address both "acceptable performance" and "best practices" or recommended performance.
77. By its approval of the Report of the Second Competence Task Force in April 1999 and the Consultation Document in March 2000, Convocation has approved the development of practice guidelines.¹ The provisions of the *Act* provide clear jurisdiction to the Law Society to formulate practice guidelines.

¹Competence Task Force: Final Report (April, 1999) In approving the development of guidelines, Convocation approved the following recommendation: *A variety of resources should be used in developing competence guidelines, including consultation with the profession and drawing on what is learned and observed through practice reviews, competence hearings, the complaints and discipline process, and the LPIC experience.*

78. This policy direction by Convocation found support during the consultation process. During that process many participants confirmed to the Committee the need for, and benefit of, guideline development, both as a monitoring mechanism and to provide members with guidance as to the validity and reliability of their own approaches to competent performance.² Many participants felt that, in view of the existence of section 41 of the *Act* regarding standards of competence, the development of practice guidelines in specified areas would be important to inform members of expectations regarding competent performance.
79. The research conducted by the Committee has revealed that the formulation of practice guidelines is a common competence-enhancing technique employed by many other professions in Ontario. As appears from Appendix 4 to this Report, practice guidelines are utilized by a number of health professions (including the College of Physicians and Surgeons of Ontario, the Royal College of Dental Surgeons of Ontario, and the College of Nurses of Ontario) as well as the Institute of Chartered Accountants of Ontario, the Certified General Accountants of Ontario, the Canadian Institute of Actuaries, the Ontario Association of Architects and the Professional Engineers of Ontario. The use of such guidelines, therefore, must be viewed as a common technique.
80. For all of the foregoing reasons, guidelines development is one of the central features of the Committee's proposed approach to competence. The Committee considers that such guidelines should be regarded as an ongoing and long-term component of the Law Society's and the profession's commitment to achieving and maintaining competence. It is essential to develop, through consultation with the profession, a shared understanding of the knowledge and skills lawyers require in various practice fields.
81. The Committee proposes that,
1. the practice guidelines developed as part of the competence model should be specific in nature and flexible in application;
 2. the initial emphasis of guidelines development should be on "acceptable performance" and should work towards the identification of "best practices";
 3. initially, guidelines should be directed at practice management, including technology and client service issues. More particularly, the first guidelines should focus on what is meant by "*the member's attention to the interests of clients*", "*the records, systems, or procedures of the member's practice*" and "*other aspects of the member's practice*", as set out in section 41 of the *Act*;
 4. guidelines should be developed to provide guidance to lawyers on what they should know and apply in specific areas of substantive law;
 5. the guidelines development process should be undertaken as a consultative process with the profession and draw on what is learned and observed through practice reviews, competence hearings, the complaints and conduct processes, and the experience of LPIC;
 6. guidelines should be widely published in order that, by reference to them, members are able to monitor their own skills, enhancing them where necessary; and
 7. guidelines should be reviewed and updated on an ongoing basis to ensure that they continue to be relevant and appropriate.
82. The design process in connection with practice guidelines would include consideration of, among other issues,

²In the consultation survey, 73.5% of respondents supported the development of best practices guidelines. See *Information Report*, p. 22 and Tab 2, p.6. Acceptable performance guidelines were also supported if they were to be developed in consultation with those to be affected by them.

1. the appropriate approach to guidelines content having regard for the need to take into account different practice approaches and client needs in recognition of the individuality of some aspects of practice;
2. the precise nature of the collaborative approach to designing guidelines;
3. the direction to be given to those designing guidelines so that guidelines follow a consistent approach;
4. the applicability and usefulness of guidelines to those members not in private practice;
5. the cost of developing guidelines and the proposed prioritization of resources; and
6. the system for measuring the appropriateness of the guidelines and their effectiveness, and for updating them on a regular basis.

COMPETENCE MODEL SPECIALIST CERTIFICATION COMPONENT

OVERVIEW TO REPORT

Request to Convocation

Convocation is requested to consider the proposed design for the specialist certification component of the competence model and, if appropriate, approve it.

Summary of the Issue

The Professional Development Model, which Convocation approved in March 2001, has five components:

- ☐ Practice Guidelines
- ☐ Remedial Components Mandated by Statute:
 - Focused practice review
 - Competence hearings
- ☐ Voluntary Practice Enhancement:
 - self-assessment
 - peer assessment pilot project
- ☐ Continuing Legal Education:
 - Post-call education
 - Private practice refresher program (formerly requalification)
- ☐ Reformulated Specialist Certification

Convocation approved certain principles and features to underpin each component of the model as well as certain principles to be followed by the Professional Development and Competence Committee in designing the details of each component.

This report and the business plan that accompanies it set out the Committee's proposal for the design of a reformulated specialist certification program, as directed by Convocation.

Considerations Taken Into Account in the Design

- ☐ Overall Goals of the Competence Model

- ❑ Framework of the Reformulated Specialist Certification Program Approved by Convocation in March 2001
- ❑ Factors Convocation directed in March 2001 be included in the design
- ❑ Equity Considerations
- ❑ Financial Implications of the Program – On Members and Law Society Operations

Key Features of the Design

- ❑ Focus on updated standards and experiential and educational requirements to ensure
 - a coherent approach to specialization across all specialty areas; and
 - a transparent application and approval process.
- ❑ Assessment of each specialty area to consider the potential to sub-categorize the area.
- ❑ Consideration and development of new specialty areas.
- ❑ Establishment of a PD&C Committee working group to consider the viability of a “general practice” specialty.
- ❑ Restructuring of application and renewal process for simplicity, transparency and consistency across specialties.
- ❑ Focus on communication and promotion of the program among the public and the profession.
- ❑ Self-funding Criteria.

THE COMPETENCE MODEL AND SPECIALIST CERTIFICATION

1. The Competence Model adopted by Convocation in March 2001 reflects the Law Society’s commitment to fostering a *continuum of professional development* that spans a lawyer’s career. It includes a range of approaches to support members’ efforts to maintain their own competence, endorsing a combination of quality assurance measures (to ensure compliance with established standards) and quality improvement measures (to focus on voluntary tools to improve practices).
2. Through quality improvement measures a directed effort is made to provide the tools that assist competent lawyers to keep abreast of changes in an increasingly complex professional environment. A combined quality assurance and quality improvement approach integrates standards of acceptable performance and best practices.
3. In analyzing the Committee’s proposed design for the specialist certification program it is essential to keep the image of the professional development continuum in mind. Remedial needs and regulatory monitoring are addressed at one end of the continuum through practice review and competence hearings. At the far end of the continuum best practices are addressed through specialist certification. Between these two ends the model includes tools for assisting competent lawyers to keep abreast of changes and developments in law and skills. Whereas the quality assurance end (practice review) is mandatory, the quality improvement end (certification) is voluntary.
4. In considering how to enhance the quality improvement end of the continuum Convocation approved the reformulation of the specialist certification program. It directed the Committee to return with a specific design proposal.
5. In developing the design, the Committee has kept in the forefront of its considerations the role of specialist certification to,
 - a. assist lawyers in the ongoing development of their expertise; and
 - b. offer additional options to members of the public for making informed choices when choosing the legal representation that best suits their needs.
6. Convocation adopted the Committee’s recommendations on the proposed framework of the new program and on those factors that should be taken into consideration in the design. Appendix 1 sets out the section of the March 2001 report that considers specialist certification.

A Reformulated Specialist Certification Program

7. The current specialist certification program is a voluntary recognition program that assesses and recognizes those applicant lawyers who, by experience and on their own, have become *de facto* specialists. It provides no framework, however, to *guide* lawyers in developing the experience, knowledge, and skills necessary to accomplish the goal of certification. In March 2001 Convocation agreed that there is a role for the Law Society to encourage and support the development of specialist skills in a coherent fashion. It included in that role the need for the program to,
 - a. increase the practice categories eligible for inclusion in the program;
 - b. considering the possibility of a “generalist” category; and
 - c. develop staged educational and experience requirements.
8. Clearly, education alone can never define a specialist. It is the competent and sophisticated application of knowledge and skills in a concentrated manner over a reasonable period of time that identifies specialist skills. The reformulated specialist certification program described in the business plan that follows at Appendix 2, however, will, in addition to the recognition program, offer a more formalized way for lawyers to begin integrating education with experience at an earlier stage in their careers, should they wish to do so to position themselves for the specialist designation.
9. The reformulated specialist certification program has multiple goals:
 - a. To enhance lawyer competence through the encouragement and facilitation of the acquisition of true specialty expertise in a given area;
 - b. To promote the public interest by the development of such expertise, to allow those who acquire it to make this known to the public, and to communicate the program to the public;
 - c. To provide guidance to those who wish to aspire to specialization as to the appropriate scope of professional development and experience they should undertake; and
 - d. To certify specialists in a broad range of specialty areas.
10. There will continue to be lawyers who simply apply for the specialist designation based on their own determination that they are ready to do so (the recognition stream). There will, however, be other lawyers, particularly newer calls, who will take advantage of a framework provided by the specialty committees on how best to proceed over a number of years to ready themselves to apply for the designation (the developmental approach).
11. The advantages of this additional approach are,
 - a. Involvement of greater numbers of lawyers in the program, including those not traditionally well-represented (women, minorities, those from smaller centres);
 - b. development and availability of more curriculum-based CLE that address the needs of lawyers in a range of speciality areas; and
 - c. ongoing development of appropriate standards for specialists.
12. The importance of greater involvement of the profession cannot be over-emphasized. One of the criticisms of the current program is that it is elitist, not in terms of the standards, *per se*, but in terms of the process by which certification is obtained. Because it is based entirely on recognition, it has tended to be the reserve of a limited few, with fewer women and members of minority groups represented. The enhanced approach will provide a direction that younger lawyers can take to develop the skills and experience they need to accomplish the goal of certification.
13. The design also focuses on the importance of communicating the nature of the program both to the public and to the profession.
 - a. Members of the public have varying needs for legal representation depending in particular upon the nature and complexity of issues, their financial resources and the interplay of multiple practice

areas with respect to the client's problem. Explaining the nature of the program to the public will enable them to make informed choices for legal representation.

- b. The design also includes a number of initiatives focused on encouraging members of the profession to pursue the goal of certification, both for the competence-enhancing features of it and the recognition factor.
14. The proposed design has been considered and analysed by the Finance Committee, which discussed the business plan with the Director of Professional Development and Competence. The Finance Committee's separate report is attached as Appendix 3. The Finance Committee is satisfied that the business plan will result in a self-funding program, in accordance with Convocation's direction.

APPENDIX 1: Excerpt from March 2001 Report on Implementing the Law Society's Competence Mandate

X. SPECIALIST DESIGNATION

123. A specialist certification program already exists as one of the Law Society's current competence-related activities. In its current form it is a "recognition" program, that is, it assesses and recognizes those applicant lawyers who, by experience and training have become *de facto* specialists. At present, it is not a "developmental" program, that is, a program that both recognizes those with expertise and also provides pathways or supports for the development of specialists. To date, with little promotion, it has attracted limited but growing interest among members of the profession.
124. The Committee had the benefit during the course of its work of a detailed and comprehensive report from the Specialist Certification Working Group of the Committee, Chaired by Marilyn Pilkington. That report urged, and the Committee accepted, the view that a broadly-based, developmental specialist designation program is a critical component of a QI program and should play a role in the Law Society's overall competence model. This is to be contrasted with the current specialist certification program, which has functioned to date as a stand-alone initiative, unconnected to an integrated approach to the regulation of competence.
125. A broadly-based specialist designation program would function as a QI component of the Law Society's competence model. As a voluntary developmental program, it could be designed as a staged process in which members continue to self-elect to pursue the designation of "specialist", advancing along a continuum of requirements with increasing levels of required expertise, until all requirements are met to gain the final specialist designation credential. This approach could encourage lawyers, at an early stage of their careers, to seek to develop expertise in identified areas of the law in a systematic way by pursuing relevant accredited continuing legal education designed to promote "best practices" in legal work settings.
126. A broadly-based specialist designation program of the type proposed above, would also have links both to developing practice guidelines and articulated expectations for continuing legal education. For example, representatives of each specialty area could develop best practices guidelines to which members seeking specialist designation would aspire along the developmental track. Similarly, what is identified in the future as a minimum expectation for continuing legal education among members of the bar-at-large could be designed and identified as a required component of the specialization continuum. The requirement that educational programs be accredited in the future would apply to specialist designation- stream continuing legal education to ensure that such programs address appropriate levels of learning and content with increasing rigour and complexity.
127. As with the proposed voluntary peer assessment pilot project, a broadly-based specialist designation component of the proposed competence model will function to provide members who wish to enhance their standards and competence with the tools to do so. This will have a direct beneficial effect for members of the profession, and for the beneficiaries of their services, members of the public.

128. The envisioned specialist designation program represents a fresh approach to the issue of specialization. In the Committee's view, such an approach plays an important part in the continuum of professional development envisioned as the proposed competence model. Like other components, it has the dual purpose of seeking to benefit the public and, as well, members of the profession who choose to pursue it.
129. The Committee proposes that,
- a. there be a reformulated specialist designation program offered by the Law Society as part of the competence model;
 - b. the practice categories identified as eligible for designation should be increased;¹
 - c. serious consideration should be given to developing a specialist designation for "generalists" and, if adopted, to the content of a specialist program leading to such a designation;
 - d. the specialist designation program offered by the Law Society in the future should be designed as a continuum with identified, staged requirements intended to promote the increasing accumulation of expertise and knowledge and leading, ultimately, to a specialist designation; and
 - e. design costs for the reformulated specialist designation program should be borne by the Law Society.
130. The design process in connection with a reformulated specialist designation program would include consideration of, among other issues,
- a. what combination of education and experience would lead to the various stages of specialist designation;
 - b. what appropriate level of involvement in a practice area should be required to qualify for the various stages of specialist designation;
 - c. what methods will be used to assess candidates for various stages of specialist designation;
 - d. how much continuing legal education would be required at the various stages of specialization;
 - e. what types of educational activities would qualify as specialist designation-stream continuing legal education;
 - f. what steps could be undertaken to enhance delivery of specialist designation-stream continuing legal education throughout the province, and at what cost;
 - g. whether development of "best practices" guidelines should form part of the developmental process for the specialist designation program and, if so, what links, if any, such guidelines should have to

¹The American Bar Association has identified fields appropriate for specialist certification. As well, the Committee recently received a submission from l'AJEFO that proposes a specialist designation stream to enable lawyers to be designated as bilingual specialists. In l'AJEFO's view, the public interest would be greatly served by such a designation. Although the submission was directed to a French language designation, it is possible to envisage such a designation for other languages.

the development of “acceptable performance” guidelines;

- h. whether a system of incentives or disincentives should be connected to this component of the proposed competence model, including the nature of the “designation” to be granted to those who have met the requirements;²
- i. how the benefits of the new program should be communicated to the profession and the public;
- j. the impact of the reformulated program on those currently designated as specialists;
- k. whether other “best practice” approaches, such as the ISO-9000 designation, should be encouraged within or integrated into this component of the proposed competence model; and
- l. the costs of this component of the proposed competence model.

PRIVATE PRACTICE REFRESHER PROGRAM – PROPOSED GUIDE TO MODULES

OVERVIEW TO REPORT

Request to Convocation

1. Convocation is requested to
 - a. review the proposed guide respecting which modules those members subject to the PPRP will be required to complete; and, if appropriate,
 - b. direct that the profession be advised of the guide and be given the opportunity to provide comments on it.

Issue Summary

Upon the adoption of the Private Practice Refresher Program (PPRP) in September 2001, the Committee agreed to return to Convocation with a proposed guide that would set out which modules lawyers in different job categories, who are subject to the PPRP, would be required to complete. Convocation directed that the profession be advised of the guide and be given the opportunity to provide comments.

The report that follows contains a list of the 17 most common non-private practice jobs or categories in which lawyers work and sets out a proposal addressing which modules lawyers in those jobs should be required to complete. The list also includes an 18th category to address which modules lawyers who are not working, or are working in fields unconnected to law, should be required to complete.

The report also addresses how to determine which modules those who do not fall within any of the 18 categories should be required to complete.

The requirement to complete the program will not begin until 2007.

REPORT

Background

2. In September 2001, Convocation approved the introduction of the Private Practice Refresher Program (PPRP) to replace the requalification program. Under the new program member categories have been defined, with rights and privileges that flow under each category:

²It has been suggested that the recognition afforded specialists could be similar to the kind of designation attached to the names of physicians who are Fellows of the Royal College of Physicians and Surgeons of Canada (FRCS(C)).

Category A: Any member eligible for insurance under the Law Society's insurance plan and who is required to have insurance because he or she engages in the practice of law;

Category B: All members who are not in Category A or C;

Category C: Retired members.

3. Beginning in 2007 a member seeking to change his or her category status from B or C to A will be entitled to do so unless "for 80 percent or more of the five years immediately preceding the date of the request the member has been a category B member or a category C member"³. In such cases the member will be subject to the PPRP and will be advised which of the eight (8) modules he or she will be required to complete.
4. The Committee undertook to return to Convocation with,
 - a. the proposed By-law amendments to implement the approved policy; and
 - b. a guide indicating which modules members subject to the PPRP would be required to complete, based on their work category.
5. The first issue was addressed in February 2002, when Convocation approved amendments to By-laws 13 and 28 to address the requirements of the new PPRP.
6. This report addresses the second issue and sets out,
 - a. the approach used to develop the proposed guide; and
 - b. a chart with proposed modules that members in different jobs should be required to complete.

The Approach

7. Using job and activity information that members in each of the three fee categories report annually, staff compiled a list of 17 jobs/activity categories that represent those most often seen within the profession. An 18th category was added for those who are not working or are working in fields unconnected to law.
8. Having created the list of jobs, staff reviewed the topics contained within each of the eight modules subjects. The modules are:
 - a. Time Management
 - b. File Management
 - c. Financial Management
 - d. Client Service and Communication
 - e. Technology
 - f. Professional Management
 - g. Personal Management
 - h. Professional Responsibility
9. In considering the modules the Committee determined that regardless of which module a member is required to complete, all members subject to the PPRP should receive all modules and be encouraged to read them. In this way, although a member might not be required to complete the module for the purposes of the PPRP, the module could be used as a reference tool on specific points once the member is in private practice.
10. The table of contents for each module reveals that, generally speaking, the modules will be focused on issues relevant to the private practice experience. Because of this focus, even if a member is likely to have some experience in the *general* topic area of a module, there might well be gaps in his or her *specific* knowledge as it relates to private practice that necessitate completion of the module.

³ By-law 13.

11. With these points in mind, the jobs in the list and the content of the modules were considered and an assessment made as to whether the module will address likely gaps in the experience members might have in particular jobs.
12. Appendix 1 contains a draft document prepared in satisfaction of Convocation's direction that a guide be developed upon which the profession would have the opportunity to comment. It includes,
 - a. the principles and factors considered in developing the guide; and
 - b. a chart that sets out which modules those in specified job categories should be required to complete.
13. The chart reflects the following principles:
 - a. The Time Management Module and Personal Management should be provided to all those required to participate in the PPRP as "read only" with no assessment. They provide valuable information, but it is not necessary that candidates be assessed on them. Participants in the program should certify they have read them and thereafter use them in practice as they see fit.
 - b. Generally speaking, everyone in the 18 categories should be required to complete the Technology Module and the Professional Management Module. This is because both modules are directed at specific issues relevant to running a practice and awareness of the rules and by-laws under the *Law Society Act* that govern lawyers in private practice. They address issues that those out of private practice would be unlikely to consider.
 - c. Almost all categories should complete the Financial Management Module. This is because it addresses complex financial responsibility issues that are essential to private practice and entail specific knowledge not gained in other jobs. The lawyers who are working for accounting firms might be the exception to this, if they are themselves accountants.
 - d. Within certain job categories there may be variation in activities and experience that would mean that some members would have to complete a particular module and others would not.
14. The approach also reflects the following factors:
 - a. This is only a guide. Some members, whose most recent job would indicate that they should complete particular modules, may have had previous experience or additional current experience that makes completion of one or more modules unnecessary. This will be taken into account when the Law Society considers a member's request to complete fewer than the indicated modules.
 - b. Members who dispute the determination of which modules they should complete will have the opportunity to appeal the decision in writing to a benchler.
 - c. The entire module program is self-study.
 - d. Although there will be assessments in some of the modules, others will be "read only".
 - e. Although no one will have to take the program before 2007, the modules will be available in advance of that date, so that someone contemplating a return to private practice will be aware of the content;
 - f. Those members who have not worked at all for the period in issue or whose job or activity has been in a field unconnected to law will be required to complete all eight modules.
15. To the extent that a member's job or activity is not mentioned in the guidelines, when he or she advises the Law Society that he or she wishes to return to private practice a determination will be made of which modules he or she is required to complete. To the extent possible the job will be analogized to those in the chart.

Appendix 1

Guide to PPRP Modules – Consultation Document

Interested members are invited to provide input on this proposed “guide to requirements” that members subject to the Private Practice Refresher Program will have to complete, beginning in 2007.

Comments should be provided by June 30, 2002.

Background

Convocation has approved a new program, called the Private Practice Refresher Program (PPRP), that will require lawyers who have been out of private practice for a specified number of years or more to undergo a refresher program prior to entering private practice.

Replacing the former Requalification Program, the PPRP came into effect in early 2002, but will not apply to any lawyers until 2007.

The new program will more effectively address the goals of the original program, to ensure that those members who have been out of private practice are provided with a refresher program for those areas in which their skills may have eroded. The focus will be on practice management and client relationships.

There will be no requirement to redo the Bar Admission Course, or any aspect of it.

The program Convocation approved can be briefly summarized as follows:

Member categories have been defined, with rights and privileges that flow under each category:

Category A: Any member eligible for insurance under the Law Society’s insurance plan and who is required to have insurance because he or she engages in the practice of law;

Category B: All members who are not in Category A or C;

Category C: Retired members.

Members seeking to change their category status from B or C to A will be entitled to do so unless for 80 percent or more of the five years immediately preceding the date of the request the member has been a category B member or a category C member.

In such a case the member will be advised which of eight practice management and client relationship modules he or she must complete. These are:

Time management
File management
Financial management
Client service and communication
Technology
Professional management
Personal management
Professional responsibility

A Table of Contents for each module is attached to this consultation document.

A member who disagrees with the assessment of which modules he or she must take will be entitled to seek a written review of the determination from a benchler.

Upon satisfactory completion of the modules the member’s category status will be changed from category B or C to category A.

For further information on the program see By-law 13 made under the *Law Society Act* and the Law Society’s website at www.lsuc.on.ca.

Input Sought on Modules to Be Completed by
Various Job Categories

In approving the PPRP, Convocation directed that the guide being developed to illustrate which modules lawyers in a wide range of job categories would be required to complete should be circulated among legal organizations and be made available to the profession for comment.

The attached chart sets out 18 job categories/activities and the modules those in each category will, *in general*, be required to complete.

The following factors are relevant in considering the modules to be completed by those in each category:

- Regardless of which modules a member is required to complete, all members subject to the PPRP will receive all modules and be encouraged to read them. In this way, the modules may be available for use as a reference tool on specific points, once the member is in private practice.
- This is a guide only. Some members, whose most recent job would indicate that they should complete certain modules, may have had previous experience or additional current experience that makes completion of one or more of the specified modules unnecessary. The Law Society will consider a member's request to complete fewer than the indicated modules at the time a member seeks to return to private practice.
- Members who dispute the determination of which modules they should complete will have the opportunity to appeal the decision in writing to a bench.
- The entire module program is self-study.
- Although there will be assessments in some of the modules, others will be "read only".
- Within certain job categories there may be variation in activities and experience that will mean that some members will have to complete a particular module and others will not. This will be determined at the time a member seeks to return to or enter private practice.

- Although no one will have to take the program before 2007, the modules will be available in advance of that date, so that a lawyer contemplating entry into or return to private practice will be aware of the content well in advance of undertaking the requirement.

The considerations underlying the determination of which modules should be completed in each job category reflected in the chart, are:

- The Time Management Module and Personal Management will be provided to all those required to participate in the PPRP as *read only* with no assessment. They provide valuable information, but it is not necessary that candidates be assessed on them. Members will certify they have read them and thereafter may use them in practice as they see fit.
- Generally speaking, everyone in the 18 job categories will be required to complete the Technology Module and the Professional Management Module. This is because both modules are directed at specific issues relevant to running a practice and awareness of the rules and by-laws under the *Law Society Act* that govern lawyers in private practice. They address issues that those out of private practice would be unlikely to consider.
- Almost all categories will complete the Financial Management Module. This is because it addresses complex financial responsibility issues that are both essential to private practice and entail specific knowledge not gained in other jobs. The lawyers who are working for accounting firms might be the exception to this, if they are themselves accountants.
- To the extent that a member's job or activity is not mentioned in the guide, when he or she advises the Law Society that he or she wishes to enter or return to private practice, a determination will be made as to which modules he or she is required to complete. To the extent possible the job will be analogized to one of those in the chart.

Technology	=T
Professional Management	=PFM
Personal Management	=PM*
Professional Responsibility	=PR

[illegible]

Please direct comments, by September 9, 2002 to:

Sophia Sperdakos
 Policy Advisor
 Law Society of Upper Canada
 130 Queen Street W.
 Toronto, Ontario
 M5H 2N6
[@lsuc.on.ca](mailto:lsuc@lsuc.on.ca)
 416-947-5209 or 1-800-668-7380
 facsimile: 416-947-7623

INFORMATION

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE COMMITTEE ON JUNE 13, 2002

1. The Committee is pleased to report final approval of the following lawyers' applications for certification, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation:	Rudy V. Buller (Toronto)
Criminal Law:	Mitchell L. Eisen (Barrie)
Family Law:	Jason P. Howie (Windsor)

2. The Committee is pleased to report final approval of the following lawyers' applications for re-certification, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation:	James L. Vigmond (Barrie)
Criminal Law:	Steven Skurka (Toronto)
Environmental Law:	James W. Harbell (Toronto) Mark L. Madras (Toronto) John Robert Tidball (Toronto)
Immigration Law:	Marshall Edward Drukarsh (Toronto) Mendel Green (Toronto)
Labour Law:	Frederick J. W. Bickford (Thunder Bay)

SALE OF QUICKLAW TO LEXISNEXIS

1. Quicklaw's owner, Hugh Lawford has recently announced that Quicklaw Inc. is in final negotiations to be acquired by the legal publisher LexisNexis Butterworths Canada. Details concerning the sale are set out in the attachments at Appendix 1, for Convocation's information.

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

- (1) Copy of the LSUC & OBA Joint Committee on Electronic Registration of Title Documents – Interim Report to the Professional Development and Competence Committee.
(Appendix 1, pages 14 – 57)
- (2) Copy of Practice Management Guidelines, Draft #2.
(Appendix 1, pages 62 – 153)
- (3) Copy of Practice Management Guidelines, Report on Reviewer Response June 2002.
(Appendix 3, pages 157 – 173)
- (4) Copy of the Specialist Certification Business Plan.
(Appendix 2, pages 184 – 233)
- (5) Copy of an e-mail from Mr. Hugh Lawford to Mr. Abraham Feinstein dated May 26, 2002 re: Message from Quicklaw CEO Hugh Lawford together with attachments.
(Pages 246 – 253)

Re: Electronic Registration

It was moved by Mr. Cherniak, seconded by Mr. Feinstein that:

- (1) the Professional Development & Competence Committee be the Law Society standing committee primarily responsible for acting as the Law Society liaison with the Ontario Bar Association Joint Committee on Electronic Registration;
- (2) the following guidelines set out at pages 48 – 57 of Appendix I of the Report be approved:
 - i. Practice Guideline #1 – Maintaining Integrity of Access and Accounts
 - ii. Practice Guideline #2 – Obligations Regarding Document Preparation
 - iii. Practice Guideline #3 – The Acknowledgement and Direction
 - iv. Practice Guideline #4 – Electronic Closings and the Document Registration Agreement
 - v. Practice Guideline #5 – Electronic Closings and Mortgage Transactions
 - vi. Practice Guideline #6 – Use of Compliance with Law Statements; and
- (3) the following Rules of Professional Conduct and commentaries be amended:
 - i. Rule 5.01 be amended by adding subrules (7) and (8) and related commentary, set out at pages 8-9 of the Report
 - ii. The commentary to subrule 6.03(8) be amended as set out at page 10
 - iii. The commentary to subrule 5.01(2) and subrule 5.01(3)(m) be amended as set out at pages 11 and 13 of the Report.

It was moved by Mr. Wright, seconded by Mr. Crowe that the motion be amended by referring the commentary to subrule 5.01(2) set out in bold at page 11 back to the committee.

Carried

The Cherniak/Feinstein motion, ~~excluding the Practice Guidelines~~, [by Convocation April 27, 2006] was voted on and approved as amended.

It was moved by Mr. Cherniak, seconded by Mr. Simpson that the Professional Development & Competence Committee be authorized to seek input from the profession on the draft Practice Management Guidelines, set out in Appendix 1 of the Report.

Carried

It was moved by Mr. Cherniak, seconded by Ms. Carpenter-Gunn that the proposed design for the specialist certification component of the competence model be approved.

Carried

Mr. Gottlieb dissented.

It was moved by Mr. Cherniak, seconded by Mr. Simpson that the profession be advised of the proposed guidelines respecting which modules those members subject to the Private Practice Refresher Program will be required to complete and be given the opportunity to provide comments on it.

Carried

The Treasurer thanked Mr. Cherniak and the Committee for their time and devotion to these matters.

Items for Information Only

- Report on Specialist Certification Matters Finalized by the Certification Working Group
- Information on Sale of Quicklaw Inc. to LexisNexis Butterworths Canada

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

Mr. Copeland presented the Report of the Equity & Aboriginal Issues Committee for approval by Convocation.

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
June 28, 2002

Report to Convocation

Purpose of Report: Policy - For Decision
Information

Prepared by the Equity Initiatives Department

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS2

POLICY - FOR DECISION

APPOINTMENT OF DISCRIMINATION &
HARASSMENT COUNSEL3

INFORMATION

TREASURER'S MEETING WITH MANAGING PARTNERS TO DISCUSS NON-DISCRIMINATION AND EQUITY IN ARTICLING	5
---	---

APPOINTMENT OF NEW MEMBER TO EQUITY ADVISORY GROUP	5
---	---

APPENDIX

APPENDIX A - BY-LAW 36 DISCRIMINATION & HARASSMENT COUNSEL	7
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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee /Comité sur l'équité et les affaires autochtones (EAIC) met on June 12, 2002. In attendance were:

Paul Copeland	(Chair)
Helene Puccini	(Vice Chair)

Stephen Bindman
Thomas Carey
Jeffrey Hewitt (Co-Chair, Rotatio⁷ ties)
Janet Minor
Judith Potter

Staff: Josée Bouchard, Geneva Yee

2. The Committee is reporting on the following matters:

Policy - For Decision

- Appointment of Mary Teresa Devlin to the position of Discrimination & Harassment Counsel pursuant to section 2 of By-Law 36 for a term of three years to begin on June 23, 2001 – page 3.

Information

- Treasurer's meeting with Managing Partners to discuss non-discrimination and equity in articling – page 5.
- Appointment of new member of Equity Advisory Group – page 5.

POLICY - FOR DECISION
APPOINTMENT OF DISCRIMINATION &
HARASSMENT COUNSEL

3. Request of Convocation

Convocation is requested to approve the following recommendation from the Committee:

- Mary Teresa Devlin shall be appointed to the position of Discrimination & Harassment Counsel pursuant to section 2 of By-Law 36 for a term of three years to begin on June 23, 2001.

Statement of the Issue

4. Mary Teresa Devlin performed the duties of Discrimination & Harassment Counsel from the creation of the *pilot project* in 1999 and has continued to perform those duties with the creation of the *permanent program* and the adoption of By-Law 36 on June 22, 2001. *However, the Committee neglected to recommend to Convocation the appointment of Mary Teresa Devlin to the position of Discrimination & Harassment Counsel as required by By-Law 36.* By-Law 36 is attached as Appendix A.
5. By-Law 36 states that Convocation shall appoint a person as Discrimination & Harassment Counsel. Further, the appointment must be recommended to Convocation by the standing committee of Convocation responsible for matters relating to equity and diversity in the legal profession.

Background

6. On June 24, 1999, Convocation adopted a report from the Treasurer's Equity Advisory Group recommending the establishment of the Discrimination & Harassment Counsel as a *pilot project* of the Law Society of Upper Canada.
7. Mary Teresa Devlin was awarded the position of Discrimination & Harassment Counsel of the project as a result of significant recruitment efforts in which 86 applications were received, 10 applicants short-listed for interviews and 4 applicants included in final interviews. Mary Teresa Devlin's contract as Discrimination & Harassment Counsel began in January 2000.
8. Convocation established, at its June 22, 2001 meeting, the Discrimination & Harassment Counsel program as a *permanent program* and made By-Law 36 entitled Discrimination & Harassment Counsel. However, the Committee neglected to recommend to Convocation the appointment of Mary Teresa Devlin to the position of Discrimination & Harassment Counsel as required by By-Law 36.
9. By-Law 36 also provides that when a vacancy exists in the office of Counsel, the Committee shall conduct a search for candidates for appointment. Mary Teresa Devlin was awarded the position of Discrimination & Harassment Counsel following an extensive search for candidates and the Committee is of the view that the requirement to conduct a search has been satisfied.
10. Section 3 of By-Law 36 provides a process to reappoint a person as Discrimination & Harassment Counsel. Mary Teresa Devlin has never been appointed under By-Law 36 and the Committee is satisfied that the reappointment process does not apply.

FOR INFORMATION

TREASURER'S MEETING WITH MANAGING PARTNERS
TO DISCUSS NON-DISCRIMINATION AND EQUITY IN ARTICLING

11. The Committee notes that the Treasurer has arranged to meet on July 3, 2002 with Managing Partners of a number of law firms to discuss non-discrimination and equity in articling.
12. The Committee welcomes this important initiative and is confident that it will provide an opportunity to build on the meeting of May 30, 2001 organized by the Law Society with directors of student and associate programs. The May 30, 2001 meeting focused on working with law firms to address equity and diversity issues in articling. Discussions related to the selection of candidates for summer/articling positions, equity issues in the selection process, and suggestions to move forward.
13. The Committee would be pleased to assist the Treasurer in organizing the meeting.

APPOINTMENT OF NEW MEMBER TO EQUITY ADVISORY GROUP

14. At its meeting of May 29, 2002, the Equity Advisory Group decided, by consensus, to recommend to the Committee the appointment of Ms White-Ducharme to the Equity Advisory Group.
15. At its meeting of June 12, 2002, the Committee approved the appointment of Ms White-Ducharme to the Equity Advisory Group and informs Convocation of the appointment.
16. Ms White-Ducharme is a member of the Ontario Bar and practices in Windsor. She has demonstrated experience working on pay equity issues and on workers' compensation and criminal injuries compensation matters. She is a panel member for the Office of the Children's Lawyer and practices in the areas of child protection and family law.

APPENDIX A

BY-LAW 36

Made:	June 22, 2001
Amended:	July 26, 2001
	September 28, 2001

DISCRIMINATION AND HARASSMENT COUNSEL

Appointment

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

Term of office

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

Appointment at pleasure

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

No appointment without recommendation

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

Vacancy in office

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

List of candidates

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

Additional candidates

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

Recommendations considered in absence of public

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

Application of s. 2

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

Function of Counsel

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

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

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

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

No authority to conduct investigation

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

Access to information

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

Annual and semi-annual report to Committee

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

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

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

Report to Convocation

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

Confidentiality

6. (1) The Counsel shall not disclose,

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

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

Rules of Professional Conduct

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

Exceptions

(3) Subsection (1) does not prohibit,

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

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

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

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

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

Re: Appointment of Discrimination & Harassment Counsel

It was moved by Mr. Copeland, seconded by Mr. Ducharme that Mary Teresa Devlin shall be appointed to the position of Discrimination & Harassment Counsel pursuant to section 2 of By-Law 36 for a term of three years beginning on June 23rd, 2001.

Carried

Items for Information Only

- Appointment to Equity Advisory Group
- Treasurer's meeting with Managing Partners re: Non-discrimination of Equity and Articling

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. MacKenzie presented the Report of the Professional Regulation Committee for approval by Convocation.

Professional Regulation Committee
June 13, 2002

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS	1
I. POLICY	
REVISION TO PROCESS FOR SUSPENSION OF MEMBERS FOR FAILURE TO FILE THE MEMBER'S ANNUAL REPORT	2
ISSUE FOR DECISION.....	2
A.THE ISSUE	2
B.BACKGROUND	3
C.THE REASONS FOR THE COMMITTEE'S PROPOSAL	4
D.THE PROPOSAL.....	5
II. INFORMATION.....	7
NEW ISSUES RELATED TO THE "E-REG" SYSTEM FOR REAL ESTATE TRANSACTIONS.....	7
NEW WORKING GROUP ON REVIEW OF THE FIRM NAME AND LETTERHEAD RULES	8
FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS	9
APPENDIX 1 – BY-LAW 17 – FILING REQUIREMENTS, FORM 17A – MEMBER'S ANNUAL REPORT	10
APPENDIX 2 – FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS	23

TERMS OF REFERENCE/COMMITTEE PROCESS

The Professional Regulation Committee ("the Committee") met on June 13, 2002. In attendance were:

Gavin MacKenzie (Chair)

Stephen Bindman
Patrick Furlong
Gary Gottlieb
Marilyn Pilkington
Judith Potter

James Wardlaw

Staff: Lesley Cameron, Katherine Corrick, Caterina Galati, Terry Knott, David McKillop, Zeynep Onen, Andrea Waltman, Jim Varro, Jim Yakimovich

Other Attendees: Maurizio Romanin

This report contains a policy report on continuing suspension of members who fail to file the Member's Annual Report, and information reports on

- ▶ proposed amendments to the *Rules of Professional Conduct* relating to lawyers' obligations in the electronic registration of title documents ("e-reg") system
- ▶ a new working group on review of the firm name and letterhead rules
- ▶ file and caseload management and staffing information in the complaints resolution, investigations and discipline departments.

I. POLICY

REVISION TO PROCESS FOR SUSPENSION OF MEMBERS FOR FAILURE TO FILE THE MEMBER'S ANNUAL REPORT¹

ISSUE FOR DECISION

Convocation is requested to adopt a policy that

- a. members who are already suspended for failure to file the Member's Annual Report and who fail to file in years subsequent to the year in which they are suspended for the failure to file should not be suspended again for each year they fail to file, and
- b. members, as a condition of reinstatement or readmission, be required to file the Member's Annual Report for the year they were suspended for failure to file and the year they are reinstated or readmitted as a member with full rights and privileges.

A. THE ISSUE

1. Convocation is requested to approve a new policy applicable to members suspended for failure to file the Member's Annual Report ("the MAR").
2. Under By-Law 17, a member (including a suspended member) is required to file the MAR each year. The operative section of By-Law 17² is section 2 which reads:
 2. (1) Every member shall submit a report to the Society, by March 31 of each year, in respect of the member's practice of law and other related activities during the preceding year.
 - (2) The report required under subsection (1) shall be in Form 17A [Member's Annual Report].
3. The proposed new policy interprets this requirement to the effect that a member who is already suspended for failing to file the MAR and who fails to file in subsequent years remains suspended but is not suspended for each subsequent year the suspended member fails to file.

B. BACKGROUND

4. The February 1999 amendments to the *Law Society Act* gave the Society the authority to summarily revoke the membership of a member if the member has been suspended for more than 12 months. The relevant sections are section 47 and 48:
 47. (1) An elected benchler appointed for the purpose by Convocation may make an order suspending a member's rights and privileges if, for the period prescribed by the by-laws,
 - (a) the member has been in default for failure to complete or file with the Society any certificate, report or other document that the member is required to file under the by-laws; or

¹Deferred from May 23, 2002 Convocation.

²A copy of By-Law 17 appears at Appendix 1, which includes Form 17A, the Member's Annual Report.

(b) the member has been in default for failure to complete or file with the Society, or with an insurer through which indemnity for professional liability is provided under section 61, any certificate, report or other document that the member is required to file under a policy for indemnity for professional liability.

(2) A suspension under this section remains in effect until the member completes and files the required document in accordance with the by-laws to the satisfaction of the Secretary.

48. An elected benchers appointed for the purpose by Convocation may make an order revoking a member's membership in the Society, disbarring the member as a barrister and striking his or her name off the roll of solicitors if an order under section 46 or clause 47 (1) (a) is still in effect more than 12 months after it was made.

5. Of the over 1,600 members who have been suspended for more than 12 months, and who are eligible to have their membership revoked pursuant to s. 48, 587 have been suspended more than ten years and 374 for more than five years but less than ten³. The Committee recently confirmed a plan to implement the summary revocation authority.⁴
6. The majority of suspended members are suspended for failing to file the MAR. These suspensions occur every year the member fails to file, whether it is a new suspension for failure to file, or a suspension for failure to file by a member already suspended for failing to file the MAR.
7. Several thousands of dollars are expended each year in postage for mailing to suspended members the MAR, the two notices that must be delivered prior to a suspension order, and the suspension order itself (by registered mail). Other expenses are associated with these members, including the telephone calls that must be made to them prior to suspension.

C. THE REASONS FOR THE COMMITTEE'S PROPOSAL

8. Not suspending such members every year would significantly reduce the number of suspension notices that must be mailed out year after year to those who continually fail to file the MAR, and reduce the other staff activities related to the annual suspensions of these members.
9. The Committee determined that as suspended members remain subject to the Society's regulation, issues arising from inappropriate activity during suspension can be adequately monitored through other regulatory processes. The Committee does not believe that re-suspending members who are already under suspension provides a significant incentive to file annually in any event.

D. THE PROPOSAL

10. The Committee proposes that a member be suspended for the first failure to file the MAR. This suspension would continue until the member files the MAR for the year in which he or she was suspended and the year

³These figures are as of October 2001.

⁴In March 2002, the Committee approved an implementation plan for the summary revocation authority, which was reported to March 22, 2002 Convocation for information. The Committee decided that the authority should be implemented in stages, given the February 2000 policy that permits such members to make a submission to the Society in writing or orally before revocation. The PRC determined that the initial implementation phase should involve those members who have been suspended for the reasons described in section 46 or clause 47 (1) (a) of the Act (failure to file or pay fees and levies) or the equivalent sections under the Act as it existed prior to February 1999, for seven years or longer.

of reinstatement as a member with full rights and privileges, or, if the membership of the member is revoked, upon readmission, on which one of the terms will be filing the MAR for the year of suspension and the year of readmission.

11. The Committee determined that an amendment to By-Law 17 would not be required to implement this policy. The Committee relies upon a policy adopted by Convocation in 1993 for payment of the annual fee (required under By-Law 15) for members who continue to be suspended for failure to pay the fee. In such cases, a member suspended for failure to pay the annual fee continues to be suspended until he or she pays the fee for the year of suspension and the year of reinstatement. The requirement for payment of the annual fee in By-Law 15 is worded in very similar fashion to the requirement to file the MAR in By-Law 17⁵.
12. The 1993 policy reads:
 - i. That members who are suspended after this policy is adopted be reinstated upon payment of all outstanding fees and levies for the year of suspension, together with a reinstatement fee. On reinstatement, the member will be billed for the fees and levies for the current year.
 - ii. That this policy not be applied retroactively. Members currently suspended who apply for reinstatement will be required to pay the arrears which have accrued to the date the policy is adopted by Convocation.
 - iii. That arrangements for financial assistance continue to be made available.
 - iv. That notice be sent to all members, including those currently suspended, informing them of this policy and outlining the rights and obligations of members, suspended members and former members.
13. The Committee proposes that Convocation adopt the policy for continuing MAR suspensions as set out at the beginning of this section of the report.

II. INFORMATION

NEW ISSUES RELATED TO THE “E-REG” SYSTEM FOR REAL ESTATE TRANSACTIONS

14. In September 1996, the Law Society and the Ontario Bar Association (then the CBAO), formed a Joint Committee on Electronic Registration of Title Documents. Its mandate is to consider the impact of electronic registration (“e-reg”) upon conveyancing practice and make recommendations as to what practice standards should be implemented to deal with e-reg.
15. Following a report to Convocation in June 1997, which included a number of recommendations, the Joint Committee has continued work on practice issues relating to e-reg. It recently prepared a report for the review by relevant Law Society committees which sets out the need for various steps to be taken expeditiously, as the scope of electronic registration is being rapidly expanded. The report was primarily for review by the Professional Development and Competence Committee, but it relates in part to the jurisdiction of the Professional Regulation Committee in that the Joint Committee is proposing that certain amendments be made to the *Rules of Professional Conduct* relating to lawyers’ duties in the e-reg system.
16. The Professional Regulation Committee completed a review of the Rule issues and approved proposed Rule amendments. The proposals have been reviewed for style and consistency by lawyer Paul Perell, who assisted the Society as principal drafter of the new 2000 Rules.
17. The Professional Development and Competence Committee is reporting the proposed amendments to Convocation in June 2002.

⁵Subsection 1 (1) of By-law 15 reads: “Every year, a member shall pay an annual fee, in accordance with sections 2 and 3, unless the member is exempt from payment of an annual fee.”

NEW WORKING GROUP ON REVIEW OF THE FIRM NAME AND LETTERHEAD RULES

18. The Committee agreed to form a working group to examine whether the *Rules of Professional Conduct* governing law firm names and letterhead should be made less restrictive and if so, what form revised rules should take.
19. A number of developments are prompting the review, including
 - more frequent and pointed questions to Advisory Services about specific situations relating to the rules, and the true mischief the rules are intended to address
 - the profession's increasing desire to use firm names that are a variation on traditional firm names (e.g. the firm names "Torys" and "Goodmans")
 - the possibility of a movement to harmonize rules of conduct in Canadian jurisdictions, leading to an analysis of Ontario's more rigid approach to firm names as compared to other Canadian jurisdictions
 - cross-border law practice and regulation of trade in services, on which GATS talks through the World Trade Organization are focussing and which, in part, involve examination of the legitimacy of regulation in the professions
20. The working group will take a broad approach to the review, and will also consider constitutional law issues that bear on regulation around advertising generally, as it relates to identification of a firm through its name.

FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS

21. Senior regulatory staff reported to the Committee on caseload management in the Complaints Resolution, Investigations and Discipline Departments. The reports appear at Appendix 2. These reports are prepared monthly for review by the Committee as part of its monitoring function respecting file management. The Committee receives general information and statistics on file management and caseloads in the departments noted above.⁶ The reports in this report cover the period to the end of May 2002.

APPENDIX 1

BY-LAW 17 FILING REQUIREMENTS

FORM 17A - MEMBER'S ANNUAL REPORT

BY-LAW 17

Made: January 28, 1999

Amended:

February 19, 1999

May 28, 1999

October 29, 1999

January 27, 2000

June 22, 2000

October 19, 2000

⁶The chair, as a member of the Proceedings Authorization Committee, is not a member of the Hearing Panel and accordingly does not and cannot have adjudicative responsibilities. Information received by the Committee, as reflected in the reports appended to this report, does not itemize specific cases.

April 26, 2001
October 25, 2001

FILING REQUIREMENTS

Interpretation: “Society official”

0.1 In this By-Law, a “Society official” means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Notice of fiscal year

1. Every member who engages in the private practice of law in Ontario shall inform the Society in writing of the termination date of his or her fiscal year, and shall file with the Society written notice of any change in the fiscal year within one month after the change is made.

Requirement to submit annual report

2. (1) Every member shall submit a report to the Society, by March 31 of each year, in respect of the member’s practice of law and other related activities during the preceding year.

Member’s Annual Report

(2) The report required under subsection (1) shall be in Form 17A [Member’s Annual Report].

Exemption from requirement to submit annual report

(3) The following members may apply to the Society for an exemption from the requirement to submit a report under subsection (1):

1. A member who is over sixty-five years of age and who,
 - i. does not practise law in Ontario,
 - ii. is not an estate trustee, and
 - iii. does not act as an attorney under a power of attorney for property given by a client or former client.
2. A member who is incapacitated within the meaning of the Act.

Application by member’s representative

(4) A Society official may permit any person on behalf of a member to make an application under subsection (3).

Application form

(5) An application under subsection (3) shall be in a form provided by the Society.

Documents and explanations

(6) For the purposes of assisting a Society official to consider an application under subsection (3), the member or the person applying on behalf of the member shall provide to the official such documents and explanations as the official may require.

Consideration of application

(7) A Society official shall consider every application made under subsection (3) and if the official is satisfied that the member is eligible for an exemption under paragraph 1 or 2 of subsection (3), the official shall approve the application.

Duration of exemption

(8) A member whose application is approved is exempt from the requirement to submit a report under subsection (1) in respect of the year in which the application is approved and in respect of every year thereafter if the member remains eligible for the exemption throughout the entire year.

Interpretation: practising law

(9) For the purposes of subsection (3), a member practises law if the member gives any legal advice respecting the laws of Ontario or Canada or provides any legal services.

Period of default

3. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file a report required under section 2 of this By-Law is 120 days after the day the report is required to be submitted.

Reinstatement of rights and privileges

(2) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 2 of this By-Law, as amended on October 29, 1999, for the purpose of subsection 47 (2) of the Act, the member shall complete and file the report in Form 17A in force at the time the member is filing the report.

Same

(3) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 2 of this By-Law, as that section read before October 29, 1999, for the purpose of subsection 47 (2) of the Act, the member shall complete and file the report required under section 2 of this By-Law, as amended on October 29, 1999, in Form 17A in force at the time the member is filing the report.

Requirement to submit public accountant's report

4. (1) The Secretary may require any member who is required to submit a report under subsection 2 (2) to submit to the Society, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the member is required to submit a report to the Society under subsection 2 (2).

Contents of report and time for filing

(2) The Secretary shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

Member's obligation to provide access to files, etc.

- (3) For the purpose of permitting the public accountant to complete the report, the member shall,
- (a) grant to the public accountant full access, without restriction, to all files maintained by the member;
 - (b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and
 - (c) provide to the public accountant such explanations as the public accountant may require.

Authority to confirm independently particulars of transactions

(4) For the purpose of permitting the public accountant to complete the report, the public accountant may confirm independently the particulars of any transaction recorded in the files.

Cost

(5) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the member.

Public accountant's duty of confidentiality

(6) When retaining a public accountant to complete a report required under this section, a member shall ensure that the public accountant is bound not to disclose any information that comes to his or her knowledge as a result of activities undertaken to complete the report, but the public accountant shall not be prohibited from disclosing information to the Society as required under this By-Law.

Period of default

5. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 4 of this By-Law is 60 days after the day the report is required to be submitted.

Reinstatement of rights and privileges

(2) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to file a report of a public accountant in accordance with section 4 of this By-Law, for the purpose of subsection 47 (2) of the Act, the member shall file the report.

Failure to submit public accountant's report: investigation

6. (1) If a member fails to submit the report of a public accountant in accordance with section 4, the Secretary may require an investigation of the member's financial records to be made by a person designated by him or her, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

Investigation: application of subss. 4 (3) and (4)

(2) Subsections 4 (3) and (4) apply with necessary modifications to the investigation under this section.

Confidentiality

(3) A person designated to investigate a member's financial records under this section shall not disclose any information that comes to his or her knowledge as a result of the investigation except as required in connection with the administration of the Act or the by-laws.

Cost

(3) The cost of the investigation under this section shall be paid for by the member.

Commencement

7. This By-Law comes into force on February 1, 1999.

APPENDIX 2

FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS

THE LAW SOCIETY OF UPPER CANADA COMPLAINTS RESOLUTION, COMPLAINTS REVIEW AND TRUSTEE SERVICES

MEMORANDUM

TO: Professional Regulation Committee

FROM: David McKillop
Manager, Compensation Fund, Resolution and Trustee Services

DATE: 31 May 2002

RE: Management Report - Complaints Resolution, Complaints Review and Trustee Services

The purpose of this memorandum is to provide information about matters in the Complaints Resolution, Complaints Review and Trustee Services (Unclaimed Trust Fund) departments for the month of May 2002.

COMPLAINTS RESOLUTION

Summary of Results for Complaint Files in May 2002

Complaints in Unit as at 30 April 2002	1,443
Complaints Reopened During Month	22
Complaints Resolved/Closed During Month	282
Complaints Transferred to Other Departments During Month	84
New Complaints Received During Month	229
Complaints in Unit as at 31 May 2002	1,328
Average Age of Active Complaints (in days)	263

Comparative Results

The following graphs reveal comparative results for a) Complaints Opened and Closed in Period, and b) Number of Open Files in Unit; for the months October 2001 to May 2002 inclusive.

Complaints Resolution – Complaints Opened & Closed in Period

(see graph in Convocation file)

Number of Open Complaint Files

(see graph in Convocation file)

Number of Active Files in the Complaints Resolution Department as at 31 May 2002 by File Type

Type of File	Number of Active Files
Complaint	1,328
Bankruptcy	85
Discipline Costs, Panel Orders & Undertakings	48
Practice Windup	0
TOTAL ACTIVE IN COMPLAINTS RESOLUTION	1,461

Discipline Costs

As at 31 May 2002 outstanding costs awarded totalled \$144,203.91. Of that amount, payment of \$99,017.24 is being actively pursued. The remainder of \$45,186.67 is not currently being pursued as the Members concerned are under suspension. Suspended Members are monitored bi-annually to determine whether there has been a change in their status to that of practising Member and, if so, the cost award is pursued.

The total amount received in May 2002 was \$2,900.00. Year to date \$22,400.00.

COMPLAINTS REVIEW

As at 31 May 2002, there were 48 files in the Complaints Review process. Further information on these 49 files is found in the following chart.

Request for Hearing Received	6
Hearings Pending	19
Hearing Held, Further Investigation Ordered	5
Hearing Held, Awaiting Decision	18
Files To Be Closed	1
TOTAL	49

The 49 files relate to complaints originally received by the Law Society in the following years:

1996	2
1997	0
1998	3
1999	6
2000	8
2001	23
2002	7
TOTAL	49

TRUSTEE SERVICES (THE UNCLAIMED TRUST FUND)

The Trustee Services department is responsible for the administration of the Unclaimed Trust Fund. The following details the operation of the program since inception.

Applications For Payment Of Unclaimed Trust Funds To Law Society Received From Members

May 2002	Cumulative
29	309

Applications From Members Pending Determination (additional information required)

May 2002	Cumulative
18	44

Applications From Members To Transfer Trust Funds To The Law Society Approved

May 2002	Cumulative
33	241

Applications From Members Rejected

May 2002	Cumulative
5	24

Amount of funds received:

May 2002	Cumulative Amount
\$34,565.22	\$306,687.21

Investigations Department Management Report

TO: Gavin MacKenzie, Chair, Professional Regulation Committee

Copy: Malcolm Heins, C.E.O.

FROM: James Yakimovich, Manager, Investigations

DATE: June 5, 2002

RE: Management Report - Investigations Department –May 31, 2002

The following information pertains member investigations in this department.

A) Authority to Investigate Authorized by the Secretary in the Month Pursuant to s. 49.3 of the *Law Society Act*

MONTH	NO. OF MEMBERS AUTHORIZED FOR INVESTIGATION
April 2002	43
May 2002	44

B) Members Under Investigation at Month End

Number of Members Under Investigation	
April 2002	198
May 2002	209

C) Open Complaints

This chart tracks the volume of complaints and their age in “days outstanding” with respect to complaints associated with member investigation cases. The days outstanding calculation includes time associated with the file while it was in departments other than the Investigations Department.

Month	Number of Complaints Files	Average Age of Complaints Files
December 2001	694	357 Days Outstanding
January 2002	688	345 Days Outstanding
February	623	364 Days Outstanding
March	543	307 Days Outstanding
April	554	311 Days Outstanding
May	537	307 Days Outstanding

D) New Complaints Transferred to Investigations

MONTH	NO. OF COMPLAINTS TRANSFERRED TO INVESTIGATIONS	AGE IN DAYS IN INVESTIGATIONS AT MONTH END	TOTAL AGE IN DAYS SINCE COMPLAINT RECEIVED
April 2002	46	50	143
May 2002	44	29	79

E) Complaints Closed This Month

It is estimated that 30 complaint files were closed in May. Further programming is required to improve on the reporting of closed complaints.

F) Tracking the Complaints in the Investigation Process

The graph shows the stage of complaints in the investigation process.

(see graph in Convocation file)

Unauthorized Practice Investigations

The non-member case investigations for unauthorized practice are in addition to the member investigations reported above. The chart that follows depicts the number of cases open.

Proceedings Authorization Committee – May Meeting Results

At the May 22, 2002 meeting of the Proceedings Authorization Committee, it considered the matters brought before it and arrived at decisions as summarized below.

DECISION	NUMBER OF MATTERS
Invitation to Attend	1
Conduct Application	5
Close File	1
Defer the Investigation	1
Directions Provided	1
Report to LPIC	2

DISCIPLINE DEPARTMENT

MEMORANDUM

TO: Professional Regulation Committee

FROM: Lesley Cameron
Senior Counsel - Discipline

DATE: June 6, 2002

RE: *Discipline Department Information*

The purpose of this memorandum is to provide information about matters in the discipline process for the month of May, 2002. Members of the Committee may recall there was some discussion of the desirability of presenting the information from investigations and discipline in the same format. The IS department has been working on IS solutions for both departments and we expect to be able to do this beginning in the fall reports. There was also a request for information about the numbers of sexual harassment and discrimination prosecutions and I have included this information at the end of this memorandum.

Total Matters in Discipline Process

Attached as Chart 1 is a list of the number of each type of file carried by the discipline department at May 31, 2002. As can be seen from Chart 1:

- a) 135 matters are pending hearing or appeal;

- b) 25 conduct applications have been authorised for prosecution by the Proceedings Authorisation Committee, but have not yet been issued;
- c) 91 conduct applications have been issued and are in the discipline process: 42 are before the Hearings Management Tribunal with no hearing date set; 43 have hearing dates set or the hearing is underway; 6 are adjourned sine die;
- d) 5 appeals are pending before the Law Society Appeal Panel;
- e) 2 judicial reviews are pending before the Divisional Court; and
- f) discipline counsel are assisting investigations with 39 files.

Aging of Matters Authorised but not Issued

Of the 25 files authorised for prosecution but in which the conduct application had not yet been issued as of May 31, 2002, 14 were authorised more than 3 months ago.

Attached as Chart 2 is a summary of the age and carriage of these 14 files. As can be seen from Chart 2, of these 14 files:

- i) 11 are between 3 and 6 months old, meaning that between 3 and 6 months has elapsed since authorisation;
- ii) 1 is between 6 and 12 months old; and
- iii) 2 are over 1 year old.

Of the 2 files over 1 year old, the first required the Law Society to bring an application for search and seizure under section 49.10 and the Law Society is still waiting for third parties (two banks) to produce records. Records have been produced from time to time but are not yet complete. The second file has been authorised for non disciplinary resolution but remains on the list pending the successful completion of this resolution.

The Chair of the Professional Regulation Committee and the Acting Secretary have been provided with the names of the files, a description of the nature of the allegations in each file and a brief status report on each file in this category.

Historical Comparison

Attached as Chart 3 is a summary of the age and carriage of matters which were authorised for prosecution by the Proceedings Authorisation Committee, but in which the conduct application had not yet been issued as of the end of various months beginning in August of 2000. Chart 3 includes the information summarised in Chart 2, but adds figures from previous months for comparison purposes.

While 6 of the 14 files required further investigation, part of the reason for the increase in the numbers of files which have not been issued relative to recent history is a reflection of a change in procedure which has resulted in substantial additional work for discipline counsel. This change in procedure was outlined in last month's report. Essentially discipline counsel are now providing assistance to investigations as follows:

- i) discipline counsel are now to assist from the beginning in all investigations of allegations of sexual harassment or discrimination and in all investigations in which allegations of professional misconduct are made against a federal or a provincial crown;
- ii) discipline counsel are now to assist at an early stage in investigations where the investigative team needs help with the theory of the case, the sufficiency of the evidence to prove an allegation or the scope of the investigation; and

iii) discipline counsel are now to review all draft authorisation memoranda and associated investigation files before the memoranda are submitted to the Proceedings Authorisation Committee.

These above changes have resulted in an increase in the volume of work for each discipline counsel and have had an impact on the ability of discipline counsel to process the files which have been authorised for discipline action. However it is anticipated that these changes will improve the quality and timeliness of the processing of complaints through the investigation and discipline departments and will assist in sorting out the skill sets and resources needed in the regulatory area.

Sexual Harassment Prosecutions

Since 1999, there have been 12 prosecutions alleging sexual misconduct, the hearings in which are over. In addition to these 12 completed prosecutions, there are 5 ongoing prosecutions alleging sexual misconduct. Other than sexual misconduct prosecutions, there have been no prosecutions alleging discrimination in breach of the *Rules of Professional Conduct* or human rights legislation.

Year	Completed Prosecutions	Findings	Dismissals	Penalty Outcomes
1999	4	3	1	-suspension 18 months -suspension 6 months with terms -admonition with terms
2000	2	1	1	-suspension 3 months
2001	5	3	2	-reprimand -admonition -admonition
2002	1 (there are 5 ongoing prosecutions)	0		

Chart 1

Matters in Discipline Process as of May 31, 2002	
Discipline Providing Assistance to Investigations	39
Conduct Applications Authorized But Not Issued	25
Conduct Applications Issued Hearing Date Not Set	42
Conduct Applications Issued Hearing Date Set or Hearing Started	43
Conduct Applications Issued Adjourned Sine Die	6
Non-Compliance Applications Issued Hearing Date Not Set	0
Non-Compliance Applications Issued Hearing Date Set or Hearing Started	0
Capacity Applications Authorized But Not Issued	0

Capacity Applications Issued Hearing Date Not Set	1
Admission Hearings	8
Readmission Hearings	1
Reinstatement Hearings	2
Appeals to Law Society Appeal Panel	5
Appeals/Judicial Reviews Divisional Court	2
Total Matters	174

Chart 2

Conduct Applications Authorized For Prosecution but not Issued as Conduct Applications as of May 31, 2002			
	3 to 6 Months Old	6 to 12 Months Old	Over 1 Year Old
Law Society Counsel	11	1	1
Outside Counsel	0	0	1
Total	11	1	2

Chart 3

CONDUCT APPLICATIONS AUTHORISED FOR PROSECUTION BUT NOT ISSUED AS CONDUCT APPLICATIONS				
Month	Carriage	3 to 6 Months Old	6 to 12 Months Old	Over 1 Year Old
August 31, 2000	Law Society Counsel	14	5	15
	Outside Counsel	0	0	1
	Total	14	5	16
October 31, 2000	Law Society Counsel	14	3	5
	Outside Counsel	9	1	5
	Total	23	4	10
November 30, 2000	Law Society Counsel	12	2	2
	Outside Counsel	9	1	5

	Total	21	3	7
December 15, 2000	Law Society Counsel	9	2	2
	Outside Counsel	4	3	4
	Total	13	5	6
January 31, 2001	Law Society Counsel	11	4	1
	Outside Counsel	2	6	4
	Total	13	10	5
February 28, 2001	Law Society Counsel	7	2	1
	Outside Counsel	0	5	4
	Total	7	7	5
March 30, 2001	Law Society Counsel	6	1	0
	Outside Counsel	0	4	3
	Total	6	5	3
April 24, 2001	Law Society Counsel	6	2	0
	Outside Counsel	0	3	3
	Total	6	5	3
May 31, 2001	Law Society Counsel	6	3	0
	Outside Counsel	0	1	5
	Total	6	4	5
June 30, 2001	Law Society Counsel	5	3	1
	Outside Counsel	0	0	5
	Total	5	3	6
July 31, 2001	Law Society Counsel	5	5	1
	Outside Counsel	0	0	3
	Total	5	5	4
August 30, 2001	Law Society Counsel	4	5	0
	Outside Counsel	0	0	2
	Total	4	5	2
September 30, 2001	Law Society Counsel	6	4	0
	Outside Counsel	0	0	2

	Total	6	4	2
October 26, 2001	Law Society Counsel	2	3	1
	Outside Counsel	0	0	2
	Total	2	3	3
November 30, 2001	Law Society Counsel	5	0	1
	Outside Counsel	0	0	1
	Total	5	0	2
December 31, 2001	Law Society Counsel	4	0	1
	Outside Counsel	0	0	1
	Total	4	0	2
January 31, 2002	Law Society Counsel	6	0	1
	Outside Counsel	0	0	1
	Total	6	0	2
February 28, 2002	Law Society Counsel	7	3	1
	Outside Counsel	0	0	1
	Total	7	3	2
March 31, 2002	Law Society Counsel	4	1	1
	Outside Counsel	0	0	1
	Total	4	1	2
April 30, 2002	Law Society Counsel	10	1	1
	Outside Counsel	0	0	1
	Total	10	1	2
May 31, 2002	Law Society Counsel	11	1	1
	Outside Counsel	0	0	1
	Total	11	1	2

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

- (1) Copy of the Member's Annual Report.

(pages 15 – 22)

Re: Revision to Process for Suspension of Members for Failure to File the Member's Annual Report

It was moved by Mr. MacKenzie, seconded by Mr. Ducharme that members who are already suspended for failure to file the Member's Annual Report and who fail to file in years subsequent to the year in which they are suspended for the failure to file should not be suspended again for each year they fail to file, and members, as a condition of reinstatement or readmission, be required to file the Member's Annual Report for the year they were suspended for failure to file and the year they are reinstated or readmitted as a member with full rights and privileges.

CarriedItems for Information Only

- New Issues Related to the "E-Reg" System for Real Estate Transactions
- File and Caseload Management and Staffing Information in the Complaints Resolution, Investigation and Discipline Departments
- Firm Name/Letterhead Rules

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORTRe: Electronic Registration

It was moved by Mr. Wright, seconded by Mr. Ducharme that the commentary to subrule 5.01(2) set out in bold at page 11 be amended "that only a lawyer may sign for completeness of any document that requires compliance with law statements" and that the fourth line of the last paragraph of the commentary be amended by deleting the word "should".

CarriedREPORTS FOR INFORMATION ONLY

- Emerging Issues Committee Report
- Lawyers Fund for Client Compensation Committee Report

Emerging Issues Committee
June 28, 2002

Report to Convocation

Purpose of Report: Information

Prepared by the Policy and Legal Affairs Department

TABLE OF CONTENTS

GLOBALIZATION AND THE LAW SOCIETY	1
THE MEANING OF GLOBALIZATION AND	
THE GLOBALIZATION OF LAW	1
The Themes	2

The Primary Issues	3
International Agreements on Trade in Services and Mobility of Lawyers	3
Mobility	5
Regulation and Regulatory Schemes, and the Effects of De-regulation	6
THE SOCIETY'S RESPONSE	10
Next Steps	11

GLOBALIZATION AND THE LAW SOCIETY

1. The Committee, in keeping with its mandate¹, identified a series of issues for study, either in whole or in part, by the Society. The Committee reported its list of issues to January 23, 2002 Convocation. The list included "globalization and its effects on law practice".
2. The Committee decided to pursue this issue in some depth and through this report is providing its views on the practical effects of globalization on Ontario lawyers and how the Society may wish to respond to them.
3. The Committee was mindful of other initiatives in which the Society is involved, some of which have been ongoing for some time. As the report discloses, the Committee informed itself on these matters, and the report reflects an understanding of the current work of other committees and task forces in areas that involve transborder or international practice issues.

THE MEANING OF GLOBALIZATION AND THE GLOBALIZATION OF LAW

4. In assessing how globalization is impacting on the legal profession in Ontario, the Committee
 - reviewed extensive information compiled by staff on globalization
 - discussed with staff and chairs from other Society committees initiatives that relate to globalization
 - met with three lawyers from academia and private practice who provided views on the following issues the Committee identified for discussion (based on its review of information on globalization):
 - ▶ Can the legal profession on a global basis preserve its values and character in an increasingly borderless society?
 - ▶ What is the lawyer's role in ensuring an independent bar and judiciary?
 - ▶ What role does a regulator like the Law Society play in the global legal environment?
5. As a result of the above, the Committee gained an understanding of globalization and in particular, the globalization of law. While the views of lawyers, academics, economists and social scientists vary on the definition of globalization and its impact on the legal profession, a number of general themes, in the Committee's view, emerge.

¹The mandate of the Committee is "to monitor emerging policy issues affecting the Society and the legal profession, to undertake and direct research into such policy issues and to develop for Convocation's approval strategic plans and other proposals relating to such policy issues." (By-Law 9, s. 16.2).

The Themes

6. Globalization involves the denationalization of markets, laws and politics. The phenomenon, however, does not involve all states and regions alike, nor is it global in the sense that all major aspects of political, economic or social life are encompassed by the process.
7. In narrowing the focus to law, the definition of globalization is given some practical meaning. Learned opinion is that law follows globalization, much like it has other fundamental political, social and economic developments. Globalization of law in its current manifestation essentially involves North America, Europe, Australia, and New Zealand. Much of the time, it has been said, the “globe” will turn out to be the United States and Western Europe.
8. The areas of law most affected by globalization include
 - ▶ administrative law, constitutional, and other rights law, and legal regulation of economic enterprise
 - ▶ consumer protection and environmental law
 - ▶ worldwide law of business transactions, international trade law, mergers and acquisitions
9. An “international legal system” is still in a primitive state. Harmonization of laws is likely to occur in areas of interest to multinational corporations, such as copyright, or in areas where many countries are closely aligned, such as criminal law and human rights.
10. Trends pushing globalization include
 - ▶ Globalization of the financial markets
 - ▶ Demand by clients in major financial and commercial centres for legal services in multiple countries
 - ▶ Relaxation of restrictions against lawyers from foreign countries being partners with or employed by domestic law firms
 - ▶ Demand by clients that law firms have significant size to deal with major matters in multiple jurisdictions
 - ▶ Demand by clients for seamless services of equivalent quality across national borders
 - ▶ Enhanced communication capabilities
 - ▶ Competition from an increasing number of law firms with global practices
 - ▶ Competition from other service providers (e.g. international accounting firms)

The Primary Issues

11. As a result of its research, the Committee narrowed the issues for review under the general topic of globalization of law to
 - a. international agreements on trade in services
 - b. mobility of lawyers
 - c. regulation and regulatory schemes, and the effects of de-regulation
 - a. International Agreements on Trade in Services and Mobility of Lawyers
12. *NAFTA and Foreign Legal Consultants*
The Society is considering the scope of a regulatory regime for foreign legal consultants (FLCs), starting with review of the Society’s long-standing policy on FLCs. For a more complete understanding of the FLC issue, the Committee sought information on the process that led to the adoption among Canadian, American and Mexican bar representatives of the “Joint Recommendation of the Relevant Canadian, Mexican And American Professional Bodies under NAFTA” on June 19, 1998 for FLCs.
13. Neil Finkelstein was part of the Canadian negotiating team for the Federation of Law Societies in these talks. He explained to the Committee the positions of the jurisdictions within NAFTA on cross-border legal services. Disparate views were expressed in the talks on how open or restricted the market for legal services should be between the countries.
14. Mr. Finkelstein’s view was that the efficacy of cross-border mobility rests on reciprocity. To give reciprocity, Canada must be satisfied that an adequate regulatory regime exists in the other jurisdictions, including a sufficient competence regime, professional conduct rules and regulations and compulsory

liability insurance schemes. At present, there is no commonality among the three nations in this respect. He opined that until Canada changes its system substantially or there is a total overhaul of the regulatory regimes in the other jurisdictions, full cross-border mobility will not occur.

WTO and the GATS

15. The Committee refreshed its knowledge of the current negotiations on trade in legal services progressing within the World Trade Organization's General Agreement on Trade in Services (GATS). The Committee noted the impetus for GATS, in particular for trade in legal services, as articulated in the following material prepared by the WTO:

In the past decades international trade in legal services has grown as a result of the internationalisation of the economy. Increasingly, lawyers are faced with transactions involving multiple jurisdictions and are required to provide services and advice in more than one jurisdiction. The demand for lawyers to be involved in foreign jurisdictions often comes from their corporate clients, who do business across borders and choose to rely on the services of professionals who are already familiar with the firm's business and can guarantee high quality services. Some countries also favour international trade in legal services, as the establishment of foreign lawyers is seen as a catalyst for foreign investment, contributing to the security and predictability of the local business environment.²

16. With respect to GATS and the Canadian legal services market, a 2000 Canadian Bar Association paper highlighted international trade in services involving GATS. The following views were expressed:

To the extent that globalization, and especially GATS, has an effect on the practice of law in Canada, it is likely to be in certain fields.... there will be greater competition in those areas that large firms handle, and which have a transnational dimension, for example, international business transactions, financial services, and large-scale mergers and acquisitions.

17. GATS is a subject within the jurisdiction of and actively monitored by the Society's Government Relations Committee. To an extent, it also impacts on the work of the Federation of Law Societies' Inter-Jurisdictional Mobility Task Force, discussed briefly below. The Committee notes these developments to the extent that they are a practical application of the theory of globalization, and involve or will involve lawyers in Ontario.

b. Mobility

18. The Committee was informed of the progress of the Federation of Law Societies' Inter-Jurisdictional Mobility Task Force. While the Task Force is concentrating on mobility of lawyers within Canada, this may be a step within the larger (global) mobility issue.
19. The mobility experience in the United States, the foreign jurisdiction of greatest interest to Ontario lawyers, is varied and not readily coherent. It is currently a piecemeal approach, with some states, or groups of states, moving ahead with mobility regimes.³
20. As with the GATS, the Committee notes the ongoing initiative of the Task Force as a precursor to a broader mobility initiative involving Canadian lawyers outside of Canada.

²World Trade Organization, Council for Trade in Services, "Legal Services - Background Note from the Secretariat", July 6, 1998

³The American Bar Association's Commission on Multi-Jurisdictional Practice recently released its report containing proposals for multi-state practice in the United States. The report will be debated at the ABA's annual meeting in August 2002.

c. Regulation and Regulatory Schemes, and the Effects of De-regulation

21. The Committee was fortunate in obtaining the views of three lawyers on the implications of globalization of law for the Society, based on three issues noted earlier, namely,
 - Can the legal profession on a global basis preserve its values and character in an increasingly borderless society?
 - What is the lawyer's role in ensuring an independent bar and judiciary?
 - What role does a regulator like the Law Society play in the global legal environment?
22. The Committee met with Professor David Paciocco from the University of Ottawa, Faculty of Law (Common Law Section), who is also counsel to an Ottawa law firm, Professor Harry Arthurs of Osgoode Hall Law School and Paul Lalonde of Heenan Blaikie, Toronto, who practices in the areas of international trade law, government procurement law, federal administrative law, foreign investment review and government relations.
23. The three guests offered interesting and thought-provoking views on how globalization may affect, or is affecting, the provision of legal services by and regulation of Ontario lawyers, here and abroad. The following are some of their views, which include some practical implications for the Law Society.
 - a. Globalization will challenge the profession. Canadian lawyers involved in international tribunals will face ethical quandaries. As the federal government signs international accords, and as courts consider developments outside of Canada and look at international precedents and handling of matters in other jurisdictions, the influence will be felt domestically. It may be naive to think that the Canadian legal profession can maintain its values in the face of globalization. The norms that govern Canadian law will be challenged. Those norms include, for example, our treatment of the solicitor-client relationship.
 - b. Overlaying this is the fact that there is no global legal culture. Professional values are not shared internationally. While there is a persisting belief that there is "a" legal profession with "a" body of knowledge binding it together with a commonality of interest, there is a huge amount of evidence to the contrary. Consider that privilege does not exist in some countries, and is in its infancy in others. The Society's understanding of the concept of the independence of the profession has no counterpart in other advanced and sophisticated democracies where the profession is not self-regulating.
 - c. The Ontario legal profession is experiencing some deep divisions among its members, as a result of specialization, demographic issues, a varying range of knowledge, and radically divergent views on the profession. Lawyers no longer share a significant body of knowledge. History, not knowledge, binds lawyers together. This also undermines the assumption that there is or can be a single posture on globalization among lawyers. Further, large forces at work will erode the lawyer's monopoly, which is contracting, not expanding. This will also create divisions among lawyers.
 - d. With no apparent cohesion in this respect, regulation of lawyers globally based on common principles may be unattainable. While in theory a transnational code of ethics for lawyers may be possible, practically, it may be impossible to achieve a transnational consensus as
 - provincial or state bodies are reluctant to yield regulatory authority or defer to an international code,
 - such a code speaks only to a very distinct group practicing transnational law, and there is no immediate salience for those outside these areas, and
 - the code may not take into account the public interests of those outside the "circle".

- e. Ontario lawyers have an obligation to maintain independence but globalization is inherently political and the Ontario conception of independence will come under scrutiny. The biggest threat to independence of the bar, however, is not the state but large corporate clients.
- f. Defining legal services or the practice of law for the purposes of regulation involves complex issues. Many non-lawyers offer services that lawyers provide (e.g. union representatives, bankers and accountants). Are they practising law? It is difficult to define a regulatory jurisdiction in the context of globalization without dealing with these issues.
- g. The second part of the regulatory issue is that the Law Society's role as regulator and the role of its members is being defined by the larger forces of globalization. Globalization is linked to the Canadian economy. New bodies of law and new areas where lawyers will serve are being developed. Canadian concepts or values cannot totally survive globalization. Canadian lawyers will have to leave behind some of these values when they go abroad, and the risk is that when they return, they may have greater tolerance for another way of practising.
- h. The influence of globalization is not only felt among the large firms in transnational practice. While there is a place for small firms, global developments may filter down to the small town practice. Consolidation of legal services may result in loss of this service which would alter the civic culture in an adverse way.
- i. With respect to negotiations within the GATS relating to legal services, awareness of the approach the negotiators for the Canadian government take is important. Much formal and informal consultation occurs around these negotiations, and the negotiators are responsive to concerns raised by an industry sector.
- j. Suggested approaches to dealing with some of the above issues included the following:
 - Canadian lawyers should identify those central features of a solicitor and client relationship that cannot be compromised. Ad hoc tinkering in response to practice issues influenced by globalization must not be allowed to undermine fundamental principles without careful regard to the impact that it will have not only on the profession, but on the system of justice.
 - The Law Society should develop rules or practices relating to conflicts of laws for regulation among jurisdictions. In doing so, it should ask what its function is and where its regulatory arm reaches, especially as more international dispute resolution bodies emerge. Arguably, the Society's authority should extend to all who represent themselves anywhere as Ontario lawyers.
 - Ontario lawyers should participate in drafting international codes, with a tempered zeal and a focus on protecting the core values of the profession.
 - A commonality of thought on the need to preserve the core values should be positively influenced among new lawyers and law students.
 - In relation to WTO/GATS discussions, efforts must be made to ensure that the relevant parties at the Department of Foreign Affairs and International Trade are sensitive to the profession's view of rules and process, and aware that the legal profession feels strongly about its attributes and core values as distinctive among the professions.

THE SOCIETY'S RESPONSE

- 24. The exploration of globalization confirmed for the Committee that while some issues relating to globalization are being actively studied by the Society (i.e. mobility, FLCs), others are on the horizon (i.e. rules around who regulates internationally, the formation of international codes, establishment of rules for international tribunals).
- 25. To the extent that the Society is already pursuing a number of initiatives that fall under the globalization umbrella, the Committee believes that a co-ordinated approach, especially on issues that have a national

scope, is necessary. Broad thought is required on those issues within Ontario's jurisdiction that have an international component. An example is FLCs and the regulatory scheme being contemplated for foreign lawyers practising foreign law in Ontario.

26. Some new issues emerge that relate to the Society's mandate to govern the profession in Ontario in the public interest. More specifically, they relate to regulatory parameters for lawyers when they become involved in extra-jurisdictional legal activities. The Committee's view is that the following should govern the Society's development of policies in response to globalization:
- a. The core values of the profession, namely, independence, solicitor and client privilege and confidentiality and the lawyer's conflict of interest regime, must remain front and center in any discussions. This will require an understanding of the varied perception (or less sophisticated treatment) of these core values by foreign lawyers, and how this may impact on the practice of Canadian lawyers in the global market and the lawyer's role in ensuring an independent bar and judiciary.
 - b. The Society should affirm that there are commonly accepted standards of professional performance by which a mobile profession should be measured. Realistic and coordinated legal and regulatory regimes in which the fundamental duties of counsel - confidentiality, freedom from conflicts of interest and competence - are preserved consistent with the demands of transnational business must be developed.
 - c. In the context of global practice, the Society should make efforts to understand the range of lawyers' practices so that required rules and regulations reflecting the essential character of the profession in the public interest do not discourage the business of law. In this way, a balance can be struck between maintaining and promoting standards of conduct and providing a more flexible approach to meet the business case of law in a global market.
 - d. Consistent and complementary approaches should be followed in all initiatives relating to global practice issues. The decisions made in the context of mobility, for example, could be developed on an international level, to achieve a broader common value system. This could assist in establishing the principles that, for example, inform the GATS negotiations.

Next Steps

27. The Treasurer has agreed to create a working group comprised of the chairs of the Committee, the Government Relations Committee, and the Society's Inter-Jurisdictional Mobility Committee to deal comprehensively and in a co-ordinated fashion with a range of issues arising from mobility, WTO/GATS, foreign legal consultants and related initiatives. The Committee refers to the working group the following, which may assist in its approach to these issues:
- The Society's rules governing the conduct of lawyers and regulations relating to specific practice requirements for the regulation of Ontario lawyers should be assessed for their sufficiency in a global legal environment.
 - The Society, through the appropriate committee or task force, may wish to participate in or initiate discussions with the appropriate domestic and foreign entities on international initiatives that have relevance to the regulation of Ontario lawyers and the core values of the legal profession in Ontario.
 - The Society should, where warranted, engage in a co-ordinated approach with other law societies through the Federation of Law Societies, or, if necessary, lead on the issue through the Federation, on issues that have a national or international component.

Lawyers Fund For Client Compensation Committee
Thursday, June 27, 2002

Purpose of Report: Information

Prepared by the Lawyers Fund for Client Compensation Department

TABLE OF CONTENTS:

TERMS OF REFERENCE/COMMITTEE PROCESS	3
SECTION A- INFORMATION	3
EXPANSION OF THE PANEL OF REFEREES	3
Background	3
Issue.....	4
Decision of The Committee	4
INCREASED REMUNERATION OF REFEREES	4
Issue.....	4
Decision of The Committee	5
OPERATIONAL REVIEW OF THE LAWYERS FUND FOR CLIENT COMPENSATION BY THE FINANCE AND AUDIT COMMITTEE	5
Issue.....	5
THE SCOPE OF GUIDELINE 2(a) OF THE GENERAL GUIDELINES FOR THE DETERMINATION OF GRANTS FROM THE LAWYERS FUND FOR CLIENT COMPENSATION	7
Background	7
Decision of The Committee	7
REFEREE REPORTS AND STAFF MEMORANDA – GRANT PAYMENTS OVER \$5000.....	8
Referee Reports	8
Staff Memoranda.....	8
STAFF MEMORANDA-GRANT PAYMENTS EQUAL TO OR UNDER \$5000 FROM JANUARY 1, 2001 TO PRESENT	11
RECOVERIES FROM JANUARY 2001-APRIL 26, 2002	13
TERMS OF REFERENCE/COMMITTEE PROCESS	

1. The Lawyers Fund for Client Compensation Committee (“the Committee”) met on May 22, 2002. Committee members in attendance were Robert Topp (Chair), Abdul Chabar by telephone conference (Vice-Chair), Gillian Diamond, Marshall Crowe, Marilyn Pilkington, Gerald Swaye, Q.C., Andrew Coffee, Helene Puccini, Donald White, Richmond Wilson, Q.C. Also in attendance were David McKillop (Manager), Jack N. Daiter (Secretary), Maria Loukidelis, Paul McCormick, Heather Werry, Sara Hickling, Fred Grady – Finance Department.
2. The Committee wishes to report on the following matters:

SECTION A - INFORMATION

- Expansion of the panel of Referees who hear Compensation Fund matters, and whether their remuneration should be increased.
- Clarification of the scope of Guideline 2(a) of the General Guidelines for the Determination of Grants from the Lawyers Fund For Client Compensation

- Tabling of Draft Operational Review of the Fund for Discussion

EXPANSION OF THE PANEL OF REFEREES

Background:

3. When there is disagreement between a claimant and staff Counsel at the Compensation Fund concerning the amount of a grant or entitlement to a grant, a hearing before the Referee may be held.
4. The last time the Compensation Fund recruited for new Referees was in 1994.

Issue:

5. Staff Counsel at the Fund advise the following Referees are used on a regular basis:
 - a. Anthony Keith, Q.C. (who also handles all of the French language Hearings)
 - b. Anil K. Kapoor
 - c. June Maresca
 - d. Linda Rothstein
6. Of the four Referees noted above, Anthony Keith, Q.C. and Anil Kapoor conduct the majority of the Hearings for the Fund.
7. There may be a need to expand the panel of Referees at this time.
8. The expansion of the active pool of Referees and the use of more Referees in Compensation Fund hearings may perpetuate and enhance the integrity of the process in the eyes of the public and the membership.

Decision Of The Committee:

9. After deliberation, the Committee deferred the matter to a future Committee meeting to facilitate preparation of a position paper by Compensation Fund staff.

INCREASED REMUNERATION OF REFEREES

Issue:

10. The current rate of remuneration for Referees of \$600.00 per day for hearings and preparation of the report(s), with commitments of less than one day to be billed on a pro rata basis, has been in effect for quite some time. There is also provision for secretarial services of up to \$50.00.
11. Approximately 6 years has elapsed since the last recommendation to increase Referee fees. In order to attract new and experienced candidates to the existing panel, an increase in the remuneration paid to Referees should be considered.
12. Pursuant to Guideline #6, the Fund currently pays Claimant's counsel an \$800 per diem counsel fee in the discretion of the Referee if a hearing is held.

Decision Of The Committee:

13. After deliberation, the Committee deferred the matter to a future Committee meeting to facilitate preparation of a position paper by Compensation Fund staff.

OPERATIONAL REVIEW OF THE LAWYERS FUND FOR CLIENT COMPENSATION BY THE FINANCE AND AUDIT COMMITTEE

Issue:

14. Convocation has adopted a 2003 budget process that included the selection of several Society programs, including the Lawyers Fund For Client Compensation, to undergo an operational review as part of the annual budget process.
15. The expectation of the Finance and Audit Committee and of the Senior Management Team of the Law Society is that the budget review will comprise an examination of program delivery, benchmarking criteria and an evaluation to ensure that the programs including the Fund are achieving the mandate of Convocation.
16. To assist in achieving these objectives, a report is required that details the mandate of the Lawyers Fund For Client Compensation. The report must include:
 - a description of the program
 - policy rationale and options
 - the resources devoted to the program including both human resources and financial resources utilised for the acquisition of services and materials
 - benchmarks of the Compensation Fund, utilisation statistics, using information from other jurisdictions offering a Compensation Fund
 - criteria for monitoring the effectiveness and evaluating performance of the program
 - a description of programs funded from the Compensation Fund levy.
17. The report must also describe the relationship between the Lawyers Fund For Client Compensation and the Society's core regulatory functions, and must also look to the future direction of the Compensation Fund, including the impact of technology, and the steps the Compensation Fund will take to meet the changing needs of lawyers and the public in an electronic age.
18. The report was presented to and reviewed by the Compensation Fund Committee on May 22, 2002, and presented to the Finance and Audit Committee on June 13 2002. The Committee did not approve or disapprove the presentation. Rather, the Committee received the presentation. Further Committee deliberations shall be undertaken when the Finance and Audit Committee reports.

THE SCOPE OF GUIDELINE 2 (a) OF THE GENERAL GUIDELINES FOR THE DETERMINATION OF GRANTS FROM THE LAWYERS FUND FOR CLIENT COMPENSATION

Background:

19. Compensation Fund Guideline 1(c), (now Guideline 2 (a)), addresses when losses, in connection with a trust related to a member's law practice, will be compensated. The Committee previously determined that

the Guideline was somewhat confusing. The Guideline is now interpreted to mean that a solicitor and client relationship is not necessarily required when the loss is in connection with a trust related to the member's law practice where the member is or was a trustee. Convocation approved the proposed change to Guideline 1(c) on October 19, 2000.

20. The following issues concerning the scope and application of Guideline 2(a) have arisen:

- (a) Whether Guideline 2(a) can be applied retroactively; and
- (b) Whether certain claimants, who would not have qualified for grant relief prior to the change to Guideline 2(a), are now entitled to grant relief in light of the change made on October 19, 2000.

Decision Of The Committee:

21. The Committee determined that a sub-committee should be struck to review the scope of Guideline 2(a) and to provide Compensation Fund staff with guidance on this issue.

REFEREE REPORTS AND STAFF MEMORANDA – GRANT PAYMENTS OVER \$5000

22. The Committee wishes to report that the following Referee Reports and Staff Memoranda have been approved by the Review Sub-Committee and grants over \$5,000.00 in the amounts shown have been paid out or are in the process of being paid out:

REFEREE REPORTS

C. Anthony Keith, Q.C.

Paul D. Squires

(Disbarred September 22, 1994)

Claims of:	Robert Nagy, John Nagy & Woodbrook Farms Ltd.	NIL
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Richard Ian Kesten

(Suspended November 1992)

Claim of:	Francis Wu	NIL
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Frank Ingolf Liebeck

(Deceased November 6, 2000)

Claim of:	Salvatore Dilisi	\$ 10,970.22
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STAFF MEMORANDA

Sara Hickling

Joram Gold

(Disbarred July 23, 1999)

Claim of:	Ruth Kammer	\$ 14,018.80
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Lee Edward Fingold

(Disbarred January 25, 1996)

Claims of:	Anne Price	\$ 43,429.46
	Morris W. Price Enterprises Inc.	\$ 15,924.00

Richard T. Johnston

(Deceased April 22, 1993)

Claim of:	Jarnail and Gurdev Bhangu	\$ 50,000.00
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Roland W. Paskar

(Permission to Resign on June 26, 2000)

Claim of:	Linda Trowbridge	\$ 100,000.00
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Paul D. Squires

(Disbarred September 22, 1994)

Claim of:	Sirkka Bourne	\$ 39,440.00
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Maria Loukidelis

Solicitor #65

(Suspended September 25, 2001)

Claim of:	Romy Bonneau	\$ 26,252.21
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Arnold Saul Handelman

(Disbarred January 23, 1992)

Claims of:	Russell Gardner	\$ 50,000.00
	Gardner Investments Inc.	\$ 100,000.00
	Jan Rolin (in trust)	\$ 60,000.00
	Rasda Holdings Limited	\$ 60,000.00
	Baro Construction Limited	\$ 29,000.00

George O. Tokar

(Permitted to Resign May 16, 2001)

Claims of:	Kremmdya and Voula Kremmdya	\$ 12,000.00
	609379 Ontario Ltd.	\$ 48,000.00
	Helena Decyk	\$ 41,400.00
	Helen and Myron Kowalchuk	\$ 7,143.26
	Susan and John Antunes	\$ 7,998.25

Michael G. Decosimo

(Disbarred - March 25, 1999)

Claims of:	Knowlesview Corporation Limited	\$ 100,000.00
	Hurontario Property Mngt. Services Ltd.	\$ 68,900.00
	Nasim Khan	\$ 11,000.00
	Jack Shabani	\$ 20,000.00

R. Paul McCormick

Neil John Campbell

(Disbarred June 12, 2001)

Claims of:	Brian and Patricia Machesney	\$ 6,696.16
	Estate of James Oliver Walker	
	By George A. Walker	\$ 14,596.00
	Karen Lang	\$ 4,881.50

Solicitor #67

(Administrative Suspension September 25, 2001)

Claims of:	Air America	\$ 7,500.00
	Ronald Tarjeft	\$ 10,716.00

David Joseph Colman

(Disbarred October 22, 1998)

Claims of:	Estate of Esther Levis by Della Caleb	\$ 24,000.00
	Gordon Humphrey	\$ 13,750.00

Rene St-Fort.

(Disbarred March 2, 2000)

Claim of:	Aurele Cyr	NIL
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Heather Werry

Neil John Campbell

(Disbarred June 12, 2001)

Claims of:	Estate of Eileen Giefer	\$ 13,570.00
	Frances Mills	\$ 20,433.00

Michael G. Dicosimo

(Disbarred March 25, 1999)

Claim of:	Angela Townshend	\$ 95,200.00
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Solicitor #61

(Suspended September 25, 2001)

Claims of:	Louis Lee and Lorsche Holdings Inc.	\$ 27,400.00
	John Fragiskos and Wingrad Hotels Ltd.	\$ 20,000.00
	Estate of Edward Brenot By:	
	- Bruce Brenot	\$ 3,165.69
	- Sandra McCarville	\$ 3,165.69
	- Blair Brenot	\$ 3,165.69
	Fernande Louiseize	\$ 43,900.00
	Marie Jeanne Desbarais	\$ 29,000.00
	Daniel Blair & Sara Blair	\$ 20,000.00
	Gregory Blair	\$ 65,000.00
	Ada & Wilfred Brown	\$ 60,000.00
	Est. of Hector Wright	\$ 69,310.53
	Philip Salib and Mona Salib	\$ 79,253.18
	Arthur N. Tunnacliffe	\$ 100,000.00
	Tonia Tunnacliffe	\$ 100,000.00

John J. Andriano

(Disbarred October 27, 2000)

Claims of:	Farideh & Nosrat Jamshidi	\$ 15,000.00
	Rosenblum Family Trust	\$ 30,000.00

G. W. Steven Harrington

(Disbarred December 15, 2000)

Claims of:	Est. of Grace Edgar by Carol Ann Jean Dewey	\$ 72,000.00
	Est. of Stanley Sparrow	\$ 50,000.00
	Est. of Yvonne P. Westaway	\$ 100,000.00
	Est. of David R. Westaway	\$ 12,000.00
	Est of D.I & T.A. Wilkes	\$ 10,000.00
	Est. of Irene & Thomas Wilkes	\$ 7,053.00

Brain R. Madigan

(Disbarred March 31, 1999)

Claim of: Loretto Ladies' Colleges and Schools \$ 80,000.00

Morris C. Orzech

(Permitted to resign April 15, 1996)

Claims of: Charlotte Lindgren \$ 40,000.00
Murray Laiman & Murray L. Holdings \$ 70,000.00
Ross & Joan Manser \$ 90,000.00

STAFF MEMORANDA – GRANT PAYMENTS EQUAL TO OR UNDER \$5000 FROM JANUARY 1, 2001 TO PRESENT

23. The Committee wishes to report that the following grant payments equal to or under \$5,000.00 have been approved by the Compensation Fund Team Leader or, where appropriate, the Compensation Fund Manager, and have been paid out, or are in the process of being paid out:

MEMBER	CLAIMANT	GRANT PAID
Solicitor #5	Estate of Peggy A. Thomas	1,275.00
Solicitor #6	Ross Barenberg	4,950.00
Solicitor #43	Robert McCooey	2,500.00
Solicitor #46	Theresa McDonald	3,500.00
Solicitor #50	C & A Handsor Purchase from Banar	60.00
Solicitor #50	Alfred Walker	527.00
Solicitor #50	Sam (Sarkis) Jacobs	230.00
Solicitor #52	Therese Gervais	2,150.00
Solicitor #58	Douglas Allan Schneider	1,215.00
Solicitor #60	Gregory Keenan	1,097.00
Solicitor #60	Bonnie O'Connor	2,250.00
Solicitor #60	Gregory & Erika Furney	700.00
Solicitor #60	Mary and Peter Kelly	300.00
Solicitor #60	Deborah and John Craig	1,400.00
Solicitor #60	Joseph and Una Rusenstrom	700.00
Solicitor #60	Tammie and Gord Langohr	700.00
Solicitor #60	Erika L. Bach	330.00
Solicitor #61	Estate of Knowles	3,980.00
Solicitor #64	John Wood	5,000.00
Solicitor #64	Franca Pirri	2,500.00
Solicitor #64	Jeffrey Vandervelde	1,500.00
Solicitor #64	Carol Postma	950.00
Solicitor #64	Martha Garcia & Cornelius Kuzee	2,000.00
Solicitor #65	M. Malouin & Angie Rozon Malouin	500.00
Solicitor #65	Kenneth A. Anderson	1,300.00
Solicitor #65	Jeanne Artiste	450.00
Solicitor #65	Barriault for Sarah Franklin	1,000.00
Solicitor #67	Luigi Simoneli	1,600.00
Solicitor #67	Mark Chene	800.00
Solicitor #67	Norm Bourassa	3,200.00
Solicitor #67	Petar Trajlovic	1,000.00
Solicitor #67	George J. Couckuyt	4,200.00
Solicitor #67	Chad Taylor	3,480.00

Solicitor #70	Murray Griese	1,393.39
Solicitor #71	Gweneth Caines	1,000.00
Solicitor #73	P.P.G. Raush Holdings Ltd.	150.00
Solicitor #73	Elena Aukstalkanis	500.00
Solicitor #73	Wuebolt, P&E & Burlie	50.00
Solicitor #73	Lena Nunn	878.85
Solicitor #75	Li/Cai	60.00
Solicitor #75	Mason Purchase from Distin	60.00
Solicitor #75	Chanzy & Lan Gu	60.00
Solicitor #78	Linda Dunbar	3,884.51
Solicitor #79	William E. Madge	963.58
Solicitor #80	Marzena and Andrew Grzela	500.00
Solicitor #83	Sari M. Neilson	1,200.00
Solicitor #84	Boismier & Lester	700.00
Solicitor #85	Natalia & Leszek Wiszniewski	2,000.00
Solicitor #90	Richard C. Sheard	3,000.00
Solicitor #91	David Gray	500.00
Irene M. Desmond	Manuel Vaz	3,739.62
George W. Harrington	Michelle Sandford	662.14
George W. Harrington	Alan J. Read	500.00
George W. Harrington	Catherine A. Pulsifer	2,000.00
George W. Harrington	Stanley Morton	832.37
George W. Harrington	Romeo and Lucille Lavoie	350.00
George W. Harrington	Rita Larsen	407.75
John M. Hartley	Chia Chen Mao	2,000.00
John M. Hartley	Linda McLaughlin	1,910.00
Pasquale Iannetta	Peter Idzikowski	1,400.00
Ralph S. Jones	Mark Tomina	500.00
Elliot N. Kaufman	R. Digiacomì & L. Vendetti	70.00
Brian R. Madigan	Afrodite Kipros	1,500.00
John G. Marko	Annette Marini	1,400.00
John G. Marko	Adriano Sorella	2,000.00
John G. Marko	Craig Woolf	1,000.00
John G. Marko	David Yarmus	1,065.00
Kimberley Anne Smith	Investigations OBO 32 Claimant	1,750.00
Paul D. Squires	Ronald (Cooke) Lee	4,262.00
Paul D. Squires	Elaine (Cooke) Cronkhite	4,360.70
Paul D. Squires	Joanne A. (Cooke) Dawson	3,391.55
Gregory P.L. Vanular	Pepper Purchase from Radovics	60.00
72 Grand Totals		\$109,945.96

RECOVERIES FROM JANUARY 2001- APRIL 26, 2002

24. The Committee wishes to report that the following recoveries were received by the Compensation Fund between January 1, 2001 and April 26, 2002:

MEMBER	AMOUNT RECOVERED
Andriano, John	3,904.97
Bezair, Johanne	17,365.62
Bull, John Adam	5,817.81
Campbell, Neil John	1,213.20
Carlson, Martha Kay	1,500.00
Chernoff, Stephen Anthony Michael	486.21
Comstock, John Thomas	18,692.17
Hartley, John M.	3,910.00
Hastings, Edward	9,404.18
Heder, Burkhard Richard A.	5,770.76
Hendin, Stuart Edward	3,500.00
Lachapelle, Raymond Joseph	7,500.00
Landau, Stephen Anthony	2,613.62
Loney, Byron Douglas	4,770.00
MacDonell, Donald Archibald	1,009.30
Mallon, Paul Edward	255.00
Marcovitch, David Mark	10,000.00
Mceachern, Ian Thomas	29,011.54
Mylks, Herbert Gordon	537.41
Orzech, Morris C.	7,321.91
Paskar, Roland	4,155.36
Richman, Reuben	192,612.01
Rivera, Josefino C.	2,398.16
Sadrudin, Jaffer	3,676.87
Simonelis, Peter	1,709.93
Sproule, John Alexander	8,685.35
Upshall, Philip C.	378,942.93
Wong, Lawrence Sun	19,660.26
TOTAL FUNDS RECOVERED	\$746,424.57

CONVOCATION ROSE AT 1:00 P.M.

The Treasurer and Benchers had as their guest for luncheon The Honourable Chief Justice Patrick J. LeSage.

Confirmed in Convocation this 19th day of September, 2002

Treasurer