MINUTES OF CONVOCATION

Thursday, 26th January 2006
9:00 a.m.

PRESENT:

The Acting Treasurer (Clayton Ruby), Aaron, Alexander, Backhouse, Banack, Bourque, Campion, Carpenter-Gunn, Caskey, Cherniak, Copeland, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Elliott, Feinstein, Filion, Finlayson, Furlong, Gotlib, Gottlieb, Harris, Heintzman, Lawrence, Legge, MacKenzie, Manes, Murphy, Murray, O'Donnell, Pattillo, Pawlitza, Potter, Robins, Ross (by telephone), St. Lewis, Silverstein, Simpson, Swaye, Symes, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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TREASURER'S REMARKS

The Treasurer congratulated Ab Chahbar on his appointment as Chair of the London Police Services Board.

Congratulations were also extended to Bernd Christmas who will receive the 2006 National Aboriginal Achievement Award.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of December 9, 2005 were amended by adding "Backhouse - For" to the Roll Call Vote set out at page 8.

MOTION – AUDIT SUB-COMMITTEE

It was moved by Mr. Swaye, seconded by Mr. Caskey, that Robert Topp be removed from the Audit Sub-Committee at his request.

Carried

MOTION – LAW SOCIETY MEDAL/LINCOLN ALEXANDER AWARD AND LL.D. ADVISORY COMMITTEES

It was moved by Mr. Heintzman, seconded by Ms. Harris –

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

Constance Backhouse
Paul Copeland
Allan Gotlib
William Simpson

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

Andrea Alexander
Constance Backhouse
Neil Finkelstein
Vern Krishna
Beth Symes

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

The Director of Professional Development and Competence reports:

B.

ADMINISTRATION

B.1. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 26th, 2006:

Nancy Hoi Bertrand	Bar Admission Course
Beverly Joanne Michelle Bly	Bar Admission Course
Yashodhara Rick Cran	Bar Admission Course
Christopher Tibor Darnay	Bar Admission Course

Giles Peter George Deshon	Bar Admission Course
Xinyang Elizabeth Fan	Bar Admission Course
Sheila Rae Gibb	Bar Admission Course
Catherine Ann Greentree	Bar Admission Course
Shlomit Hirsch	Bar Admission Course
Scott Boyd Hughes	Bar Admission Course
Francois Jacobus Janse Van Vuuren	Bar Admission Course
Manju Lalji Naran Jessa	Bar Admission Course
Olga Ayala Kanevsky	Bar Admission Course
Elisha Mary Elizabeth Kelly	Bar Admission Course
James Jason McLeod Kerr	Bar Admission Course
Abdul Qayyum Khan	Bar Admission Course
Amar Tukaram Khoday	Bar Admission Course
Andrew Evan Mandlsohn	Bar Admission Course
Aharon Harvey Mayne	Bar Admission Course
Assunta Mazzotta	Bar Admission Course
Katherine Lana McKinnon	Bar Admission Course
David Lucien Michaud	Bar Admission Course
Sheila Lovella Monteiro	Bar Admission Course
Christopher Patrick Moran	Bar Admission Course
Sejal Morzaria	Bar Admission Course
Wambui Mungai	Bar Admission Course
Abimbola Adetok Ogunkoya	Bar Admission Course
Julius Otieno A Omware	Bar Admission Course
Dawn Louise Palin	Bar Admission Course
Rakhi Pancholi	Bar Admission Course
Sangeeta Patel	Bar Admission Course
Sanjeev Patel	Bar Admission Course
Edith Sophie Pérusse	Bar Admission Course
Sriyantha Saliya Bandara Pinnawala	Bar Admission Course
Riccardo Rota	Bar Admission Course
Jonathan Nattan Seal	Bar Admission Course
Michael Thomas Semeniuk	Bar Admission Course
Shahdad Shimi	Bar Admission Course
Rabinder Sajjan Sidhu	Bar Admission Course
Jasmine Chen Spei	Bar Admission Course
Michael David Story	Bar Admission Course
Rajni Tekriwal	Bar Admission Course
Trina Sarah Kahentenhawi Wall	Bar Admission Course
Jaime Joseph Weinman	Bar Admission Course

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

B.1.4. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 26th, 2006:

Nicole Adele Borovan	Province of British Columbia
Christopher Patrick Burrison	Province of British Columbia
Elisabeth Anne Cleghorn	Province of British Columbia

Perry Mark David Derksen	Province of Manitoba
Katherine Elizabeth Ford	Province of British Columbia
Simon Paul James Fothergill	Province of British Columbia
Jennifer Lynn Gray	Province of Nova Scotia
Karen Louise Illsey	Province of Alberta
Amber Rose Lepchuk	Province of British Columbia
Michael Justin Schweiger	Province of Nova Scotia

B.1.5. (c) Transfer from another Province - Section 4.1

B.1.6. The following candidates have completed successfully the transfer examinations or the academic phase of the Bar Admission Course, filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 26th, 2006:

Guy André Belliveau	Province of New Brunswick
Kathleen Célestin	Province of Quebec
Michel Joseph Clément Desrosiers	Province of Quebec
Katie Noël	Province of New Brunswick
Danistan Saverimuthu	Province of Quebec

ALL OF WHICH is respectfully submitted

DATED this the 26th day of January, 2006

It was moved by Mr. Simpson, seconded by Mr. MacKenzie, that the Report of the Director of Professional Development and Competence listing the names of the candidates for Call to the Bar be adopted.

Carried

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CALL TO THE BAR (Convocation Hall)

The candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar.

The Treasurer adjourned Convocation. [Ms. St. Lewis then presented the candidates to Madam Justice Harriet E. Sachs to sign the rolls and take the necessary oaths.]

Convocation reconvened.

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TREASURER'S RESIGNATION

The Treasurer announced that Convocation accepted the resignation of George Hunter and expressed Convocation's appreciation for the work he did during his term as Treasurer.

SECRETARY'S REPORT TO CONVOCATION

The Secretary presented the Report on the Vacancy in the Office of Treasurer.

Secretary's Report to Convocation
January 26, 2006

Vacancy in Office of Treasurer

Purpose of Report: Decision

Prepared by: Policy Secretariat

FOR DECISION

Background and Information

1. The resignation of George Hunter has created a vacancy in the office of Treasurer. In this situation, by-law 6, section 16 provides that Convocation, shall, as soon as practicable, elect an elected bencher to fill the office until the next Treasurer election, which is in June 2006.

2. The purpose of this Report is to provide Convocation with information to assist it in determining the process for the election of a Treasurer to fill the current vacancy. Convocation must determine a date for,

   a. the close of nominations,
   b. the opening and closing of the advance poll, and
   c. the election.

3. The by-laws are silent on a specific process for filling a vacancy in the office of Treasurer. However, the processes set out in the by-law related to the nomination of candidates, the conduct of the advance poll, the right of benchers to vote, and the voting process can be applied by analogy, to such an election.

4. Ordinarily, there are six weeks between the close of nominations and the election date. In a year when there is a bencher election, there are four weeks between the close of

nominations and the election date. The advance poll opens 15 days prior to the election date and closes at 5:00 p.m. on the day preceding the election.

Possible Options

5. The most efficient method of determining the relevant dates is to begin with the date Convocation wishes to conduct the Treasurer election and work backwards. The following options are available.

6. If Convocation wishes to conduct the Treasurer election at February Convocation, the dates could be as follows:

Close of nominations:	February 3 at 5:00 p.m.
Advance poll:	February 8 at 9:00 a.m. to February 22 at 5:00 p.m.
Election:	February 23

7. If Convocation wishes to conduct the Treasurer election at March Convocation, the dates could be as follows:

Close of nominations:	February 9 at 5:00 p.m.
Advance poll:	March 8 at 9:00 a.m. to March 22 at 5:00 p.m.
Election:	March 23

8. From an administrative point of view, the election can proceed anytime. Preparations are already underway.

9. To ensure clarity, Convocation ought to specify,

a. the applicability of the provisions of by-law 6 to the election, with necessary modifications;
b. the date and time for the close of nominations;
c. the date and time for the opening and closing of the advance poll; and
d. the date of the election.

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CONTINUATION OF SECRETARY'S REPORT TO CONVOCATION

It was moved by Mr. Aaron, seconded by Mr. Gottlieb, that a Treasurer's election be held today.

Lost

It was moved by Mr. Crowe, seconded by Ms. Curtis, that the election date should be February 23, 2006.

Carried

It was moved by Ms. Ross, seconded by Mr. Wright, that the provisions of By-Law 6 will apply to this election of Treasurer.

Carried

It was moved by Mr. Wright, seconded by Mr. Swaye, that the election date should be March 23, 2006.

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REPORT OF THE FINANCE & AUDIT COMMITTEE

Ms. Symes presented the Finance & Audit Committee Report.

Report to Convocation
January 26, 2006

Finance and Audit Committee

Committee Members:
Clayton Ruby, Chair
Abdul Chahbar, Vice-Chair
Marshall Crowe, Vice-Chair
Beth Symes, Vice-Chair
John Campion
Mary Louise Dickson
Allan Gotlib
Holly Harris
Ross Murray
Alan Silverstein
Gerald Swaye
Robert Topp

Purpose of Report: Decision
Information

Prepared by the Finance Department

Table of Contents

For Decision

For Information

COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on January 12, 2006. Committee members in attendance were: Abdul Chahbar (vc.), Marshall Crowe (vc.), Ross Murray, Alan Silverstein, Gerald Swaye, Beth Symes (vc.).

   Staff present were Malcolm Heins, Wendy Tysall, Fred Grady and Andrew Cawse. Michelle Strom and Akhil Wagh from LawPro and Dan Markovich from James P. Marshall were also in attendance.

FOR DECISION

ERRORS & OMISSIONS INSURANCE FUND INVESTMENT POLICY

MOTIONS:

A. That Convocation approve the attached Investment Policy Statement for the Errors & Omissions Insurance Fund.

B. That management of the Surplus Fund portion of the Errors & Omissions Insurance Fund identified in the Investment Policy Statement be transferred to Foyston, Gordon & Payne, Inc.

Background

2. The Lawyers' Professional Indemnity Company ("LawPro") signed an Administrative Services Agreement with the Law Society in 1995. Under the Agreement LawPro would administer the affairs of the Society's self administered group deductible on all insurance polices for the year 1994 and prior, known as The Errors and Omissions Insurance Fund ("E&O Fund").

3. Part of the services LawPro provides is

   > "to invest funds allocated by the Society with respect to its obligations pursuant to the (E&O Fund), such funds to be invested pursuant to the Society's Investment Policy Statement with such investment manager or managers as may be approved by the Society and LawPro from time to time."

   It is therefore Convocation's responsibility to approve changes to the E&O Fund's Investment Policy Statement and investment manager.

4. At June 30, 2005, investments of the E&O Fund had a book value of $59 million. Apart from the other considerations discussed here, most of the investment income surplus to the E&O Fund's needs is used to support the operations of the Law Society. In 2006, we are budgeting to receive support of $3 million from the E&O Fund.

5. There have been no changes to the Investment Policy Statement in the recent past other than what can be described as house keeping items, not requiring Convocation's formal approval. The recommended changes included in this motion were approved by the LawPro board in November 2005.

   Investment Policy Statement (attached)

6. The E&O Fund has evolved over time and now serves three purposes.

   a. Only a small portion of the Fund is used to settle claims arising from the professional indemnity coverage offered by the Law Society prior to 1995.

   b. A larger portion of the Fund acts as a Premium Stabilization Fund.

   c. The remainder of the Fund is used as the initial backstop for LAWPRO liabilities.

7. The attributes of the claims liabilities remaining in the Fund (a. above) reflect a short term payout pattern and a conservative/low tolerance for risk. The Premium Stabilization Fund (b. above) is intended to ensure stability and flexibility in order to provide for premium contributions to the Ontario E&O Insurance Program over the short term. Hence the attributes of the Premium Stabilization Fund also suggest a conservative/low tolerance for risk. A short-term bond portfolio would meet the requirements to fund the claims liabilities and the Premium Stabilization Fund and this combination should be designated as the Dedicated Fund.

8. The remainder of the Fund, which is intended to be used as an initial backstop for LAWPRO liabilities (c. above), is required to preserve capital while generating adequate returns. The attributes of the surplus suggest a moderate tolerance for risk. As such, a conservative asset mix composed of equities and fixed income securities should be considered and this surplus portion of the fund should be designated as the Surplus Fund.

9. The asset mix portfolio recommended for the Surplus Fund is a portfolio comprising 30% of equities and 70% of longer term fixed income securities.

   Investment Manager

10. The Dedicated Fund portion of the Fund should continue to be managed by the existing investment managers of the Fund, CIBC Asset Management, with a new mandate to manage it on a passive basis.

11. The management of the Surplus Fund portion of the E&O Insurance Fund should be transferred to Foyston, Gordon & Payne, Inc., who are currently exceeding benchmarks in managing a portion of LAWPRO's existing investment portfolio and the Law Society's two long term portfolios for the General Fund and Compensation Fund.

12. LawPro's Ms. Michelle Strom, CEO, and Mr. Akhil Wagh, Vice President Finance and Treasurer, will be in attendance.

THE LAW SOCIETY OF UPPER CANADA
ERRORS AND OMISSIONS INSURANCE FUND
INVESTMENT POLICY STATEMENT

January 26, 2006

Approved:	May 11, 1995
Revised:	May 22, 1996
Revised:	May 15, 1997
Revised:	May 12, 1998
Revised:	May 12, 1999
Revised:	June 1, 2000
Revised:	May 15, 2002
Revised:	April 15, 2003
Revised:	November 9, 2004
Revised:	January 26, 2006

INTRODUCTION

General

The Law Society of Upper Canada (the 'Society') was incorporated in 1822 as the governing body of Ontario lawyers. It is responsible for their education, licensing, supervision and discipline. The Society is a not-for-profit organization. Until December 31, 1994, the Society, through the Errors and Omissions Insurance Fund (the 'Fund'), was responsible for most of the liability arising from professional indemnity for lawyers in Ontario and Newfoundland. The Society decided to have the assets of the Errors and Omissions Insurance Fund invested in accordance with the Trustee Act of Ontario.

Essentially, the Fund was in the business of providing professional indemnity insurance in the same way as an insurance company would. As such, the Fund collected levies of the lawyers and it paid claims and expenses. Because there is a delay between the receipt of the premiums and the payment of the claims, the Fund held assets that needed to be invested.

Effective 1995, the Lawyers' Professional Indemnity Company ('LAWPRO') has been appointed manager of the Society's Errors and Omissions Insurance Fund.

The purpose of this Investment Policy Statement (the 'Policy') is to provide a framework within which the investments of the Fund can be prudently managed. In addition, the Policy provides the investment manager(s) with a written statement of specific quality and quantity guidelines and with a performance objective.

The investment guidelines are intended to maximize return while assuming acceptable levels of risk.

A major goal of this Policy is to establish ongoing communications between LAWPRO's Board and the investment manager. Effective communication will contribute to efficient and prudent management of the assets. Consultation between the parties will take the form of regular meetings supplemented, from time to time, by informal contact requested by either party.

INTRODUCTION (Cont'd)

Accountability and Responsibilities

The following section sets out the major responsibilities of the various parties involved in the investment of the assets of the Fund.

Board of Directors of LAWPRO

Subject to the final approval by Convocation, the Board of Directors of LAWPRO or a joint committee of LAWPRO and the Society shall

a) review and approve this Investment Policy Statement;
b) review the investment portfolio and monitor its performance;
c) review and approve management recommendations with respect to the appointment of the investment manager(s); and
d) approve performance measurement objectives.

LAWPRO Management

Management has overall responsibility for the following:

a) preparing, and recommending changes to, this Policy;
b) recommending the investment objectives to be used;
c) recommending the selection of the investment manager and the custodian;
d) approving the investment accounts established with the custodian for use by the investment manager(s);
e) monitoring the investments to ensure compliance with legislative requirements and with this Policy; and
f) evaluating the investment manager(s).

Investment Manager(s)

The primary responsibility of the investment manager(s) is to generate acceptable investment returns over time, measured against the performance objective contained in this Policy.

The investment manager(s) shall have full investment discretion in managing the investment assets subject to the guidelines and restrictions contained in this Policy, and to any amendments that may be made from time to time, by LAWPRO.

Custodian

The custodian shall keep all investment assets in its own vaults, in the vaults of a Canadian chartered bank or trust company or on CDS, and shall collect all income, provide monthly statements and execute purchase and sale transactions as directed by the investment manager.

INTRODUCTION (Cont'd)

Conflicts of Interest

Scope

Conflict of interest standards apply to all members of the LAWPRO Board, LAWPRO management and the investment manager, as well as to all Agents employed by LAWPRO, in the execution of their fiduciary responsibilities.

An `Agent' is defined to mean a company, organization, association or individual, as well as its employees, retained by LAWPRO to provide specific services with respect to the administration and management of LAWPRO's investment assets.

In carrying out their fiduciary responsibilities, these parties must act at all times in the best interests, and for the benefit, of LAWPRO. All parties must act in the manner that a "prudent person" would in matters related to the investment strategy and portfolio management.

No affected person shall accept a gift or gratuity or other personal favour, other than one of nominal value, from an individual with whom the person deals in the course of performance of his or her duties and responsibilities.

Disclosure

In the execution of their duties, the LAWPRO Board members and their Agents shall disclose any material conflict of interest relating to them, or any material ownership of securities, which could impair their ability to render unbiased decisions, as it relates to the administration of the investment assets.

Further, it is expected that no Board member nor Agent shall make any personal financial gain (direct or indirect) because of their fiduciary position. However, normal and reasonable fees and expenses incurred in the discharge of their responsibilities are permitted if documented and approved by LAWPRO.

It is incumbent on any party affected by this Statement who believes that he/she may have a conflict of interest, or who is aware of any conflict of interest, to notify the President of LAWPRO. Disclosure should be made promptly after the affected person becomes aware of the conflict. The President, in turn, will decide what action is appropriate under the circumstances but, at a minimum, will table the matter at the next regular meeting of the Board.

No affected person who has or is required to make a disclosure as contemplated in this Statement shall participate in any discussion, decision or vote relating to any proposed investment or transaction in respect of which he or she has made or is required to make disclosure.

CHARACTERISTICS OF THE FUND

In order to establish an appropriate investment policy for the investment assets of the Fund, it is necessary to review and understand the characteristics of the Fund, its balance sheet, the nature of its operations and its future prospects. Accordingly, the main characteristics that affect the investment of the Fund are set out below:

Business issues

- Prior to January 1, 1995, the Society self-insured the majority of the professional indemnity coverage for lawyers in Ontario and Newfoundland, and
- Effective January 1, 1995, this coverage was transferred to LAWPRO;

Balance Sheet

- As at June 30, 2005, the Errors and Omissions Insurance Fund had investments of approximately $59.4 million, with offsetting claims liabilities of $4.7 million. Cash-flow projections indicate that the claims liabilities will be liquidated over the next 3 to 5 years with net payouts anticipated to be approximately $1.0 million per year over the 2006-2008 period. In addition, an annual amount of $6.1 million will be drawn down to help supplement the premium income for professional indemnity coverage under a five-year plan running through the end of 2009.

Nature of the Operation and Future Prospects

- Subsequent to December 31, 1994, the Fund exists in part to settle the claims made prior to December 31, 1994,

- In February 1999, the deficit that existed in the E&O fund which reached $153 million in 1994, was retired. As such, no future significant revenue inflows are expected.

- In addition, a substantial portion of the assets act as a Premium Stablilization Fund (approximately $27.6 million as at June 30, 2005) to supplement the premium necessary to support the Ontario professional liability insurance program. The remainder of the Fund is considered Surplus (approximately $32.0 million as at June 30, 2005) and is used as backstop for the professional indemnity coverage liabilities.

CHARACTERISTICS OF THE FUND (Cont'd)

Based on the above assessment of the main characteristics of the Fund, the following conclusions can be drawn regarding the investment strategy that is appropriate for the Fund:

- The Fund should be divided into two distinct portions: the assets related to provide for claims liabilities along with the Premium Stabilization Fund as one portion, referred to as the Dedicated Fund, and the remaining portion of the Fund to be referred to as the Surplus Fund.

- The assets of the Fund, allocated between the Dedicated Fund and the Surplus Fund as indicated above should be managed as separate portfolios by professional investment managers.

Claims liabilities and Premium Stabilization Fund (Dedicated Fund)

- The portion of the Fund related to claims liabilities and the Premium Stabilization Fund has a short term focus. The investments for this portion should be relatively liquid, meaning that they could be sold in normal circumstances within two months,

- The Dedicated Fund portion can not tolerate excessive short term volatility of returns because of the relatively short investment horizon. As well, it must be flexible enough to allow for the moderate level of uncertainty in the cash flow pattern, and

- Only fixed income investing is appropriate for this portion of the Fund.

Surplus Fund

The Surplus Fund has a long term investment horizon and as such can afford liquidity risk.

- The Surplus Fund can tolerate short term volatility of returns.

- A mix of equities and fixed income is appropriate for this portion of the Fund.

The balance of this Policy provides the Investment Guidelines that LAWPRO believes to be appropriate, considering the above characteristics.

INVESTMENT GUIDELINES

Asset Mix and Diversification

Taking into consideration the nature of the Fund's obligation and the capital market environment for Canadian investment funds, the following asset mix and diversification policy has been established.

This Policy lists the asset classes that may be used and it presents the maximum and minimum exposures for each asset class.

Dedicated Fund:

The allocation to this portion of the Fund will be equal to the assets used to back up the claims liabilities and the assets assigned to the Premium Stabilization Fund. These assets should be invested in short term bonds, managed to approximate the return of the Scotia Capital Short Term Bond Index (SCSTBI). It is anticipated that a portion of the Dedicated Fund will be drawn down each year to cover various disbursements and the Manager should ensure that the portfolio has sufficient liquidity to enable such draw downs to be made.

Surplus Fund:

The remainder of the Fund will be invested in a portfolio composed of equities and fixed income securities.

SURPLUS FUND TARGET ASSET MIX AND RANGES

	Minimum	Target	Maximum
Canadian equities	15%	20%	25%
U.S. equities	5%	10%	15%
EAFE equities	n.a.	n.a.	n.a.
Total equities	20%	30%	40%
Fixed income	60%	70%	80%
Total		100%	

INVESTMENT GUIDELINES (Cont'd)

Permitted and Prohibited Investments

The investments of the Fund must comply with the requirements and restrictions imposed by the applicable legislation, including but not limited to the requirements of the Ontario Trustee Act, the federal Income Tax Act and any relevant regulations.

Subject to the Asset Mix Guidelines set out above and to the restrictions noted below, the Fund may invest in any of the following asset classes and in any of the investment instruments listed below:

Canadian and Foreign Equities

- common and convertible preferred stock listed on a recognised stock exchange,
- debentures convertible into common or convertible preferred stock,
- rights, warrants and special warrants for common or convertible preferred stock,
- instalment receipts,
- private placements of equities; and
- With prior approval of LAWPRO, income trusts registered as reporting issuers under the Securities Act, domiciled in a Canadian jurisdiction that provides limited liability protection to unitholders;

Bonds

- bonds, debentures, notes, non-convertible preferred stock and other evidence of indebtedness of Canadian issuers denominated and payable in Canadian dollars,

- NHA-insured mortgage-backed securities, and
- term deposits and guaranteed investment certificates;

Cash and Short Term Investments
- cash on hand and demand deposits,
- treasury bills issued by the federal and provincial governments and their agencies,
- obligations of trust companies and Canadian and foreign banks chartered to operate in Canada, including bankers' acceptances, and
- commercial paper and term deposits; and

Other Investments
- investments in open- or closed-ended pooled funds provided that the assets of such funds are permissible investments under this Policy, and
- deposit accounts of the custodian can be used to invest surplus cash holdings.

Minimum Quality Requirements

The portfolio should hold a prudently diversified exposure to the intended market. In addition, the portfolio should meet the following quality criteria at all times:

INVESTMENT GUIDELINES (Cont'd)

The minimum quality standard for individual bonds and debentures is `BBB' or equivalent as rated by a recognised bond rating agency, at the time of purchase;
- The minimum quality standard for individual short term investments is `R-1' or equivalent as rated by a recognised bond rating agency, at the time of purchase; and
- All investments shall be relatively liquid (i.e. - in normal circumstances they should be capable of liquidation within 2 months).

Maximum Quantity Restrictions

The following quantity restrictions are to be respected:

<u>Issuer Limit</u>
- Except for securities issued or guaranteed by federal and provincial governments, no more than 10% of the book value of the total portfolio may be invested in the securities (fixed income or equity) of a single issuer and its related companies.

<u>Equities</u>
- No one equity holding or private placement shall represent more than 10% of the market value of the equity portfolio, or, in the case of Canadian equities, 150% of that equity's weight in the S&P/TSX Composite Index, whichever is the greater,
- No one equity holding shall represent more than 10% of the voting shares of a corporation,
- No one equity or private placement holding shall represent more than 5% of the available public float of such equity or private placement security, and
- Income Trusts shall not comprise more than 5% of the Surplus Fund.

Fixed income, being bonds and short term investments

- Except for federal and provincial bonds, no more than 10% of the bond portfolio may be invested in the bonds of a single issuer and its related companies,
- Except for federal and provincial bonds, no one bond holding shall represent more than 10% of the market value of the total outstanding for that bond issue, and
- No more than 15% of the market value of the bond portfolio shall be invested in bonds rated `BBB' or equivalent.

Other

- Excluding rights, warrants and special warrants, derivative securities shall not be used, and
- Private placements, whether equity or bonds, shall at no time represent more than 20% of the Fund's total investment portfolio.

INVESTMENT GUIDELINES (Cont'd)

Valuation of Investments Not Regularly Traded
The following principles apply for the valuation of investments that are not traded regularly:

- Equities
  Average of bid-and-ask prices from two major investment dealers, at least once every month.

- Bonds
  Same as for equities.

- Mortgages
  Unless in arrears, the outstanding principal plus/minus the premium/discount resulting from the differential between face rate and the currently available rate for a mortgage of similar quality and term, determined at least once every month.

- Equities-not publicly traded companies
  For companies not publicly traded, investment will be carried at cost. LAWPRO will review the performance of the company(ies) on an annual basis.

Credit Ratings for Bonds
The following are the descriptions associated with commonly quoted rating agencies. LAWPRO considers bonds rated BBB and above to be investment grade.

	Standard & Poor's	DBRS
AAA	Extremely strong capacity	Highest credit quality
AA	Very strong capacity	Superior credit quality
A	Strong capacity	Satisfactory credit quality

BBB	Adequate capacity	Adequate credit quality
BB	Vulnerable	Speculative
B	More vulnerable	Highly speculative

Note: Moody's Investors Services is another commonly quoted rating agency.

INVESTMENT GUIDELINES (Cont'd)

Prior Permission Required

The following investments are only permitted with the prior written permission of LAWPRO:

- direct investments in resource properties,
- direct investments in mortgages,
- direct investments in real estate,
- direct investments in venture capital financings, and
- investments in bonds of foreign issuers and bonds denominated in currencies other than Canadian dollars.

If the investment manager wishes to deviate from the Asset Mix and Diversification Guidelines or the Permitted and Prohibited Investments Guidelines, the manager must seek the prior written permission of LAWPRO, after stating the reasons for their request.

Securities Lending

The Fund is not permitted to lend securities.

MONITORING AND CONTROL

Investment Policy Review

This Policy may be reviewed and revised at any time, but it must be formally reviewed at least annually. As part of the annual review process, LAWPRO will review and update the section of this Policy that addresses the characteristics of the Fund. The results of this process will be considered when reviewing the asset mix and diversification policy.

Performance Measurement

The performance of the Fund will be measured quarterly and return calculations shall be as follows:

- Time weighted rates of return,
- Total returns, including realised and unrealised gains and losses and including income from a ll sources, and
- Measurement to be over moving annual periods.

Performance Objectives

The primary objectives for the Fund are as follows:

Dedicated Fund
The primary objective for the Dedicated Fund is to earn a rate of return that equals the total rate of return (income and capital appreciation/depreciation) of the Scotia Capital Short Term Bond Index.

Surplus Fund
The primary objective for the Surplus Fund is earn a rate of return that exceeds the rate of return calculated using 20% of the S&P/TSX Composite Total Return Index, 10% of the S&P 500 Total Return Index in Canadian dollars, and 70% of the total rate of return of the Scotia Capital Universe Bond Index.

Compliance Reporting by the Investment Manager(s)

The investment manager(s) is(are) required to complete a compliance report each quarter. The compliance report should indicate whether or not the manager was in compliance with this Policy during the quarter.

At any time that the manager is not in compliance with this Policy, the investment manager is required to advise LAWPRO immediately, detailing the nature of the non-compliance and recommending an appropriate course of action to remedy the situation.

OTHER ISSUES

Voting Rights

The Fund has delegated voting rights acquired through the investments held by LAWPRO to the custodian of the securities to be exercised in accordance with the investment manager's instructions. Investment manager are expected to exercise all voting rights related to investments held by the Fund.

However, the Fund may take back voting rights for specific situations.

Further, the investment manager should advise LAWPRO regarding their voting intentions for any unusual items or items where they intend to vote against management.

Reasons for Terminating an Investment Manager

Reasons for considering the termination of the services of an investment manager include, but are not limited to, the following factors:

- Performance results which are below the stated performance objective;
- Changes in the overall structure of the Fund such that the investment manager's services are no longer required;
- Change in personnel, firm structure or investment philosophy which might adversely affect the potential return and/or risk level of the portfolio; and/or
- Failure to adhere to this Policy.

Standards of Professional Conduct

The investment manager's staff are expected to comply, at all times and in all respects, with the Code of Ethics and Standards of Professional Conduct as promulgated by the CFA Institute.

- END -

FOR DECISION

ERRORS & OMISSIONS INSURANCE FUND BANKING RESOLUTION

MOTION:

That Convocation approve the attached new banking resolution for the Errors & Omissions Insurance Fund which is updated for the Law Society's new officers and LawPro's new Vice President, Finance and Treasurer, Akhil Wagh.

13. The Lawyers' Professional Indemnity Company ("LawPro") signed an Administrative Services Agreement with the Law Society in 1995. Under the Agreement LawPro would administer the affairs of the Society's self administered group deductible on all insurance polices for the year 1994 and prior, known as The Errors and Omissions Insurance Fund ("E&O Fund"). Under this agreement LawPro administers the E&O Funds bank account at the Bank of Montreal.

14. In 2005, LawPro's Board appointed Akhil Wagh as the Vice President, Finance and Treasurer. The bank requires a new banking resolution to reflect the change in signing officers and authorities on the bank account. The proposed new banking resolution was approved by LawPro's board in November 2005.

15. The proposed banking resolution in respect of the Errors and Omissions Insurance Fund bank account is attached.

16. LawPro's Ms. Michelle Strom, CEO, and Mr. Akhil Wagh, Vice President Finance and Treasurer, will be in attendance.

FOR INFORMATION

LAWPRO FINANCIAL STATEMENTS FOR THE THIRD QUARTER ENDED SEPTEMBER 30, 2005

32. The third quarter financial statements of the combined Errors and Omissions Insurance Fund and LawPro, including management's analysis, are attached for information.

33. Ms. Michelle Strom, CEO, and Mr. Akhil Wagh, Vice President Finance and Treasurer, will be in attendance.

FOR INFORMATION

INTERIM FINANCIAL STATEMENTS FOR THE THIRD QUARTER ENDED SEPTEMBER 30, 2005

34. The Committee received the Report of the Audit Sub-Committee's November meeting which examined the following reports and found them to be satisfactory.

- The financial statements of the General Fund for the nine months ended September 30, 2005 (page 45).
- The financial statements of the Lawyers Fund for Client Compensation for the nine months ended September 30, 2005 (page 48).
- Investment Compliance Reports at September 30, 2005. The reports confirm compliance with Investment Policies (page 50)
- The financial statements of LibraryCo Inc for the nine months ended September 30, 2005 (page 57).

35. The Committee noted that the Audit Sub-Committee had reviewed and discussed the financial controls at the county library level. Further work by the Sub-Committee on financial controls at the county library level has been deferred pending further information on LibraryCo's new Integration Taskforce, discussions with our CDLPA partners, and the input from the Finance & Audit Committee.

36. The Committee noted that the Audit Sub-Committee had discussed the usefulness and relevance of reporting on bencher expense reimbursements. Further ways to address any financial and reporting risk in this regard will be considered. In September, Convocation approved a motion that included a bencher expense reimbursement reporting provision, requiring that expense reimbursements by individual bencher be reported to the Audit Sub-Committee and bencher expense reimbursement in total be reported to the Finance & Audit Committee and Convocation.

37. The Committee noted that the Audit Sub-Committee had met with representatives of our auditors, Deloitte & Touche LLP to discuss their planning for the year end audit including the fees for that audit.

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

(1) Copy of banking resolution for the Errors and Omissions Insurance Fund bank account.
(Tab B, pages 20 – 26)

(2) Copy of the third quarter financial statements of the combined Errors and Omissions Insurance Fund and LAWPro including management's analysis.
(Tab C, pages 30 – 43)

(3) Copy of the financial statements of the General Fund for the nine months ended September 30, 2005.
(Tab C, pages 45 - 47)

(4) Copy of the financial statements of the Lawyers Fund for Client Compensation for the nine months ended September 30, 2005.

(Tab C, pages 48 – 49)

(5) Copy of the Investment Compliance Reports at September 30, 2005.

(Tab C, pages 50 – 56)

(6) Copy of the financial statements of LibraryCo Inc for the nine months ended September 30, 2005.

(Tab C, pages 57 – 65)

Re: Errors & Omissions Insurance Fund Investment Policy

It was moved by Ms. Symes, seconded by Mr. Crowe, that Convocation approve the attached Investment Policy Statement for the Errors & Omissions Insurance Fund set out at pages 6 to 18 and that the management of the Surplus Fund portion of the Errors & Omissions Insurance Fund identified in the Investment Policy Statement be transferred to Foyston, Gordon & Payne Inc.

Carried

Re: Errors & Omissions Insurance Fund Banking Resolution

It was moved by Ms. Symes, seconded by Mr. Crowe, that Convocation approve the attached new banking resolution for the Errors & Omissions Insurance Fund which is updated for the Law Society's new officers and LawPRO's new Vice President, Finance and Treasurer, Akhil Wagh.

Carried

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CONTINUATION OF THE FINANCE & AUDIT COMMITTEE REPORT

Ms. Symes presented the LawPRO Financial Statements for the third quarter ended September 30, 2005 for information.

REPORT OF THE TRIBUNALS COMMITTEE REPORT

Mr. Banack presented the Tribunals Committee Report.

Report to Convocation
January 26, 2006

Tribunals Committee

Committee Members
Larry Banack (Chair)
Mark Sandler (Vice-Chair)
Peter Bourque
Paul Copeland
Sy Eber
Derry Millar
Bonnie Warkentin

[NOTE: PART OF REPORT DEFERRED FROM NOVEMBER 24, 2005 AND DECEMBER 9, 2005 CONVOCATION]

Purpose of Report: Decision
Information

Policy Secretariat
(Sophia Sperdakos 416-947-5209)

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Committee met on January 12, 2006. Committee members Larry Banack (Chair), Mark Sandler (Vice-Chair), Peter Bourque, Sy Eber, Derry Millar and Bonnie Warkentin attended. Staff members Katherine Corrick, A.K. Dionne, Grace Knakowski, Terry Knott, Lisa Hall and Sophia Sperdakos also attended.

FOR DECISION

PROPOSED AMENDMENT TO BY-LAW 9: COMMITTEE MANDATE

MOTION

2. That, pursuant to Convocation's approval of the Committee's mandate on October 20, 2005, By-Law 9 [Committees], made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999, May 28, 1999, December 10, 1999, July 26, 2001, November 22, 2001, October 31, 2002 and March 25, 2004, be further amended as follows:

1. Section 2 of the By-Law is amended by adding the following:

11. Tribunals Committee.

11. Comité des tribunaux.

2. The By-Law is amended by adding the following:

TRIBUNALS COMMITTEE

Mandate

16.6 (1) The mandate of the Tribunals Committee is to develop for Convocation's approval policy options on all matters relating to the operation and administration of the Hearing Panel and the Appeal Panel, including the development or preparation of practice directions, an adjudicator code of conduct, publication protocols for tribunal decisions and adjudicator professional development.

Mandat

16.6 (1) Le mandat du comité des tribunaux est d'élaborer pour approbation du Conseil différentes politiques sur toutes les questions portant sur le fonctionnement et l'administration du comité d'audition et du comité d'appel, y compris l'élaboration ou la préparation des directives de cabinet, un code de déontologie pour les arbitres, un protocole de publication pour rendre les décisions de tribunal et le perfectionnement professionnel des arbitres.

Rules of practice and procedure

(2) Subject to the approval of Convocation, the Tribunals Committee may prepare rules of practice and procedure.

Règles de pratique et de procédure

(2) Sous réserve de l'approbation du Conseil, le comité des tribunaux peut préparer des règles de pratique et de procédure.

Background and Information

3. On October 20, 2005 Convocation approved the mandate for the Tribunals Committee. The proposed amendments to By-Law 9 (Committees) incorporate into the by-law the mandate for the Tribunals Committee that Convocation approved.

PUBLICATION OF PANEL DISPOSITIONS

MOTION

4. That Convocation

   a. revokes its January 2002 policy respecting the publishing of the finding of a Hearing Panel; and

   b. provides instead that the Law Society is not prohibited from publishing a Hearing Panel or Appeal Panel disposition during the appeal period.

Background and Information

5. On January 24, 2002 Convocation adopted a policy respecting publication of Hearing Panel decisions. The Minutes of Convocation set out the policy approved as follows:

> It was moved by Mr. Bindman, seconded by Mr. Hunter and Ms. Ross that the position set out in paragraph 45 (a) and (b) be adopted, that the member's name be published in the *Ontario Lawyer Gazette* following determination of the matter by the Hearing Panel, notwithstanding any appeal filed by the member and that publication of the results of the proceedings in such cases should include notice that the member has appealed the decision of the Hearing Panel. In addition, in circumstances where the member appeals the decision of the Hearing Panel, the member may apply before the Appeal Panel for an order that the Society not publish the finding of the Hearing Panel.
>
> Carried

6. The practical implication of the policy has been that to preserve the member's right to seek a publication ban pending appeal, the Law Society cannot publish the disposition of the matter until the 30 day appeal period has passed. Although the policy speaks only to the *Ontario Lawyers Gazette*, the Law Society has assumed it includes publication generally.

7. The Committee is satisfied that there are serious negative implications of this policy for the Law Society's regulatory mandate to govern in the public interest. For a thirty-day period there is a restriction on publishing information about the disposition of a matter against a member. This includes information about suspensions and disbarments.

8. In the recent series of articles on the Law Society that were published in the Toronto Star a claim was made that the Law Society was not acting quickly enough respecting a particular member who misappropriated funds from clients. In fact, the Law Society had recently disbarred him, but was unable to publish this information because the 30-day period for filing an appeal had not elapsed.

9. Given the increasing importance of the transparency of the Law Society's regulatory processes and the importance of reassuring the public that the actions of lawyers who fall below the standards of ethical and competent practice are addressed as promptly as possible, the Committee is of the view that the 2002 policy, by precluding immediate publication, is not in keeping with the Law Society's mandate.

10. The policy also perpetuates inconsistency in the Law Society's operations. The Law Society's database (the AS400) operates in real time. Once a decision is made that affects the member's status or right to practise without restriction, this is immediately noted on the database. If a member of the public (including the media) were to contact the Law Society and ask about the member's status they would be told the member's current status. Moreover, the member's status would also be known to anyone present when a Panel renders an oral decision. Yet because of the 2002 policy the same information could not be published.

11. In the years since the policy was approved, the Law Society has made many changes to its operations to enhance its public interest mandate and to make public information about members. The 2002 policy was very narrowly focused on the *Ontario Lawyers Gazette*. The *Ontario Lawyers Gazette* is no longer the most effective way to distribute information, given that the information is already dated by the time it is published in the Gazette. The Law Society now makes much more effective use of its website to distribute information and to demonstrate the transparency of its processes.

12. In considering this issue the Committee also considered the practices of three other regulators, which are set out at Appendix 1.

13. In the Committee's view the existing policy does not reflect the Law Society's public interest mandate and should be revoked, in accordance with the motion set out above.

FOR INFORMATION

OVERDUE TRIBUNAL MATTERS AND BENCHMARKS FOR DECISION-WRITING

14. The Tribunals Task Force recommended, and Convocation approved, that a 60-day benchmark be introduced from the completion of a hearing to the Tribunals Office's issuance of the written order and reasons. The Committee approved a revision to the standard memo that the Tribunals Office sends to panels to reflect the new 60-day benchmark.

15. On November 27, 2003 former Treasurer Frank Marrocco advised Convocation that commencing in January 2004 a list of tribunal matters outstanding for more than 30 days following the completion of the hearing or appeal would be circulated to Convocation. To reflect the benchmark change the 30-day time frame has been changed to 60 days.

APPENDIX 1

MEMORANDUM

TO: SOPHIA SPERDAKOS
POLICY COUNSEL

FROM: ANNE-KATHERINE DIONNE
COUNSEL, OFFICE OF THE DIRECTOR

POLICY & TRIBUNALS

DATE: DECEMBER 19, 2005

RE: PUBLISHING DISCIPLINE DECISIONS ON THE WEB - OTHER REGULATORS

College of Physicians and Surgeons of Ontario
The College typically does not wait for the appeal period to expire before putting a discipline decision on the web. Certain information is statutorily required to be added to the College's register immediately and generally, that information is public. The register must include restrictions on a member's practice or registration as well as notice of suspension, revocation of licence, etc. That being said, where a member is appealing the decision or penalty, the appeal is also noted on the register.

Discipline decisions are published on the web as soon as they are released to the parties and have been edited by the College to anonymize the names of complainants, etc. This is generally completed before the appeal period expires.

Only in rare cases are the decisions not published before the appeal period expires. One such case is where a doctor is appealing a criminal conviction that formed the basis of the discipline committee's finding that the doctor was unsuitable to practice.

Ontario College of Teachers
The College waits for the 30-day appeal period to expire before it posts its discipline decisions on the web.

Institute of Chartered Accountants of Ontario
The ICAO publishes most of its discipline decisions on the web and all of them on QuickLaw before the appeal period has expired. It doesn't post a decision where a member was found not guilty.

Where a notice of appeal has been filed, that is noted on the website and also on QuickLaw.

Re: Proposed Amendment to By-Law 9: Committee Mandate

It was moved by Mr. Banack, seconded by Dr. Eber, that pursuant to Convocation's approval of the Committee's mandate on October 20, 2005, By-Law 9 [Committees], made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999, May 28, 1999, December 10, 1999, July 26, 2001, November 22, 2001, October 31, 2002 and March 25, 2004, be further amended as follows:

1. Section 2 of the By-Law is amended by adding the following:

   11. Tribunals Committee.

   11. Comité des tribunaux.

2. The By-Law is amended by adding the following:

TRIBUNALS COMMITTEE

Mandate

16.6 (1) The mandate of the Tribunals Committee is to develop for Convocation's approval policy options on all matters relating to the operation and administration of the Hearing Panel and the Appeal Panel, including the development or preparation of practice directions, an adjudicator code of conduct, publication protocols for tribunal decisions and adjudicator professional development.

Mandat

16.6 (1) Le mandat du comité des tribunaux est d'élaborer pour approbation du Conseil différentes politiques sur toutes les questions portant sur le fonctionnement et l'administration du comité d'audition et du comité d'appel, y compris l'élaboration ou la préparation des directives de cabinet, un code de déontologie pour les arbitres, un protocole de publication pour rendre les décisions de tribunal et le perfectionnement professionnel des arbitres.

Rules of practice and procedure

(2) Subject to the approval of Convocation, the Tribunals Committee may prepare rules of practice and procedure.

Règles de pratique et de procédure

(2) Sous réserve de l'approbation du Conseil, le comité des tribunaux peut préparer des règles de pratique et de procédure.

Carried

Re: Publication of Panel Decisions

It was moved by Mr. Banack, seconded by Dr. Eber, that Convocation

a. revokes its January 2002 policy respecting the publishing of the finding of a Hearing Panel; and

b. provides instead that the Law Society is not prohibited from publishing a Hearing Panel or Appeal Panel disposition during the appeal period.

Carried

ROLL-CALL VOTE

Aaron	For	Legge	For
Backhouse	For	MacKenzie	For
Banack	For	Manes	For
Bourque	For	Murray	For
Campion	For	O'Donnell	For
Carpenter-Gunn	For	Pattillo	For
Caskey	For	Pawlitza	For
Crowe	For	Potter	For
Curtis	For	Robins	For

Dickson	For	Ross	For
Doyle	For	St. Lewis	For
Dray	For	Silverstein	For
Eber	For	Simpson	For
Feinstein	For	Swaye	For
Filion	For	Symes	For
Finlayson	For	Warkentin	For
Gotlib	For	Wright	For
Gottlieb	Against		
Harris	For		
Heintzman	For		

Vote: 36 For; l Against

Item for Information
Overdue Tribunal Matters and Benchmark for Decision Writing

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. MacKenzie presented the Professional Regulation Committee Report.

Report to Convocation
January 26, 2006

Professional Regulation Committee

NOTE:
DEFERRED FROM NOVEMBER 24 AND DECEMBER 9, 2005 CONVOCATIONS

Committee Members
Carole Curtis, Chair
Mary Louise Dickson, Vice-Chair
Laurence Pattillo, Vice-Chair
Gordon Z. Bobesich
Anne Marie Doyle
George D. Finlayson
Patrick G. Furlong
Alan Gold
Allan Gotlib
Gavin MacKenzie
Ross W. Murray
Judith Potter
Sydney Robins
Bradley Wright

Purposes of Report: Decision and Information

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

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on November 10, 2005. In attendance were Carole Curtis (Chair), Mary Louise Dickson (Vice-chair), George Finlayson, Alan Gold, Judith Potter, Sydney Robins and Bradley Wright. Staff attending were Naomi Bussin, Anne-Katherine Dionne, Terry Knott, Zeynep Onen and Jim Varro.

FOR DECISION

CRITERIA WITH RESPECT TO MEMBERS' CONDUCT ELIGIBLE FOR THE NEW REGULATORY MEETING (REPORT FROM THE PROCEEDINGS AUTHORIZATION COMMITTEE)

MOTION

2. That Convocation approves the following general criteria prepared by the Proceedings Authorization Committee for the types of misconduct that would be eligible for a Regulatory Meeting:

   A Regulatory Meeting may be authorized by the Proceedings Authorization Committee ("the PAC") in the following circumstances:

   a. The Law Society has conducted an investigation of the member's conduct and the evidence suggests the member may have breached his or her obligations under the Rules of Professional Conduct, but in the opinion of the PAC, the circumstances are such that a conduct application may not be warranted if the member agrees to the Meeting;

   b. The conduct to be discussed is not substantially in dispute;

   c. It is not in the public interest to deal with the matter by an Invitation to Attend, given its confidential nature, because:

      i. The conduct of a member has been the subject of comment in a public forum, including, for example:

         A. by a court as a matter of public record orally or in writing;

         B. in a news report, press report, media release, article, journal, or other publication or public medium; or

         C. at a meeting, gathering, conference, etc.; and

ii. As a result of such comment in a public forum, the public is expecting or would reasonably expect to receive a Law Society response to the issue.

Background

3. In June 2005, Convocation approved the policy for a new Regulatory Meeting, which is essentially an Invitation to Attend which can be publicly noted. The policy appears at Appendix 1. The policy contains the following paragraph:

> Only members who engaged in specified types of misconduct, the general criteria for which will be determined by the [Proceedings Authorization Committee], *as approved by Convocation*, would be eligible for a regulatory meeting.
> (Emphasis added)

4. The Proceedings Authorization Committee ("the PAC") has prepared this report, which the Professional Regulation Committee has included in its report for the convenience of Convocation. Pursuant to the paragraph quoted above, the PAC is proposing the criteria set out in the motion at paragraph 2 for Convocation's approval. The report also summarizes the purpose of the regulatory meeting.

Purpose of the Meeting

5. The Regulatory Meeting is intended for cases where the matter could be referred for discipline through conduct proceedings, but in the view of the PAC there is evidence of a breach of the *Rules of Professional Conduct* that has received public attention and there is good reason to follow a remedial process instead of formal discipline.

6. Where the facts of such a case are in the public realm, the Regulatory Meeting permits an informal discussion of the issues with the member, the benchers conducting the Meeting, and any other persons who may attend with the consent of the member and the Law Society.

7. The purpose of the Meeting is to discuss the ethical issues with the member. At the conclusion of the Meeting, the fact that the Meeting took place is to be public to allow reference to the conduct that led to the Meeting. After authorization by the PAC, Society staff will advise the member of the information to be made public about the Meeting so that the member may provide his or her informed consent to the Meeting.

8. The public information is limited to the name of the member, a brief description of the member's conduct that led to the Meeting, and the regulatory issues that arose from that conduct. No other information may be disseminated about the Meeting without the agreement of the Meeting participants.

9. The Regulatory Meeting offers an opportunity for frank discussion about difficult issues of conduct where the facts are not in dispute, but there may be differing views on its interpretation in an ethical context. The Meeting provides a forum to generate solutions and closure for the member on issues such as civility. It provides a public response by the Society to the conduct that resulted in the complaint.

10. In accordance with By-Law 21, the decision to authorize a regulatory meeting is at the discretion of the PAC.[1]

Appendix 1

THE REGULATORY MEETING
(as approved by Convocation on June 22, 2005)

1. The Proceedings Authorization Committee ("the PAC") may authorize an invitation to a member to attend a regulatory meeting.

2. In order to proceed with a regulatory meeting, the member must accept (for the purpose of the meeting) the general facts alleged, be willing to participate in the process and be aware of his or her options and rights. These include:

   a. The voluntary nature of attendance at the meeting,

   b. The fact that the PAC may consider further action if the member does not accept the invitation to attend the meeting or having accepted, does not attend,

   c. The fact that the meeting will be a matter of public record, which will also disclose the issue or issues which prompted the authorization of the meeting and the outcome,

   d. The option for the member, in agreement with the PAC, to invite others to attend the meeting, as discussed below,

   e. The option for the member to attend with counsel.

3. The member will be advised that the purpose of the meeting is threefold:

   a. to *educate* the member about the impact of his or her actions,

   b. to hold the member *accountable* for them, and

   c. to *address the harm* inflicted on the public (either the complainant or the larger public interest).

   Identification of general issues around civility or other matters related to the lawyer's conduct and possible solutions could be part of addressing the harm.

---

[1] 9.(1)After reviewing a matter, the [Proceedings Authorization] Committee may determine that no action should be taken in respect of the matter or, subject to subsections (2) to (4), the Committee may take one or more of the following actions:
...
3. Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her conduct.
3.1 Invite a member to attend before a panel of benchers to receive advice concerning his or her professional competence.

4. Only members who engaged in specified types of misconduct, the general criteria for which will be determined by the PAC, as approved by Convocation, would be eligible for a regulatory meeting.

5. Required attendees at the meeting will be the member and two or more PAC members.

6. The member and the PAC members attending the meeting may agree that the following may attend the regulatory meeting:

   a. one or two senior members of the legal profession, depending on the nature of the issue,

   b. a lay bencher (community representative)

   c. the complainant.

7. Although the meeting is restricted to those listed above, there will be a public statement that the meeting occurred which identifies both the member and the issues. The fact that the meeting occurred will be a matter of public record at the Law Society.

8. The outcomes of such a meeting may include:

   a. no further action and closing the file;

   b. the member apologizing to the complainant, after which the file will be closed; or

   c. a referral back to the PAC for possible authorization of a Conduct Application in the appropriate case.

   A key element of the regulatory meeting is its public outcome. The regulatory meeting is not disciplinary, but it will be used where a public disposition is required, for example, where the court has commented publicly on the issue. The Invitation to Attend will continue to be the appropriate remedy where the matter should be private and confidential.

Re: Criteria With Respect to Members' Conduct Eligible for the New Regulatory Meeting (Report from the Proceedings Authorization Committee)

It was moved by Mr. MacKenzie, seconded by Ms. Symes and Mr. Pattillo, that Convocation approves the following general criteria prepared by the Proceedings Authorization Committee for the types of misconduct that would be eligible for a Regulatory Meeting:

A Regulatory Meeting may be authorized by the Proceedings Authorization Committee ("the PAC") in the following circumstances:

a. The Law Society has conducted an investigation of the member's conduct and the evidence suggests the member may have breached his or her obligations under the Rules of Professional Conduct, but in the opinion of the PAC, the circumstances are such that a conduct application may not be warranted if the member agrees to the Meeting;

b. The conduct to be discussed is not substantially in dispute;

c. It is not in the public interest to deal with the matter by an Invitation to Attend, given its confidential nature, because:

i. The conduct of a member has been the subject of comment in a public forum, including, for example:

A. by a court as a matter of public record orally or in writing;

B. in a news report, press report, media release, article, journal, or other publication or public medium; or

C. at a meeting, gathering, conference, etc.; and

ii. As a result of such comment in a public forum, the public is expecting or would reasonably expect to receive a Law Society response to the issue.

The following was accepted as a friendly amendment:

Page 3, paragraph 2 - the words “types of misconduct” be deleted and the word “conduct” be substituted.

Page 3, paragraph 2a - the word “circumstances” be changed to “circumstance” and the word “and” be at the end of the paragraph.

Page 3, paragraph 2b - the word “and” be at the end of the paragraph.

The main motion as amended was adopted.

Dr. Gotlib opposed the motion.

REPORT OF THE EMERGING ISSUES COMMITTEE

Ms. Symes presented the Emerging Issues Committee Report.

Report to Convocation
January 26, 2006

Emerging Issues Committee

Committee Members
W.A. Derry Millar, Co-chair
Heather Ross, Co-chair
Beth Symes, Vice-chair
Kim Carpenter-Gunn
W. Paul Dray
E. Susan Elliott
Alan Gotlib
Thomas G. Heintzman
Vern Krishna
Allan F. Lawrence
Julian H. Porter
Judith Potter
Bradley Wright

Purposes of Report: Decision

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

COMMITTEE PROCESS

1. The Emerging Issues Committee ("the Committee") met on November 9, 2005 and January 11, 2006. In attendance were Derry Millar (Chair), Beth Symes (Vice-Chair and Acting Chair on January 11, 2006), Paul Dray, Tom Heintzman, Allan Lawrence, Judith Potter, Julian Porter and Bradley Wright. Staff attending were Anne-Katherine Dionne and Jim Varro.

FOR DECISION

POLICY ON LAW SOCIETY RESPONSES TO HUMAN RIGHTS VIOLATIONS INVOLVING LAWYERS AND JUDGES

MOTION

2. That Convocation approves:
   a. a policy to systematically respond to human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, and;

   b. that a group of benchers be charged with monitoring human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, the composition of the group and particulars of its mandate to be determined following Convocation's approval of this proposal.

Background

3. At the Committee's March 2005 meeting, a new issue was raised concerning the Law Society's role in the global community, and in particular, whether the Society should develop a policy for responding in an organized fashion to international crises and human rights abuses as an alternative to approaching these issues on a case-by-case basis, and what the scope of that policy should be.

4. From time to time, Convocation has formally responded to certain events in the international community. For example, in January 2005, Convocation approved assistance to victims of the December 2004 South and Southeast Asian tsunami by facilitating the provision of *pro bono* legal services to Ontarians who had been affected by the disaster and approved the Law Society's organization of legal information sessions within the affected communities. Convocation has also approved responses to events in which lawyers have been targeted for their activities as lawyers and have suffered tragic consequences as a result. The following are two examples:

   a. Rosemary Nelson

   In March 1999, Convocation unanimously adopted a motion calling for an immediate independent and international inquiry into the murder of lawyer Rosemary Nelson, who was killed by a car bomb outside her home in Northern Ireland on March 15, 1999. Ms. Nelson's clients included those who had been arrested under emergency laws for questioning about politically motivated offences.

   b. Igbal Raad, Asthma Jahangir and Hina Jilani

   Convocation adopted a similar approach in April 2000 in responding to the case of a lawyer murdered and threats in a separate incident to two other lawyers in Pakistan. Mr. Raad was one of two senior lawyers defending Nawaz Sharif, Pakistan's deposed Prime Minister, against a possible death sentence. Mr. Raad was shot dead in his office by three assailants who also killed his office assistant and a guest, the son of a High Court Justice. Death threats were made against Asthma Jahangir and Hina Jilani, two human rights lawyers who were assisting a client in obtaining a divorce from her abusive husband. The client herself was shot dead in the lawyers' offices by a gunman who had accompanied her family to the meeting. In response, Convocation decided to convey to the appropriate authorities in Pakistan its dismay over the murders and the death threats directed at the two lawyers and the murder of their client in their office. Convocation also conveyed its hope that the Pakistani authorities would take necessary steps to protect lawyers in the carrying out of their duties, and to reaffirm the commitments of the Pakistani government to the rule of law, to the United Nations Declaration on Human Rights Defenders and to the United Nations Basic Principles on the Role of Lawyers.

5. The Committee focussed on the merits of a more formalized structure for preparing responses to these events. After directing research on the issue, the Committee struck a working group[1] at its May 2005 meeting to study the issue and, in considering a policy, how to frame the scope and content of the policy.

[1] Working Group members were Paul Copeland (Chair), Anne-Marie Doyle and Tom Heintzman.

6. The Working Group prepared a report considered by the Committee at its November 2005 meeting, which formed the basis for the proposals in this report. The Committee also asked the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (EAIC) to review the Working Group's report and provide feedback on the proposals. EAIC reviewed the report at its January 12, 2006 meeting, discussed later in this report, and endorsed the proposals.

The Committee's Review

7. In examining this subject, the Committee considered the following:

   a. The Law Society's mandate[2] to achieve the purposes of advancing the cause of justice and the rule of law through its governance of the legal profession suggests that the scope of the mandate would appropriately include responding to situations in which members of the legal profession and judiciary are subjected to persecution as a result of the discharge of their legitimate professional duties;

   b. International human rights abuses resulting in the persecution of foreign lawyers for discharging their legitimate professional duties may directly or indirectly threaten the core values of Ontario's legal system, and in particular, the independence of the bar;

   c. A policy designed to systematically address human rights violations against lawyers might include, where appropriate, joining with other organizations in responding to matters within the scope of the policy;

   d. The sufficiency of other organizations' activities in terms of addressing issues that arise may affect the Law Society's decision to respond; and

   e. In considering a method of systematic response to address human rights abuses, it might be appropriate to build in a threshold by which to measure the need for a response based on considerations such as,

      i. the Law Society's mandate and how the issue relates to governance of the profession;
      ii. the best 'voice' to address the issue;
      iii. the perspective the Law Society can bring to the issue;
      iv. the persuasiveness of the Law Society's position;
      v. how the Law Society might be distinguished from other organizations; and
      vi. the Law Society's resources.

[2] The Role Statement says:

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.

8. In connection with d. and e. above, the Committee reviewed the work of advocacy organizations on behalf of persecuted lawyers and the work of other Canadian law societies in this area:

   a. Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers dedicated to protecting human rights advocates and promoting the rule of law and human rights internationally. The organization monitors cases of lawyer persecution and conducts letter writing campaigns, trial observations and rights advocacy training. In 2005, LRWC was granted Special Consultative Status with the United Nations, which allows it to participate in U.N. human rights policy development. Bencher Paul Copeland is on LRWC's Board of Directors.

   b. The Law Society of England and Wales' International Human Rights Committee and staff organizes a letter writing campaign through which members and the public can download, sign and send to the appropriate foreign government authorities a letter outlining the fact of the human rights violation, commenting on the relevant law(s) being violated and demanding immediate action.

   c. In 2002, Richard Gibbs, Q.C., then Vice-President of the Law Society of British Columbia, went to Malaysia to monitor and report on the trial of lawyer, Karpal Singh. Mr. Singh was charged with sedition for words spoken in defence of his client who was in custody, facing criminal charges. Mr. Gibbs represented the Law Society of British Columbia, Lawyers' Rights Watch Canada and the Federation of Law Societies of Canada. The Law Society indicated that the Malaysia trial observation was a one-time project and that at present the Law Society does not engage in international human rights advocacy.

   d. The Barreau du Québec's Comité sur les droits de la personne is responsible for advising the equivalent of the Treasurer and Convocation whenever a public position on human rights violations is warranted.

9. The Committee also considered whether a national group, such as the Canadian Bar Association, might be better suited to respond to human rights violations that target members of the legal profession and judiciary. National organizations have the ability to mobilize members across the country, which may have greater impact than a response from a provincial law society. However, it was recognized that with approximately 35,000 members, a response from the Law Society may carry significant weight. The Committee also contemplated that there may be occasions in which the only appropriate response available is one that can be effected immediately, without the constraints of relying on another organization's timetable.

The Committee's Proposals

<u>Scope and Rationale for a Response to Human Rights Abuses</u>

10. The Committee recognized that proposals to address this issue should be informed by the Law Society's Role Statement.

11. In the Committee's view, the Law Society's purpose of advancing the cause of justice and the rule of law is subsumed in its mandate to govern the legal profession in the

public interest. The cause of justice and the rule of law are promoted when members of the public have access to meaningful legal representation and an independent bar and judiciary. These basic tenets of a fair and accountable justice system are achieved when members of the legal profession and judiciary are free to discharge their legitimate professional duties without threat of persecution. Justice is denied where lawyers are persecuted for performing their professional duties. Governing in the public interest requires that the Law Society ensures access to lawyers who can meet the public's legal needs by preserving and promoting access to justice, the rule of law and an independent bar.

12. The Committee also acknowledged that the legal profession is becoming globalized. The erosion of respect for the rule of law elsewhere threatens its tenuous position even in the most democratic societies. As Martin Luther King, Jr. observed, "A threat to justice anywhere is a threat to justice everywhere."

13. The Committee concluded that the Law Society should monitor human rights abuses that involve persecution of lawyers and the judiciary, here and abroad, for the purposes of advising Convocation of the need for a response, and that a structure should be established to facilitate systematic responses.

14. With respect to the scope of the policy, responses should be limited to cases in which members of the legal profession and judiciary are threatened or persecuted as a result of the discharge of their legitimate professional duties. While many human rights abuses are politically complex and 'double-edged', responding in cases in which lawyers have been murdered or incarcerated for discharging their professional duties is readily justifiable. In other cases in which the circumstances of the threat or persecution are less obvious, it may be appropriate for the Law Society to conduct research and determine whether a response is warranted.

15. Suggestions for possible responses include:

    a. Letters of indignation;
    b. Letters in support of others' advocacy;
    c. Letters urging responses from other organizations, such as the Federation of Law Societies, the Canadian Bar Association or the federal government; and/or
    d. Partnering with advocacy organizations such as Lawyers' Rights Watch Canada.

16. The Committee determined that a Law Society response to humanitarian crises and general human rights abuses, while worthy of attention, does not fall within the narrow scope of the Law Society's mandate as a regulator of the legal profession in the public interest. However, this would not preclude interested benchers from bringing egregious abuses to the attention of Convocation and requesting a response on a case-by-case basis.

<u>Forming a Group of Interested Benchers to Monitor Human Rights Abuses</u>

17. The Committee believes that a group of interested benchers should be formed to monitor on an on-going basis human rights abuses, including threats and persecution, of lawyers and the judiciary. Once the group is established, it would be for the group to bring definition to its structure and determine such details as the frequency of reporting, the range of responses, including those outlined in paragraph 15, and the particulars of

the action required in a specific case for the approval of Convocation, with regard to the considerations in paragraph 7.e.

18. The Committee anticipates that staff support will be required to assist the group with on-going monitoring, research into the circumstances of alleged cases of lawyer persecution, where necessary, and the preparation of materials for the group and Convocation's review. The Committee considers this support essential to permit Convocation to make effective, informed and timely responses.

19. The Committee determined that an initiative of this nature might best be implemented by the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (EAIC), given the relationship of this issue to the work done in that committee. One option would be to constitute the group of benchers as a working group of this standing committee.

20. The Committee referred its report to EAIC for comment on the proposal, and EAIC considered the report at its January 12, 2006 meeting. EAIC agreed with the Committee's approach and supports establishing the group of benchers under its leadership. Upon approval of the policy discussed in this report, EAIC is prepared to consider in detail the composition of the working group and the matters noted in paragraph 17.

Summary of the Proposed Policy

21. The Committee recommends that Convocation adopt and implement a policy to systematically respond to national and international human rights violations that result in the persecution of members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties. These responses are justified on the basis that the events that prompt them generally relate to matters of the independence of the bar and access to justice, and that a threat to a lawyer anywhere is a threat to the legal profession as a whole.

22. The Committee further recommends that Convocation charge a group of benchers with responsibility to monitor human rights violations and persecution experienced by members of the legal profession and judiciary as a result of the discharge of their legitimate professional duties. The particulars of the mandate of this group and its composition should be determined after Convocation has approved this proposal.

Re: Policy on Responses to Human Rights Violations Involving Lawyers and Judges

It was moved by Ms. Symes, seconded by Mr. Heintzman, that Convocation approves:

a. a policy to systematically respond to human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, and

b. that a group of benchers be charged with monitoring human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, the composition of the group and

particulars of its mandate to be determined following Convocation's approval of this proposal.

It was moved by Mr. Silverstein, seconded by Mr. Aaron, that the motion be tabled.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE REPORT

Mr. Simpson presented the Professional Development, Competence & Admissions Committee Report.

Report to Convocation
January 26, 2006

Professional Development, Competence & Admissions Committee

Committee Members
William Simpson (Chair)
Constance Backhouse (Vice-Chair)
Gavin MacKenzie (Vice-Chair)
Peter Bourque
Kim Carpenter-Gunn
James Caskey
Sy Eber
Gary Lloyd Gottlieb
Thomas Heintzman
Vern Krishna
Laura Legge
Bonnie Warkentin
Bradley Wright

Purpose of Report: Decision
Information

Policy Secretariat
(Sophia Sperdakos 416-947-5209)

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COMMITTEE PROCESS

1. The Committee met on January 12, 2006. Committee members William Simpson (Chair), Constance Backhouse (Vice-Chair), Gavin MacKenzie (Vice-Chair), Peter Bourque, Kim Carpenter-Gunn, James Caskey, Sy Eber, Thomas Heintzman, Laura Legge, Bonnie Warkentin and Bradley Wright attended. Staff members Diana Miles, Dulce Mitchell and Sophia Sperdakos also attended.

FOR DECISION

AMENDMENT TO BY-LAW 38 (CERTIFIED SPECIALIST PROGRAM)

MOTION

1. That Convocation approves the following amendment to By-law 38:

   THAT By-Law 38 [Certified Specialist Program], made by Convocation on April 25, 2003 and amended by Convocation on June 26, 2003 and October 28, 2004, be further amended as follows:

1. Clause 17 (3) (b) of By-Law 38 [Certified Specialist Program] is deleted and the following substituted:

(b) written references from such persons and such number of persons as determined by the Committee from time to time, not one of whom is,

   (i) a person whose membership is in abeyance under subsection 31 (1) of the Act,

   (ii) a partner, an associate, a co-worker, an employer or an employee of the applicant,

   (iii) an individual who is counsel to the applicant, to the applicant's employer or to the applicant's firm or company;

   (iv) a relative of the applicant,

(v) a member of a specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist;

(vi) a member of the Board,

(vii) a bencher, or

(viii) an employee of the Society; and

b) des références écrites données par des membres et des non-membres dont le nombre doit être déterminé par le Comité, et dont aucun n'est une des personnes suivantes:

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

(ii) un associé, un collègue, un employeur ou un employé de l'auteur de la demande,

(iii) une personne qui est conseillère juridique pour l'auteur de la demande, pour son employeur ou pour son cabinet ou sa compagnie,

(iv) un parent de l'auteur de la demande,

(v) un membre du comité de spécialisation constitué à l'égard du domaine du droit dans lequel l'auteur de la demande souhaite être agréé à titre de spécialiste,

(vi) un membre du Conseil d'agrément,

(vii) un conseiller élu ou une conseillère élue,

(viii) un employé ou une employée du Barreau;

Background and Information

2. Pursuant to By-law 38 the Specialist Certification Board develops for the Committee's approval policies relating to the certification of members as specialists. The Committee is not required to seek Convocation's approval of those policies. Where, however, a By-law amendment is required, the Committee must seek Convocation's approval of the by-law amendment.

3. In November 2005 the Committee approved a number of changes to policies for certified specialists. Among the changes, the Committee decided that given the particular circumstances of the newly re-introduced Workplace Safety and Insurance specialty area, the number of referees who must be lawyers should be reduced from the usual four set out in the By-law. This decision requires an amendment to By-law 38.

4. The proposed By-law amendment adopts language that will more generally address both the number and the nature of required referees so that by-law amendments are not required each time a change is proposed.

5. Pursuant to the proposed amendment to By-law 38, set out above, Clause 17(3)(b) is amended to replace the words “four members” to “such persons and such numbers of persons as determined by the Committee from time to time”.

FOR INFORMATION

NOTICE TO LICENSING CANDIDATES

6. The new licensing process for admission to the bar of Ontario begins in May 2006. Licensing candidates have already received a number of bulletins and notices outlining the nature of the process and expectations. In December 2005 they received a further Notice respecting examination requirements and process, a copy of which was provided to Convocation.

7. Licensing candidates continue to express concern about the nature of the examination process and whether they should take private preparatory courses. A further notice is being sent to licensing candidates addressing these issues. The notice is set out at Appendix 1 for Convocation’s information.

DIRECTOR’S QUARTERLY BENCHMARK REPORT

8. The quarterly benchmark report (as at December 31, 2005) from the Director, Professional Development and Competence is set out at Appendix 2 for Convocation’s information.

APPENDIX 1

Notice to Students

Open book examinations are one component of the Law Society of Upper Canada’s new Licensing Process, which launches in May of 2006.

Recently, a private provider of educational programming has introduced a preparatory course for the Law Society of Upper Canada’s licensing examinations. The Law Society would like to make it clear to all potential licensing candidates that no preparatory course is necessary in order to embark upon any of the components of that process.

The licensing examinations have been developed in a self-directed study environment with no formal instruction of any kind being required. The Law Society will provide licensing candidates with all of the information and study supports that are needed to successfully write the examinations.

The Law Society does not endorse any private organization that establishes a preparatory program, nor the content of any preparatory program. The study materials for the open book licensing examinations will not be available to anyone until on or about May 1, 2006. No private teaching course can provide advance information, and no organization other than the Law Society is aware of the contents of those materials or the extent and focus of testing based on those materials. Private courses are unnecessary and expensive. The Law Society’s new

process has been designed to minimize further financial burdens on students who may already have incurred significant debt.

Students are encouraged to contact the Law Society if they require further information on licensing activities. They may also refer to the recent notice posted by the Law Society in response to queries about the upcoming process. The notice can be found at: http://education.lsuc.on.ca/Assets/PDF/lp/memApplicants2005.pdf

APPENDIX 2

Professional Development & Competence Department
Resource and Program Benchmarking Report

As at December 31, 2005

FOR INFORMATION ONLY

Diana C. Miles
Director
Professional Development & Competence
(416) 947-3328
dmiles@lsuc.on.ca

Contents

Competence: Practice Management

Practice Management Guidelines: Web traffic report

Guideline	2003	2004	2005
Executive Summary Page	5,085	2,934	3,137
Client Service & Communication	1,488	5,088	3,342
File Management	930	3,317	4,709
Financial Management	553	1,190	1,861
Technology	597	1,723	1,585
Professional Management	584	1,620	2,217
Time Management	924	2,287	2,357
Personal Management	423	1,691	5,549
Closing Down Your Practice	558	1,365	1,814
Total	11,142	21,215	26,571

Number of Visits

(see graph in Convocation Report)

Practice Management Helpline

	2001	2002	2003	2004	2005
Sole practitioners	2,363	2,465	2,399	2,363	2,378
Other members	2,150	2,354	2,372	2,332	2,154
Non-members[1]	922	896	532	1,013	815

[1] Non member category consists of the following: Articling students, Secretary or Bookkeeper at firm, Manager or Administrator at firm, Law Society staff, Law Clerk or Paralegal at firm and other (sales person, lawyer outside Ontario, etc.)

Total member calls for advice	5,435	5,715	5,303	5,780	5,347

Practice Advisory Mentor Program

	2001	2002	2003	2004	2005
Number of new mentors	N/A	N/A	6	17	17
Number of matches	N/A	30	91	86	92

Total number of mentors: 152

Best Practices Self-assessment Tool

The Best Practices Self-assessment Tool was launched June 2004.

	2004	2005
Number of Registered Users	654	339
Percentage of users in firms with 1-3 lawyers	87%	91%

Percentage of users with less than 5 years experience	100%	100%
Percentage of users in Toronto	53%	51%
Percentage of users outside of Toronto	47%	49%

Competence: Certified Specialist Program

	2001	2002	2003	2004[2]	2005
Number of Specialists	617	611	609	682	699
Number of applications in process	-	-	-	-	15
Specialists in Toronto Area	349	344	341	384	387
Specialists outside Toronto	268	267	268	298	312
Number of Specialty Areas	10	10	10	13	13

Number of Specialists

(see graph in Convocation Report)

Competence: Practice Review Program

	2001 (first year of new process)	2002	2003	2004	2005
Number of authorizations into program	16	20	19	45	34
Number of authorizations through internal referrals	3	8	11	11	15
Number of Practice Reviews	19	28	30	56	49

[2] The Certified Specialist Program redesign was effective January 2004.

Total Practice Reviews Conducted[3]	18	50	45	50	79

Number of Practice Reviews

(see graph in Convocation Report)

Competence: Continuing Legal Education

	2001	2002	2003	2004	2005
Total number of CLE programs (*all formats*)	67	63	71	72	72
Attendance at all CLE programs (*all formats*)	8,539	11,788	18,269	20,187	16,273
Average attendance at all CLE programs (*all formats*)	127	187	262	280	225

(see graph in Convocation Report)

[3] A portion represents follow-up practice reviews for members that volunteered into the program prior to mandatory reviews being enacted in 1999. As a result, more reviews are being shown as conducted than authorized. A significant number of reviews in 2002 & 2003 fall within this category.

Competence: Continuing Legal Education

	2001	2002	2003	2004	2005
Number of programs for law clerks - *included in total*	-	10	5	8	8
Number of programs on the Interactive Learning Network (ILN) - *included in total*	-	-	35	45	35
Attendance at ILN locations	-	-	4,014	3,595	1,597
Average attendance at ILN locations per program	-	-	115	80	46
Number of Teleseminars - *included in total*	-	-	5	9	9
Attendance at Teleseminars	-	-	2,468	3,762	1,644
Average attendance at Teleseminars	-	-	494	418	183
Number of live webcasts of programs on BAR-eX - *included in total*	-	-	12	29	42
Attendance at live webcasts of programs	-	-	213	1,198	2,276
Average attendance at live webcasts of programs	-	-	18	41	54
Bursaries provided	140	151	243	215	161
Publications sold (paper, CD and PDF)	8,249	11,424	11,028	12,963	10,975
Number of visits on CLE page of e-Transactions	-	-	38,954	70,890	61,824
Number of members who have purchased the bar admission reference materials online for $0	-	-	2,546 (available in Nov.)	6,525	9,218

Competence: Great Library

	2001	2002	2003	2004	2005
Materials catalogued and classified	1,806	2,005	2,179	1,305	1,493
Number of visits on the Legal Research Portal	New Web tracking system was implemented in 2005 so yearly comparative Web site activity is not applicable				79,581
Catalogue searches on Advocat					163,697
Number of information requests	71,000	47,000	48,800	47,100	44,500
Pages copied in custom copy service	68,437	56,159	43,815	40,391	49,625
Pages copied on self-copiers	481,473	397,957	337,313	297,223	295,562

Attendance at orientation tours and general instruction	413	350	360	448	456

Competence: Corporate Records and Archives

	2001	2002	2003	2004	2005
Corporate Records and Archives - new records created	N/A	2,157	4,428	4,227	4,150

Bar Admission

	2001	2002	2003	2004	2005
Enrolment	1,247	1,312	1,317	1,356	1,403
Average attendance skills phase (May-June)	80%	72%	74%	69%	64%
Average attendance substantive phase (July – Aug)	48%	42%	48%	39%	27%
Tuition Fee	$4,400	$4,400	$4,400	$4,400	$4,400
National Mobility Agreement transfer candidates	-	-	41	76	59
Non-National Mobility Agreement transfer candidates	-	-	26	13	13
Total Transfer candidates	61	93	67	89	72

Bar Admission: e-Learning Web site

	2003	2004	2005
Number of visits	55,660	67,496	63,187

Bar Admission: Articling Program

	2001	2002	2003	2004	2005
International Articles	29	16	11	15	17
National Articles		14	16	12	22
Part time Articles		5	8	7	8
Joint Articles		0	2	5	7
Biographic paragraphs posted	53	62	99	93	67
Job postings	163	129	104	75	93
New Articling Mentors	-	-	-	5	3
New Articling Mentees	-	-	-	57	51
Unplaced students as at December 31 of each year	-	70	130	124	103
Students actively seeking placement	-	-	54	66	43

Bar Admission: Education Support Services

	2001	2002	2003	2004	2005
Distance education – number of sites	15	29	71	62	118
Distance education – number of students[4]	28	46	103	66	198
Number of students who have received accommodation[5]	11	29	27	38	20
Number of accommodations provided	-	-	126	128	95
Number of students who have received special needs accommodation[6]	47	33	33	56	49
Number of special needs accommodations provided	-	-	147	320	284

[4] Represents individual students and does not account for returning students
[5] Accommodation requests cover issues such as bereavement, pregnancy and time conflicts
[6] Special Needs Accommodation requests cover issues such as disabilities, medical conditions, dyslexia, and hearing and vision impairments

Number of students who have received tutoring	60	72	45	47	86
OSAP – number of applicants	333	258	342	365	354
Repayable Allowance Program approvals	47	57	37	87	66
Repayable Allowance Program amount awarded	$170,700	$213,395	$117,167	$290,295	$212,482

Spot Audit Program

	2001	2002	2003	2004	2005
Books and records audits	718	506	529	476	501
Complex audits	319	401	528	663	626
Total audits	1,037	907	1,057	1,139	1,127

Audits referred to Investigations/ undertakings obtained	42	70	56	57	96

Number of Audits

(see graph in Convocation Report)

Re: Amendments to By-Law 38 (Certified Specialists) and Related Policies

It was moved by Mr. Simpson, seconded by Mr. MacKenzie, that Convocation approves the following amendment to By-law 38:

THAT By-Law 38 [Certified Specialist Program], made by Convocation on April 25, 2003 and amended by Convocation on June 26, 2003 and October 28, 2004, be further amended as follows:

1. Clause 17 (3) (b) of By-Law 38 [Certified Specialist Program] is deleted and the following substituted:

(b) written references from such persons and such number of persons as determined by the Committee from time to time, not one of whom is,

(i) a person whose membership is in abeyance under subsection 31 (1) of the Act,

(ii) a partner, an associate, a co-worker, an employer or an employee of the applicant,

(iii) an individual who is counsel to the applicant, to the applicant's employer or to the applicant's firm or company;

(iv) a relative of the applicant,

(v) a member of a specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist;

(vi) a member of the Board,

(vii) a bencher, or

(viii) an employee of the Society; and

b) des références écrites données par des membres et des non-membres dont le nombre doit être déterminé par le Comité, et dont aucun n'est une des personnes suivantes:

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

(ii) un associé, un collègue, un employeur ou un employé de l'auteur de la demande,

(iii) une personne qui est conseillère juridique pour l'auteur de la demande, pour son employeur ou pour son cabinet ou sa compagnie,

(iv) un parent de l'auteur de la demande,

(v) un membre du comité de spécialisation constitué à l'égard du domaine du droit dans lequel l'auteur de la demande souhaite être agréé à titre de spécialiste,

(vi) un membre du Conseil d'agrément,

(vii) un conseiller élu ou une conseillère élue,

(viii) un employé ou une employée du Barreau;

Carried

ROLL-CALL VOTE

Aaron	Against	Heintzman	For
Backhouse	For	Legge	For
Banack	For	MacKenzie	For
Bourque	For	Manes	For

Campion	For	Murray	For
Carpenter-Gunn	For	Pattillo	For
Caskey	For	Pawlitza	For
Copeland	For	Potter	For
Crowe	For	Robins	For
Curtis	Abstain	Ross	For
Dickson	For	St. Lewis	For
Doyle	For	Silverstein	For
Dray	For	Simpson	For
Eber	For	Swaye	For
Feinstein	For	Symes	For
Filion	For	Warkentin	For
Finlayson	For	Wright	For
Gotlib	For		
Gottlieb	Against		
Harris	For		

Vote: 34 For; 2 Against; 1 Abstention

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that the motion be tabled.

Lost

Items for Information
Notice to Licensing Candidates
Director's Quarterly Benchmark Report

REPORT NOT REACHED

Governance Task Force Report

Final Report to Convocation
January 26, 2006

Governance Task Force

NOTE:
DEFERRED FROM NOVEMBER 24, 2005 CONVOCATION (AS AMENDED) AND DECEMBER 9, 2005 CONVOCATION

Task Force Members
Clay Ruby, Chair
Andrew Coffey
Sy Eber
Abe Feinstein
Richard Filion
George Hunter
Vern Krishna
Laura Legge
Harvey Strosberg

Purpose of Report: Decision

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

FOR DECISION

GOVERNANCE TASK FORCE RECOMMENDATIONS

MOTION

That Convocation approves the following recommendations to improve the governance of the Law Society by Convocation:

1. RECOMMENDATION 1 - *The method by which members become benchers*

    a. That enhancements be made to the existing communications strategy for the bencher election, through appropriate Law Society and other media, to encourage more members to vote in the bencher election;
    b. That Law Society members who are candidates in the bencher election be educated through material produced by the Law Society to be sent to all candidates and published in the bencher election voters' guide on the subject of the Society's public interest mandate, the importance of a self-regulating legal profession and the role of a bencher, with a focus on the bencher's obligations as a fiduciary and as a representative of the public's, as opposed to the profession's, interests;

2. RECOMMENDATION 2 - *Electronic voting for bencher elections*

    a. That the Law Society begin the process to institute electronic voting for the next bencher election and future bencher elections, and
    b. That the Society pursue other improvements to the bencher election process that might reasonably be expected to increase voter participation.

3. RECOMMENDATION 3 - *The size of Convocation as a board*

That rules of procedure for Convocation be adopted to assist the Treasurer and benchers in fulfilling the policy decision-making function of Convocation;

4. RECOMMENDATION 4 - *Benchers in the dual role of directors of a corporation and representatives in a forum similar to a legislature*

   a. That Convocation affirm the bencher's role as a fiduciary to the Law Society as an organization, whose mandate benchers must reflect in their discussions and decision-making;
   b. ~~That Convocation affirm that a bencher in his or her role as a bencher cannot advocate a position in Convocation or elsewhere that places the profession's interest ahead of the public interest.~~*[deleted as a friendly amendment November 24, 2005]* and
   c. That Convocation affirm that when a bencher is appointed as a Law Society representative to the board of another organization, insofar as the issues the bencher addresses affect the Law Society's mandate, the bencher must strike a balance between duties as a Society representative and duties owed to the board by virtue of the appointment, and, on occasion, may have to refrain from offering views or opinions if doing so places the bencher in a conflict with respect to those duties.

5. RECOMMENDATION 5 – *Increase efforts to encourage potential bencher candidates from all communities*
   That the Society increase its efforts to encourage members from all communities within Ontario's legal profession to run for bencher, as the public whose interests the Society represents in its governance of the profession should be reflected in those who serve as governors.

Introduction and Terms of Reference

6. On September 23, 2004, Convocation established the Governance Task Force as part of an ongoing commitment to ensure that the Law Society's self-governance of the legal profession is sound and continues to focus on the public interest. The terms of reference for the Task Force approved by Convocation appear at Appendix 1.

7. The Law Society's effectiveness as a regulator is linked to its effectiveness at the board (Convocation) level. The Task Force focused on whether changes to improve the Society's corporate governance are needed, and if so, what those changes should entail. The Task Force recognized that the Law Society's governance structure is a functional response to its legislative mandate, and that any changes to the structure must be informed by and consistent with this mandate.

8. The Task Force also recognized that improvements in governance, if warranted, must be made in ways that acknowledge the value of the Law Society's unique history, culture and traditions, which have influenced its governance structure.

9. As reflected in its terms of reference, the Task Force took advantage of significant work that had previously been done by the Society on the subject of governance. The Task Force declined to explore governance theory and focused on practical considerations affecting governance.

10. The Task Force, which met on six occasions beginning in the fall of 2004, considered the following issues:

    a. The method by which members become benchers and the size of Convocation as a board;
    b. The role of the Treasurer as chair of the board (Convocation), the notion of an executive committee, priority planning, and the frequency and the procedural and substantive efficacy of Convocation;
    c. Benchers in the dual roles of directors of a corporation and representatives in a forum similar to a legislature;
    d. Benchers in the dual roles of policy makers and adjudicators; and
    e. Electronic voting for bencher elections.

11. The Task Force received written submissions on governance issues from benchers Bradley Wright and Joanne St. Lewis, in her role as chair of the Equity and Aboriginal Issues Committee/Comité Sur L'Équité Et Les Affaires Autochtones.

12. This report discusses the above-noted issues and the Task Force's conclusions, which led to a series of recommendations that, in the Task Force's view, will enhance Convocation's ability to fulfill its obligations to govern the legal profession in the public interest.

The Starting Point: Governance and the Public Interest

13. In the Task Force's view, the historical basis for the Society's public interest mandate, how the public interest has been interpreted judicially and how that interpretation has informed the Society's governance of the profession is important to an understanding of the Law Society's purpose and, in relation to governance, the benchers' roles as directors and fiduciaries of the organization.

The Law Society's Role Statement

14. The Law Society's Role Statement, which was adopted by Convocation on October 27, 1994, reads 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.

15. Through this language, the "public interest" informs the Law Society's governance obligations for the purpose of advancing the cause of justice and the rule of law.

The 1797 Statute

16. The creation of the Society presupposed a public interest foundation. The principles found in the Role Statement were embodied in the 1797 legislation that established the Law Society. It read as follows:

> "it shall and may be lawful for the persons now admitted to practise in the law, and practicing at the bar of any of his Majesty's courts of this province, to form themselves into a Society, to be called the *Law Society of Upper Canada,* as well for the establishing of order amongst themselves as for the purpose of securing to the Province and the profession a learned and honorable body, to assist their fellow subjects as occasion may require, and to support and maintain the constitution of the said Province."

Judicial Consideration of the Public Interest Mandate

17. In *Attorney General of Canada v. Law Society of British Columbia*,[1] the Supreme Court of Canada explained the rationale for a self-governing body serving the public interest:

> The general public is not in a position to appraise unassisted the need for legal services or the effectiveness of the services provided in the client's cause by the practitioner, and therefore stands in need of protection. It is the establishment of this protection that is the primary purpose of the *Legal Professions Act.*

18. The Court goes on to explain why regulation of the profession independent from government is necessary for the protection of the public:

> The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally. The uniqueness of position of the barrister and solicitor in the community may well have led the province to select self-administration as the mode for administrative control over the supply of legal services throughout the community.

19. Callahan, J. (as he then was) writing on behalf of the Ontario Divisional Court in *Re Klein and the Law Society of Upper Canada*[2] stated:

> The Law Society's mandate under the *Law Society Act* R.S.O. 1980, c. 233, is to regulate the affairs of the legal profession and the public interest… The Law Society is a statutory authority exercising its jurisdiction in the public interest…

20. This view was reiterated in the February 2000 decision of *Wilder v. Ontario Securities Commission*[3] , in which the Ontario Divisional Court stated:

> The Law Society and the Ontario Securities Commission both exercise public interest functions, but the public interests which they seek to protect are not the same. The Law Society has an important role to govern the legal profession in the public interest, and to ensure that members of the profession do not engage in professional misconduct or conduct unbecoming a barrister and solicitor.

21. On appeal (February 2001), the Ontario Court of Appeal agreed with the Divisional Court's analysis.

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[1] [1982] 2 S.C.R. 307
[2] (1985), 50 O.R. (2d) 118 (Ont. Div. Ct.)
[3] (2000) 47 O.R. (3d) 361 (Ont. Div. Ct).

22. In June 2001, the Supreme Court of Canada in Edwards v. *Law Society of Upper Canada*[4] , referring to the mandate of the Law Society, said "The *Law Society Act* is geared for the protection of clients and thereby the public as a whole;"

Applying the Public Interest Mandate in the Profession's Governance

23. The law is clear that self-regulatory organizations such as the Law Society are required to fulfill their mandates in the public interest. The competence, professional conduct, integrity and independence of the bar in the Ontario, as the Role Statement emphasizes, is fundamental to the public interest mandate of the Law Society.

24. It is against this background that the Task Force examined the Law Society's own governance through the benchers in Convocation.

The Issues

I. The Bencher Qualification Process and the Size Of Convocation as a Board

The Election Process

25. The Task Force considered whether the method by which members of the Law Society become benchers affects the effectiveness of Convocation as a board and thus the Society's effectiveness as a governing body.

Some "Pros and Cons" of the Election Process

A Democratic Process

26. Forty benchers are elected by the legal profession in Ontario every four years. The eligible voters are the 37,000 members of the Law Society. The bencher election provides lawyers in the province with a transparent, democratic process for electing their governors from the profession, who are required to govern the profession in the public interest.

Voter Participation - Does Convocation Reflect the Legal Profession in Ontario?

27. Despite increased efforts by the Society to encourage members to vote, a significant portion of the Society's membership does not vote in the bencher election. In recent bencher elections, the benchers have been elected by less than 50% of the eligible voters. [5] How this number might be improved is discussed later in this report.

28. The question for the Task Force, in light of this statistic, was whether the election results in a board of governors that sufficiently captures the choices of and reflects Ontario's legal profession.

The "Constituency" Issue

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[4] [2001] 3 S.C.R. 562.
[5] See the chart on page 13 for data on past bencher elections.

29. The bencher election prompts most candidates to mount some type of campaign. Campaigns are directed to the Society's membership as voters, and in some cases, judging from candidates' election statements, focus more on member's interests than the public interest. While this may be peculiar to this election process, the Task Force is discomforted by the notion that some bencher candidates do not appear to understand that the bencher's role, as a fiduciary of the organization, is that of a governor of lawyers in the public interest.

30. The election process in fact leads some bencher candidates to portray themselves as constituency representatives rather than representatives of the public constituency for the profession's governance. The issue of benchers as legislative representatives *versus* fiduciaries on a board is discussed in detail later in this report, but the question is whether a bencher who participates more as a constituency representative negatively impacts on Convocation's ability to fulfill the Society's public interest mandate. From time to time, some benchers have confused their role in this way.

The Value of An Election Process

31. Notwithstanding the above, the Task Force believes that the election of the governors by the profession's membership is a key aspect of self-governance of the profession in Ontario.

32. In the Law Society's process, the entire membership is able - and invited - to vote for the governors without restriction.[6] Through the vote, the members determine who governs the profession in Convocation, and to that extent, have the opportunity to influence the profession's governance. In the absence of an election process, the Society might well be criticized for failing to provide such an opportunity.

33. The election process is also free of any limitations on who may run as a candidate, including limitations that might be viewed as discriminatory or arbitrary. The election provides a level playing field in which any member who meets the requirements in the by-laws can choose to become a candidate.[7]

34. The Task Force considered whether the lack of specific qualifications for a bencher leaves the Society open to criticism about the quality of the elected bench or whether the "right" candidates are elected. The Task Force rejected this notion. There is no evidence to suggest any correlation between the quality of the benchers and the fact that they are elected, as opposed to qualifying through other methods.

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[6] All members of the Society whose rights and privileges have not been suspended are entitled to vote (By-Law 5, s. 18).

[7] Section 15 of the *Law Society Act* provides that benchers are elected in accordance with the by-laws. By-Law 5 (Election of Benchers) provides as follows:

> 9.Every member, other than a temporary member, is qualified to be a candidate in an election of benchers if, at the time of signing a nomination form containing his or her nomination as a candidate, the member resides in Ontario and the member's rights and privileges are not suspended.
>
> 10(2).A candidate shall be nominated by at least ten members who are not temporary members and whose rights and privileges are not suspended at the time of signing the nomination form.

35. As an option to an elected board, the only other process noted by the Task Force by which a board could be constituted was an appointment process.[8] In this process, board members are selected typically on the basis of certain criteria and qualifications. John Carver said the following about recruiting board members:

> If a board is able to select its own members, it should start with a well-deliberated set of qualifications. If the members are selected by others, the board should enroll appointing authorities in using the board's desired qualifications whenever possible.
> …
> What qualifications are important?… For the degree of strategic leadership championed in these pages, five qualifications, among other, are necessary.
> 1. Commitment to the ownership and to the specific mission area:…
> 2. Propensity to think in terms of systems and context:…
> 3. Ability and eagerness to deal with values, vision, and the long term
> 4. Ability to participate assertively in deliberation:…
> 5. Willingness to delegate, to allow others to make decisions:… [9]

36. The Task Force did not consider the appointment process as a viable option for the Society. First, the process would be complex, with intricate considerations around the criteria and qualifications for appointment, who sets these standards, who should make the appointments and the term of the appointments. Second, the Task Force was not convinced that an appointment process or any process other than an election would ensure, or at a minimum enhance the ability to show, that the Society's governors represent the profession's choices. Third, an appointment process may give rise to claims of elitism or claims that the ability to govern in the public interest is compromised if there is a concern that those who appoint, and those who are appointed, have other agendas that are not centered on the public interest.

37. In short, the Task Force concluded that an appointment process would create more problems than it would solve. In comparison, the election process is a transparent and democratic method of populating Convocation that avoids the concerns of unfairness, favouritism or selectivity. The Society's history affirms this conclusion.

Lay Benchers

38. The Task Force considers the appointment process for lay benchers a separate issue, and is making no recommendations for changes or enhancements to that procedure. Lay benchers are appointed under s. 23 of the *Law Society Act*. Under this process, the Lieutenant Governor in Council may appoint eight lay benchers whose terms expire immediately before the first regular Convocation following the first election of benchers that takes place after the effective date of the appointment. Lay benchers are eligible for reappointment.

Conclusions on the Bencher Qualification Process

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[8] This is distinguished from the current process for appointing lay benchers to Convocation under the *Law Society Act.*

[9] John Carver, *Boards That Make A Difference* (Jossey-Bass Inc.: 1990 pp. 201-203)

39. The Task Force is recommending no change to the process by which members become benchers. However, the Task Force believes the public interest mandate of the Law Society, the role of the bencher within that mandate, with a focus on the bencher's obligations as a fiduciary and as a representative of the public's, as opposed to the profession's, interests, and the importance of an independent self-regulating profession should be emphasized within the profession. More specifically, it should be emphasized among those who choose to run as candidates in a bencher election. To this end, the Task Force proposes that material produced by the Society on these subjects should be sent to each bencher candidate upon acceptance of the candidacy under By-Law 5.[10] This material should also be published in the voters' guide for the election to create awareness among the profession about these issues and to indicate that all bencher candidates have received the material.

40. The Task Force also believes that the bencher election process will be enhanced and the results more meaningful if a larger number of members vote in the election. The Task Force suggests that two matters be pursued.

41. The first matter relates to the profession's awareness of the bencher election. The Law Society already engages in extensive communications in advance of a bencher election[11] , and the Task Force acknowledges the significant and worthwhile effort that is made through the Society's Communications Department to notify the membership of an upcoming election. The Task Force proposes that enhancements be made to this communications strategy, in the months prior to the bencher election, using available Law Society and other media, that would have the effect of focusing the profession's attention on the vote.

42. The second matter relates to the voting process. The Task Force believes that improvements to the election process, including the ease with which members may cast

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[10] By-Law 5, s. 11 requires the Elections Officer to do the following:
Results of examination of nomination form
(3) The Elections Officer shall communicate the results of his or her examination of a nomination form to the candidate whose nomination is contained therein and,

(a) if the Elections Officer has accepted the nomination, he or she shall communicate to the candidate,

(i) the manner in which the candidate's name will appear on the election ballot; and

(ii) the electoral regions from which the candidate is eligible to be elected as bencher; or

(b) if the Elections Officer has rejected the nomination, he or she shall communicate to the candidate,

(i) the reasons why the nomination was rejected; and

(ii) the time by which the candidate, if he or she wishes to be a candidate in the election of benchers, must submit to the Elections Officer a valid nomination

[11] An elaborate communications plan entitled "Get the Vote Out" was instituted for the 2003 bencher election. It included notices in the *Ontario Reports* and local community newspapers, notices and articles in the *Ontario Lawyers Gazette*, posters distributed to county law libraries and legal organizations, a letter from the Treasurer sent separately to every member about the election and a link on the Society's website to a stand-alone site that included all election material and information.

their votes, may have the effect of increasing voter participation. Such improvements should be pursued. The Task Force focused on electronic voting for the bencher election as one such improvement, discussed in the next section of this report.

Electronic Voting For Bencher Elections

43. As noted above, the Task Force concluded that no change to the method by which members become benchers is required. However, an ongoing concern has been the level of voter participation in bencher elections. Voter turnout has been steadily declining over the last 40 years. In 1961, voter participation was 76% compared to 37% in 2003.[12]

44. The Task Force believes that an increase in voter participation is desirable primarily because Convocation will more solidly reflect the profession's choices for its governors.

45. To this end, the Task Force supports methods to streamline the election process that may also have the effect of increasing voter participation.

The Current Election Process and the Benefits of Electronic Voting

46. By-Law 5 (Election of Benchers) requires that the ballot and voting guide be mailed to members and that members return the ballot to the Law Society in Toronto by mail, courier or hand delivery. Apart from cost[13] , the following systemic issues with the current process could be resolved by electronic or on-line voting:

    a. Mail delivery to members in the regions outside of Toronto, particularly the northern regions, usually takes longer than delivery in Toronto. Members outside of Toronto must also allow more time for return of their ballots to the Law Society. Some of these members will courier their ballots to ensure delivery, incurring

[12] Law Society Vote Turnout

Year	Total Eligible Voters	Total Ballots Cast	% Turnout	Trend
1961*	5,061	3846	76%	
1966*	5,655	4193	74%	-2%
1971*	6,905	5051	73%	-1%
1975*	9,007	6146	68%	-5%
1979*	12,296	8,237	71%	+3%
1983*	14,367	9,341	63%	-8%
1987	18,369	10,506	54%	-9%
1991	23,391	12,399	53%	-1%
1995	27,175	11,880	44%	-9%
1999	29,718	11,351	42%	-2%
2003	33,667	12,363	37%	-5%

*Source: Law Society Archives.

[13] Elections conducted by mail have very high administrative costs. The budget for the election in 2003 was $250,000. Of that, more than $180,000 was spent on printing and distribution of the election package. An additional $15,000 was spent on postage for return ballots. These costs will continue to increase with future elections. In 2007, the size of the membership will be almost 40,000 members.

charges that some Toronto members can avoid, for example, by hand delivering their ballots to the Law Society on the day voting closes.

b. A significant number of ballots are received by mail after voting has closed. In 1995, 1,332 ballots were received late, in 1999, 1,102 ballots were received late and in 2003, 508 ballots were received late. Electronic voting would eliminate the need for members to estimate the time for delivery of a paper ballot to the Law Society.

c. A paper system can result in invalid or spoiled ballots. When a mark on a paper ballot is unclear, scrutineers must determine whether the vote is valid. The number of spoiled ballots can be significant. In the 1995 bencher election, there were 462 spoiled ballots, in 1999 there were 40 spoiled ballots and in 2003 there were 159. Members cannot spoil a ballot when voting electronically.

47. On-line voting would provide equal access for members in all locations, provided that the member has access to the Internet. Election results would be generated almost instantaneously with on-line voting. Members who misplaced their ballot packages could vote on-line. An email could be sent to members to remind them to vote with a link to the log-in screen. They will no longer have to search for their ballot package or call the Law Society to request another ballot.

48. Electronic voting may also encourage younger members to vote, a group that statistically is underrepresented among members who vote. Many members who were born after 1970 are accustomed to using the Internet as a daily tool. Electronic voting may engage younger members of the Law Society in the governance of the profession by providing an easy and convenient voting method.

49. Currently, the Society can communicate with more than 70% of members by email. Law Society members are becoming more accustomed to conduct business with the Society electronically. More than 15,000 members e-filed the Member's Annual Report in 2004, compared to 10,754 in 2003, and 2,343 in 2002. LawPRO reports that of the 19,800 members who pay insurance, 16,200 or 80% file electronically.

50. The Law Society has already used electronic voting. The recent referendum on bencher remuneration was conducted by an electronic vote.[14]

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[14] The following excerpt from the March 24, 2005 report on the referendum provides a summary of the experience with electronic voting:

Conduct of the Referendum

1. In October 2004 Convocation approved electronic voting as the means by which the referendum would be conducted. No paper ballots were accepted during the referendum. All voting was done over the telephone or the Internet.
2. The Law Society contracted with Computershare, a company in the business of conducting corporate shareholder voting processes. Computershare already had the electronic voting systems in place to conduct the reference. Computershare manages shareholder voting for over 7,000 corporations with more than 60 million shareholders worldwide.
3. Computershare printed and distributed the referendum packages; conducted the electronic voting process; and generated the statistical reports following the referendum.

Conclusions on Electronic Voting for Bencher Elections

51. The Task Force recommends that electronic voting be instituted for the 2007 bencher election. While the hope is that such a method will improve voter participation, based on research completed after the last bencher election, there is no evidence to suggest that electronic voting increases voter participation. Reforms in other jurisdictions designed to make voting more convenient in broad based elections have had very little effect on voter participation. The studies that resulted in these conclusions suggest that information, motivation and mobilization are more powerful tools of influence than convenience.

52. The Task Force is hopeful that, within the smaller context of the bencher election, electronic voting as a means to increase the ease with which members may vote will translate into increased participation. However, the Task Force believes that even if electronic voting does not ultimately enhance voter participation, for the reasons outlined above, this method is a logical evolution of the election process, is reasonable as an application to facilitate the vote and will be an effective way to run the election.

53. The Task Force understands that initial costs for electronic voting would likely be high in the short term, until the infrastructure for on-line voting is in place. The Task Force also learned that overall costs may not decrease until there is a way to distribute the election material, including the lengthy voter's guide, by a means other than mail. The Law Society would also have to accommodate members who do not use the Internet. Eventually, the Society could move to electronic voting only. Determining the costs of a move to and maintaining an electronic election process will be part of the work to be done if Convocation agrees to pursue this proposal.

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4. Voting closed at 7:00 p.m. EST on February 28, 2005. Computershare advised the Law Society of the results at 9:00 a.m. on March 1, 2005. The results were posted on the Law Society's web site after benchers were advised of them.
5. The referendum was conducted between February 4, 2005 and February 28, 2005. A notice to the profession first appeared in the January 7, 2005 edition of the *Ontario Reports*. Six notices in total were published in the *Ontario Reports* between January 7 and February 18, 2005.
6. In addition to notifying the profession through the *Ontario Reports*, notices appeared on the Law Society's web site, in an e-bulletin distributed by the Professional Development & Competence Department to 24,942 members, and in the *Ontario Lawyers Gazette*.
7. One week prior to the close of voting, a reminder e-mail was sent to every member for whom the Law Society has an e-mail address (27,239 members).
8. Referendum packages were mailed to all eligible voters on February 4, 2005. The packages consisted of the referendum question and background information, as well as a Voting Instruction Form. ...
9. All referendum material and notices to the profession were distributed in French and English.
10. Three members who have visual impairments have asked the Law Society to distribute all information to them electronically. The Elections Officer communicated directly with these members, and they received the referendum package from Computershare in a format that was accessible to them.

54. Apart from electronic voting, the Task Force has no other specific recommendations on improving the election process, but requests that Convocation encourage the Society's staff to pursue other improvements that might reasonably be expected to increase voter participation.

Size of Convocation as a Board

55. As noted above, there are 40 elected benchers in Convocation. The total number of benchers who make up Convocation, however, is greater. Currently, in addition to the elected benchers, there are eight lay benchers and 29 *ex officio* benchers, who include former Treasurers, current and former Attorneys-General and life benchers, for a total of 77. The *Law Society Act* determines the composition of Convocation.

56. For the size of the organization, the board of directors (Convocation) is large. The Task Force considered whether there was some relationship between the size, the ability to set priorities and timely and effective decision-making.

57. As a subject for review, the size of Convocation is not a new issue. It was discussed in the Strategic Plan of 2000, which proposed that the size and composition of Convocation be reviewed to determine whether it could be structured to be more effective in its policy decision-making. The Strategic Planning Committee's report of January 2001 included the following:

> A. Size of Convocation
>
> The Committee considered reducing the size of Convocation as a means of making the decision-making process more efficient. Several members of the Committee were of the view that the size of Convocation should be reduced, and that the reduction should be substantial. At the same time, the Committee recognized that any reduction in the size of Convocation would have to take into account the effect of such a measure on diversity and regional representation.
>
> A reduction in the size of Convocation would require legislative amendment. Given how lengthy and resource intensive a process legislative change is, the Committee recommends the implementation of a number of other measures to improve Convocation's efficiency prior to embarking on a course of legislative amendment.
>
> The measures being suggested for immediate implementation to improve the efficiency of Convocation include,
> (a) the development and enforcement of rules of procedure for Convocation, and
> (b) the establishment of the Treasurer's Advisory Committee.

58. With respect to (a) above, the Task Force agrees that there is merit to examining procedures that govern Convocation. The Task Force is aware that the Professional Regulation Committee has completed a review of proposed rules of procedure for Convocation, which were before Convocation in June 2004. Following that report, the Treasurer reviewed the proposals and indicated his intention to conduct the affairs of Convocation in accordance with the proposed rules for a period of six months, beginning in September 2005, during which Convocation may assess their appropriateness. The

Treasurer proposed that toward the end of that period, Convocation's disposition should be sought regarding the adoption of these rules.

59. With respect to (b) above, the matter of an Executive Committee or Treasurer's Advisory Committee is discussed later in this report.

60. Beyond these two issues, the Task Force concluded that the large size of Convocation does not translate into an unwieldy forum for decision-making. While a smaller board may be more efficient in moving through the business of Convocation, the current size is not an impediment to accomplishing the Society's business. Many factors affect whether efficient decisions can be made at Convocation, but the size of the board has never determined whether a required decision was made or not made.

61. Further, reducing the size of Convocation may lessen the ability of Convocation to reflect the diversity of Ontario's legal profession. As noted above, the Task Force determined that continuing with an election process and increasing efforts to encourage the vote should help to enhance this aspect of Convocation. Given that conclusion, it would be inappropriate to suggest that Convocation's size be reduced.

62. If improvements can be made in Convocation's governing procedures through rules of procedure, this should assuage any current concerns about inefficiency.

Conclusions on the Size of Convocation as a Board

63. The Task Force makes no recommendation to reduce the size of Convocation.

64. With respect to ways to improve the effectiveness and efficiency of decision-making in Convocation, the Task Force proposes that rules of procedure for Convocation be adopted to assist the Treasurer and benchers in fulfilling the policy decision-making function of Convocation.

II. Role Of The Treasurer as the Chair of the Board, the Notion of an Executive Committee, Priority Setting, and the Frequency and Procedural and Substantive Efficacy of Convocation

65. As the Task Force began review of the issues noted in the above title, the link between them became apparent. They all focus on Convocation's agenda and in a broader sense, how governance priorities are set and how planning for Convocation's agenda unfolds.

The Treasurer

66. The Treasurer is "the president and head of the Law Society".[15] , and as the chair of Convocation, is responsible for running Convocation. The Task Force's interest in the Treasurer's role was the extent of the Treasurer's authority and, in relation to the governance process, whether its scope should be reconsidered.

[15] *Law Society Act*, s. 7

Overview of the Treasurer's Duties

67. The Task Force could not improve on the following narrative description provided by bencher Ron Manes, transcribed from Convocation's discussion of the Strategic Planning Report on January 25, 2001:

> …when it comes to defining what the Treasurer does, it's important we understand the scope of the Treasurer's job and how it has evolved from what historically may be termed a largely ceremonial position to what is now a real integral function to the internal operations of the Law Society and to Convocation.
>
> The Treasurer, it is true, presides over Convocation, presides over our agenda to ensure that what comes before us is properly before us, and, of course, regulates the debate. The Treasurer oversees all committees, all task forces, and all working groups to ensure that they all achieve their objective.
>
> The Treasurer is responsible for coordinating. The Treasurer is an ex officio member of all of those committees, task forces, and working groups, and in our experience with our present Treasurer, attends many of these committee meetings, task force meetings, et cetera.
>
> The Treasurer, in addition to that, monitors the CEO. We have decided that now. It is clear to us that the Treasurer is going to be accountable to us to monitor the performance of the CEO. Now, this entails, just so we understand, not only defining for the CEO or translating what we have defined for the CEO what the CEO's objectives are, but also measuring the CEO against those objectives.
>
> Now, anyone who knows that responsibility knows how onerous it is, and it is not a responsibility that in our view the Treasurer can possibly discharge on his own. And then he comes to recommend to us, in a formal way, what we or how we assess the performance of the CEO.
>
> The Treasurer, in addition to that oversight and in addition to his responsibilities here at Convocation, must liaise with the public, must liaise with the profession, must liaise with the bench, liaise with the press, deal with interest groups and constantly write letters to the Globe and Mail.
> …
> The Treasurer is the face of Convocation. Yes, it is a ceremonial job. It is a huge job. He represents us at a substantial number of functions, more functions than we can possibly count or comprehend."

68. The Treasurer's formal authority is found in the *Law Society Act*, the regulations and the by-laws. Policies have also developed around the role of the Treasurer. Certain practices connected with the office of the Treasurer are also followed. The following discusses the provisions that relate to governance.

Law Society Act

69. The Treasurer is part of the corporation of the Society. Section s. 2(2) says that the Society "is a corporation without share capital composed of the Treasurer, the benchers and the other members from time to time." The Treasurer is the president and head of

the Society (s. 7). Benchers, not the membership, elect the Treasurer annually, who ceases to be an elected bencher (s. 25).

70. The Act includes by-law-making authority for matters related to the office of the Treasurer. Section 62 (1) 7. says that by-laws may be made " governing the election of and removal from office of the Treasurer, the filling of a vacancy in the office of Treasurer, the appointment of an acting Treasurer to act in the Treasurer's absence or inability to act, and prescribing the Treasurer's duties".

The By-Laws

71. The By-Laws include the following:

a. By-Law 1 (By-laws): the Treasurer has the authority to call a special meeting of Convocation to vote on making, amending or revoking a by-law when that vote has been deferred (s. 1(3)).
b. By-Law 5 (Election of Benchers): Generally, the Treasurer presides over the election of benchers.[16] The Treasurer can intervene to fill certain positions (e.g. assistant or scrutineer) related to the election (s. 7).
c. By-Law 6 (Treasurer): Most of this by-law focuses on the election of the Treasurer. The last part of the by-law deals such things as term of office, vacancy and who acts when the Treasurer is unable to act (s. 16 and 17). For example:
    i. Subject to removal of a Treasurer from office, he or she remains in office until his or her successor takes office;
    ii. If a Treasurer resigns, is removed from office or cannot continue to act, Convocation must elect an elected bencher to fill the office of Treasurer until the next Treasurer election;
    iii. If a Treasurer is temporarily unable to act, or if there is a vacancy in the office, the chair of the standing committee of Convocation responsible for financial matters, or if he or she cannot act, the chair of the standing committee of Convocation responsible for admissions matters, acts as Treasurer until the Treasurer is able to act or another election is held.
d. By-Law 8 (Convocation) details the Treasurer's authority and responsibility in Convocation. This is the by-law which is the subject of the motion (June 2004) to adopt rules of procedure for Convocation. In particular,
    i. The Treasurer may vary the dates of regular Convocation (s. 1);

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[16] 4. (1) Subject to subsection (4), an election of benchers shall be presided over by the Treasurer.
(2) The Treasurer may appoint a member who is not a candidate in an election of benchers to assist the Treasurer in exercising the powers and performing the duties of the Treasurer under this By-Law.
(3) The Treasurer shall appoint a member who is not a candidate in an election of benchers to exercise the powers and perform the duties of the Treasurer under this By-Law whenever the Treasurer is unable to act
(4) If the Treasurer is a candidate in an election of benchers, Convocation shall, as soon as practicable after the Treasurer's nomination as a candidate is accepted, appoint a member to preside over the election and to exercise the powers and perform the duties of the Treasurer under this By-Law.

ii. The Treasurer may call a special Convocation (s. 2(1)) at any place (s. 3(2)) but must do so on the written request of 10 benchers (s. 2(2));
iii. The Treasurer presides over all Convocations (s. 4);
iv. In addition to Convocation's decision to meet in camera according to the criteria in By-Law 8, Convocation will meet in camera to consider "any matter at the instance of the Treasurer" (s. 5(3)5);
v. The Treasurer can vary the usual order of business at Convocation (s. 6(1)).

Policy

72. Convocation has adopted Governance Policies that also define to the Treasurer's role. Reproduced below is Section D of the Governance Policies (amended to April 30, 1999), which provides the Treasurer's "job description". This description repeats some of the Treasurer's duties described in the Act and by-laws.

D. Treasurer's Job Description

1. The Treasurer is the president and head of the Law Society.

2. The Treasurer shall adhere to the Policy Governance Model.

3. The responsibilities of the Treasurer shall be,
   a) to be the public and ceremonial representative of the Law Society of Upper Canada and the only person authorized to speak for Convocation;
   b) to chair meetings of Convocation in accordance with the Policy Governance Model;
   c) to prepare Convocation's agenda on the advice of Convocation;
   d) to develop for Convocation's approval, priorities for the Law Society for the upcoming year in consultation with benchers and senior staff;
   e) to coordinate, in consultation with staff and committee chairs, the work and responsibility of committees and to ensure policy issues are assigned to appropriate committees;
   f) to appoint chairs and vice-chairs and members of committees subject to ratification by Convocation;
   g) to be an *ex officio* member of all committees and task forces; and
   h) to provide such reports and evaluations as Convocation may request, including an evaluation of the performance of the Chief Executive Officer.

<u>The Treasurer's Role in Setting Convocation's Agenda and Priority Planning</u>

73. The Treasurer's responsibility for Convocation's agenda has developed as a matter of practice, but to the extent that it has been codified, Governance Policies D.3.c) through f) above generally reflect the process.[17] Simply put, the Treasurer controls Convocation's agenda, and no item will appear on the agenda unless the Treasurer has approved it for the agenda.

[17] In the Task Force's view, the Treasurer's receipt of the "advice of Convocation" described in Governance Policy D.3.c), operates primarily as a "reverse" consultation in practice, in that benchers will raise issues with the Treasurer they feel should appear on the agenda. Under By-Law 8, 10 benchers also have the right to require a special Convocation to deal with an issue.

74. That said, an informal consultation between the Treasurer and other key individuals, including the Chief Executive Officer (CEO) and committee or task force chairs, occurs prior to Convocation. As noted above, these chairs are the appointees of the Treasurer and Convocation, and in a practical sense, their input has a significant impact on the business of Convocation.

75. This consultation is required because the Treasurer must ensure that items that appear on the agenda have been fully developed, consulted upon and properly presented in writing. Beyond the CEO and committee chairs, the Treasurer will also consult with the Director of Policy and Tribunals with respect to Convocation's agenda.

76. At another level, the Treasurer will respond to the initiatives of benchers, external bodies and other stakeholders to have matters considered by Convocation. These "ad hoc" initiatives will generally be accommodated to the extent that they relate to the governance of the profession. The Treasurer's accommodation also helps him or her to manage the political aspects of Convocation, which are a function of its structure, size and the relationships that arise within it.

77. The above process relates to the whether an executive committee would be a useful addition to the Society's governance processes.

The Notion of an Executive Committee

78. The suggestion that the Society explore establishing an executive committee has arisen from time to time in discussions about priorities and planning for Convocation. In particular, the executive or advisory committee has been characterized as a way to assist Convocation in effectively and efficiently sorting out priorities and planning Convocation's policy agenda.

79. The issue dates back to at least the early 1990s. A 1991 Research and Planning Committee report referenced a subcommittee report's findings on the idea of an executive committee:

> When agreement has been reached on the limits of the proper role of the Law Society, a further study should be undertaken into the respective roles of benchers and staff to determine whether there are ways in which bencher workload might be reduced, …
>
> …Consideration should be given as to whether the problem might be alleviated by the establishment of an Executive Committee of Convocation.
> The proposal that the establishment of an Executive Committee should be studied coincides with your Committee's earlier thinking in response to the request from the Finance and Administration Committee to consider how the Society should respond to proposals for new programmes in times of fiscal restraint.
>
> The further consideration of these matters will be recommended to the Research and Planning Committee which takes office after the 1991 bencher election.

80. A subsequent report from this Committee to July 10, 1992 Convocation included the following:

> The following questions were posed for consideration [by the Committee]:
>
> Should the Research and Planning Committee develop a statement for Convocation, defining the limits of the proper role of the Law Society, the statement to serve as a standard against which all activities of the Law Society, and all proposals for new activities, can be measured to determine their respective priorities?
>
> Should the Research and Planning Committee recommend to Convocation that the Rules of the Law Society be amended to provide for an Executive Committee which will be responsible for determining the political and financial priorities of the Law Society?
>
> Should the Research and Planning Committee prepare a proposal for Convocation setting out the respective responsibilities of the Treasurer, Convocation, the Executive Committee, Standing Committees, benchers and staff?
>
> At its meeting on May 15, your Committee debated the first two questions at length and decided to consider, at its June meeting, proposals
>
> - for developing a statement on the role of the Law Society and,
> - for studying an appropriate structure for the determination of Law Society priorities.

81. The first question noted above lead to the adoption of the Society's Role Statement in 1994. In its report to September 24, 1992 Convocation, the Committee indicated the following with respect to the second question:

> DETERMINATION OF LAW SOCIETY PRIORITIES
>
> A further consequence of the discussions last year concerning the responsibilities of benchers, staff and committees was a decision to appoint a subcommittee to recommend a structure for the determination of Law Society priorities. The project is dependent upon the definition of the role of the Law Society, mentioned in the previous paragraph; it also overlaps with steps that are being undertaken by the Finance and Administration Committee. The Research and Planning Committee will therefore proceed only when it seems appropriate to do so in light of these other initiatives.

82. In the fall of 1992, the Committee formed a sub-committee to deal with this issue and its February 26, 1993 report to Convocation indicated that this matter would "wait until after the 1993-1994 budget process has been completed". There is no record of further reports from the Committee to Convocation with respect to this matter or recommendations for an executive committee.

83. The most recent comprehensive treatment given to the issue was in the 2000 Strategic Plan, which recommended that an executive committee be formed "for managing and streamlining Convocation's agenda and advising the Treasurer". The Strategic Planning Committee's January 2001 report to Convocation included the following section on the establishment of a Treasurer's Advisory Committee.

C. Treasurer's Advisory Committee

29. There is currently no formal mechanism in place to plan Convocation's agenda; to determine when issues are ready for Convocation's consideration; to advise the Treasurer between meetings of Convocation; to ensure that the Chairs of the major policy-making committees are apprised of the issues being dealt within each committee; to consistently and effectively monitor the implementation of Convocation's policies; to review the Law Society's governance policies to ensure they meet the Law Society's current needs; and to generally assist the Treasurer in the exercise of the Treasurer's duties.

30. The Committee is of the view that a formal process must be developed to accomplish these objectives if Convocation is to become more efficient. Too often, matters are before Convocation prematurely, the consequences of a course of action have not been fully examined, financial ramifications are not detailed, or further consultation with other committees, staff, or external organizations is required. Bringing such matters before Convocation results in time wasted on debate when the matter is eventually sent back to committee for further study, or decisions are made by Convocation on the basis of inadequate information.

31. Convocation has not always effectively monitored the implementation of the policies it sets. Once the policy is passed by Convocation, there is no formal mechanism for monitoring its implementation or its achievement of Convocation's goals.

32. In addition, the Committee is of the view that our governance policies, including the executive limitations, must be reviewed to ensure they are appropriate for the current circumstances of the Law Society. There is no formal mechanism to accomplish this.

33. The Committee recommends that a Treasurer's Advisory Committee be established to oversee the work of committees, task forces and working groups, to ensure that issues are channelled to the appropriate committee, that the work of the committees is progressing and finding appropriate space on Convocation's agenda, that the work of the committees is co-ordinated to avoid duplication of effort, that Convocation's policies are implemented by maintaining close liaison with the Chief Executive Officer, and that appropriate monitoring mechanisms are developed. The Treasurer's Advisory Committee would advise the Treasurer in responding to important issues until these can be dealt with by Convocation and assist the Treasurer to monitor the performance of the Chief Executive Officer.

34. The Treasurer's Advisory Committee would not acquire any of the decision-making powers vested in Convocation by section 10 of the *Law Society Act,* which reads as follows:

> The benchers shall govern the affairs of the Society, including the call of persons to practise at the bar of the courts of Ontario and their admission and enrolment to practise as solicitors in Ontario.

35. As always, all policy decisions would be made in Convocation. The Treasurer should be responsible for keeping Convocation apprised of the committee's activities, for example, by circulating agendas and minutes of the committee's meetings.

36. For maximum efficiency, the Treasurer's Advisory Committee should be small. The committee would be composed of the Treasurer and the chairs of those committees responsible for developing policy on matters related to the core mandate of the Law Society - bar admissions, professional regulation, professional development and competence - as well as the chair of the Finance and Audit Committee and the Chief Executive Officer. In addition, the Treasurer should have the option of adding two further benchers to the Treasurer's Advisory Committee. Other benchers may be invited to attend committee meetings for specific purposes.

Recommendation to Convocation

37. That a Treasurer's Advisory Committee be established with the mandate to ensure that,

(a) the work of committees, task forces and working groups is overseen;
(b) issues are channelled to the appropriate committee;
(c) the work of the committees is progressing and finding appropriate space on Convocation's agenda;
(d) the work of the committees is co-ordinated to avoid duplication of effort;
(e) Convocation's policies are implemented by maintaining close liaison with the Law Society's Chief Executive Officer;
(f) appropriate monitoring mechanisms are established; and
(g) the Law Society's governance policies meet the current needs of the Law Society.

The Advisory Committee would advise the Treasurer in responding to important issues until these can be dealt with by Convocation and assist the Treasurer to monitor the performance of the Chief Executive Officer.

38. The Treasurer's Advisory Committee is to be composed of the Treasurer, the Chairs of the Admissions, Professional Regulation, Professional Development and Competence, and Finance and Audit Committees, the Chief Executive Officer and up to two other benchers to be appointed at the option of the Treasurer.

39. The Treasurer shall keep Convocation apprised of the Committee's activities.

84. The above recommendation was defeated in Convocation by a vote of 20 to 12.

85. As noted above, in the absence of an executive or advisory committee, the priorities and planning functions for Convocation do not devolve to Convocation as a whole. Consultations occur among the chairs of committees and senior staff, who bring issues forward as required to the Treasurer and the CEO. The Treasurer then sets Convocation's agenda.

86. As boards usually set the policy agenda for an organization, one argument in favour of an executive committee is that a large board could benefit from the work of a smaller group of its members who can focus on the groundwork for a policy agenda. The authority given to an executive committee, however, may be broader. Task Force reviewed the mandates of the executive committees of a diverse group of organizations and found the following common particulars:

a. To perform the duties and exercise the powers delegated to it by the board;
b. To expedite the administration and affairs of the organization between board meetings on important matters arising between board meetings that cannot be postponed until the next scheduled meeting of the board;
c. To exercise all the powers delegated to it by the board when the board is not in session and, in the judgment of the committee, calling an in-person or telephonic special board meeting is impractical or unnecessary;
d. To act as a sounding board for general management issues and/or matters that affect the organization as a whole;
e. To conduct an annual performance evaluation of the committee;
f. To report to the board on a regular basis so that the board can monitor the committee's performance and take any corrective action.

87. There are critics of the executive committee, but the criticism is linked to the larger issue of whether or not a board is exercising good governance. John Carver, in a 1994 article on board leadership, discussed how many boards, as noted above, give their executive committees the power to make board decisions between board meetings. He then says that the only excuse for a board to authorize an executive committee to make such decisions is if the board is too awkward to do its own job. Ultimately, he concludes that executive committees are entirely optional, and that giving such a committee the authority commonly given either to the board or the CEO reflects important flaws in the existing governance.

88. The theory of Carver's policy governance model is that if a board is properly constituted, knows its role, and governs effectively, an executive committee is likely superfluous.

Conclusions on the Treasurer's Role and an Executive Committee

89. The Task Force saw no reason to disturb the process by which the Treasurer controls Convocation's agenda by suggesting any limitation on his or her role or institutionalizing the Treasurer's current and effective consultative process.

90. In the Task Force's view, the Treasurer should be free to seek and receive advice from those from whom he or she wishes to hear. He or she should be able to seek that advice, in confidence if necessary, outside of a formal process, such as an executive committee, that would require structure, agendas and minutes. An executive or advisory committee would impose another layer of bureaucracy, and may politicize the Treasurer's consultations, for no great benefit.

91. With respect to some of the findings documented in the Strategic Planning Committee's report, the Task Force notes that since 2001, improvements in planning Convocation's policy agenda have been made, including the following:

a. Committees and task forces are better at preparing the necessary information for Convocation's decision-making function, including the financial impact, the impact on stakeholders and how the decisions are to be implemented operationally;
b. Through the budget planning process, a systematic review of operations includes information on the implementation status of Convocation's policies, which will also inform the need for new initiatives that Convocation should consider[18] ;
c. The work of the committees is co-ordinated to a large extent through the Policy Secretariat within which regular briefings are held on committee activities; efforts are made to avoid duplicated work;
d. In consultation with the Policy Secretariat, the CEO informally monitors the progress and completion of policy issues before the standing committees and task forces.

92. As a final matter, the process of electing the Treasurer is in one respect part of the long-range planning for Convocation's agenda. Each candidate for Treasurer espouses priorities that he or she would pursue upon election as Treasurer. This informal advice to benchers is in reality an institutionalized method of informing benchers about proposed priorities, broadly speaking, for the next two years. The benchers' vote for their candidate of choice is effectively an endorsement of a broad-based policy agenda for that period.

93. The Task Force concludes that the decision in 2001 to reject establishing the Treasurer's advisory committee was the right one. The Task Force does not propose that an executive committee or advisory committee be established, nor does it propose any changes to limit the role of the Treasurer.

Frequency and Substantive and Procedural Efficacy of Convocation Meetings

Frequency of Convocation

94. The Task Force determined that an in-depth examination of Convocation's meeting schedule was not warranted. The Task Force could not see how the integrity of Convocation's governance functions is negatively affected because of the frequency of Convocation's meetings, which generally occur once a month. Typically, at each meeting, there is important business to conduct and decisions to be made.

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[18] The following is from the Finance Committee's report to May 2005 Convocation on the budget planning process for the 2006 budget:

> Convocation, in the course of its regular business, receives regular program reports from the Society's various standing committees as well as periodic updates from the CEO on how the policy objectives of Convocation are being implemented and the relative merits and progress of the various initiatives and programs undertaken during the course of the year.
>
> A comprehensive system of program review linked to the budget is also in place. It was approved by Convocation in January 2002 and has been carried out for the last three years (the 2003, 2004 and 2005 budgets). With Convocation's concurrence, it is staff's intention to continue the review program for the 2006 budget.

Procedure for and Efficacy of Convocation's Decision-Making

95. The Task Force concluded earlier in this report that there is merit to adopting appropriate rules of procedure for Convocation, and noted the Treasurer's intention to apply proposed rules of procedure prepared through the Professional Regulation Committee for a period of six months beginning in September 2005. The Task Force will await Convocation's disposition after the six-month period regarding the adoption of these rules.

96. The Task Force repeats its recommendation above with respect to the use of rules of procedure for Convocation as a way to increase the effectiveness of its decision-making.

III. Benchers in the Dual Roles of Directors of a Corporation and Representatives in a Forum Similar to a Legislature

97. As members of a board of an organization, benchers have fiduciary duties as directors to the Law Society. However, benchers become directors through an election process in which they seek the vote of the membership. This dynamic creates what the Task Force calls the dual nature of benchers' participation in Convocation, that is, benchers as fiduciaries and benchers as participants in a forum similar to a legislature.

98. The dual nature is a function of structure, tradition and culture. It is influenced by factors such as:

a. Regional participation as part of the design of the bencher election process, including the designation of a regional bencher,
b. Benchers choosing to identify themselves as representatives of particular constituencies within the profession, and
c. Convocation's "debates" unfolding more like proceedings in a legislature than at a board meeting.

99. A key question for the Task Force was whether benchers' fidelity to the organization as board members can co-exist with the historical expectation that benchers will speak freely on a particular issue affecting the profession. Convocation is mandated to oversee the governance of the legal profession in the public interest. If a bencher approaches his or her participation in Convocation as a representative of a particular legal constituency, does that negatively impact on the ability of Convocation to make a decision consistent with the public interest?

Benchers as Fiduciaries

100. As Treasurer, Vern Krishna discussed with Convocation its function as a board of directors, and highlighted the fiduciary duties of benchers to the organization. The following excerpts from Convocation proceedings illustrate his thinking on the issue:

> We are here as fiduciaries to Convocation and we run and want to run a democratic Convocation, but a democratic and efficient Convocation. This is a decision-making body, it is not a debating society, and I want the focus of Convocation to be on decisions.
>
> July 26, 2001

> Section 2 of the *Law Society Act* says we are a corporation, and every bencher sitting around this room is a director of that corporation and a fiduciary of that corporation. … This is not a legislative assembly or a parliamentary body.
>
> February 13, 2003

> …you are fiduciaries to the corporation not to the shareholders and not the members. … And that fiduciary obligation that is on us requires us to govern in the best interest of this Society in the public interest. And sometimes we have to pull ourselves up and say, is what I am doing in the best interest of the society? Is the speech that I am making in the best interest of the society? Or is it in some other interest?
>
> May 22, 2003

101. The question of in whose interests the Society governs (public *versus* profession) is not a new issue for the Society and has spawned a number of debates about whether the interests of the profession can be considered - and if so, to what extent - when the Society governs in the public interest. The debates have generally been resolved by concluding that often the interests of the public and the profession meet, but when a conflict between the two interests arises, the interests of the public must take precedence.[19]

102. Legal regulators in jurisdictions in which this line is blurred have suffered the consequences. Recent developments in England and Wales and some Australian states illustrate how entities that included both a regulatory and representative function fell into disrepute with the government because of the perception, in some cases supported by fact, that the regulatory function in the public interest was not being pursued as robustly as required. The result led to reforms in New South Wales, Australia to create an entity separate from the Law Society to control the investigation of complaints about solicitors.[20] In England and Wales, a proposal currently before the government will create a Legal Services Board to oversee the legal services sector, will remove complaints investigation authority from the Law Society of England and Wales, and will empower an independent entity created by the government to oversee these functions.[21]

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[19] This is articulated in Commentary 3 to the Law Society's Role Statement as follows:

> It is sometimes assumed that the public interest must necessarily be opposed to the interest of the profession and that, in fulfilment of its duty to govern in the public interest, the Law Society can give no consideration to the interest of the profession. This is not so. Ideally, what is in the public interest will also be in the interest of the profession. It is only when the two interests conflict that the Law Society must subordinate the interest of the profession to that of the public.

[20] In 1994, the New South Wales government established an independent statutory office called the Legal Services Commissioner, pursuant to sections 134 and 135 of the *Legal Services Act 1987*, responsible for receiving all complaints and monitoring investigations conducted by the Law Society and Bar Council, and established a Legal Services Tribunal, responsible for hearing misconduct complaints. The Commissioner reports to Parliament through the Attorney General, and co-regulates legal practitioners and licensed conveyancers with the Law Society, the Bar Association and the Office of Fair Trading.

A Bencher's Duty as a Fiduciary

103. As neither the *Law Society Act* nor the *Corporations Act*, which applies to the Law Society as a corporation without share capital, describe the fiduciary duty of a director, reliance is placed on the common law to determine the nature of a bencher's fiduciary duty. In general terms, a director's common law fiduciary duty requires the director to act honestly, in good faith and with a view to the best interests of the corporation.[22]

The Notion of the Bencher as Constituency Representative

104. In discussing benchers' fiduciary duties, Vern Krishna as Treasurer said the following:

> We…are elected by various constituencies and by various regions. But when we arrive here, we are not here as spokespeople for those constituencies. We are

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[21] The proposal is to create a single independent complaints organization, covering all the "front-line" regulatory bodies, under the general supervision of the Legal Services Board (LSB). The LSB, as a legislatively created body, would be granted regulatory powers and would have the authority to delegate day-to-day regulatory operations to the recognized front-line bodies, like the Law Society of England and Wales, where such bodies satisfy the LSB that they are competent to handle the regulatory functions and have appropriate governance arrangements to deal with such functions without conflict. The model from which the LSB came would require the separation of the Law Society's regulatory and representative functions.
In his March 21, 2005 speech to the Legal Services Reform Conference, Lord Falconer, Constitutional Affairs Secretary and Lord Chancellor said: "...I will create an Office for Legal Complaints. I reject the view that centralisation will lead to a slower service for consumers...A single complaints body means consistent, fair and professional handling of cases for all complainants...As with the Legal Services Board, the Office for Legal Complaints will be led by a board with a lay Chair and lay majority, and appointments will be made on merit, by the Legal Services Board. The different responsibilities of the Legal Services Board, the Office for Legal Complaints and the various professional bodies will be clearly defined...Removing complaints handling from the professional bodies will in no way reduce their responsibility to ensure that their members operate to the highest professional and ethical standards at all times. I acknowledge the serious and constant efforts the professional bodies make in this regard. The Office for Legal Complaints will help, not hinder...

[22] In remarks he prepared for bencher orientation, Vern Krishna, after a review of the applicable law, provided the following summary of the bencher's fiduciary responsibility:

> The Law Society is a corporation without share capital and the Benchers are its directors. As directors, Benchers are responsible for "govern[ing] the affairs of the Society". Since Benchers act as agents for the Law Society, they are not separate from the Law Society, but effectively *are* the Law Society. Thus, in all matters related to their agency, the interests of the Law Society must be the very interests of the Benchers.
>
> Benchers have a fiduciary responsibility to act faithfully and loyally in the best interests of the Law Society. This fiduciary duty is owed directly to the Law Society rather than to its members who are merely "shareholders" of the corporation. Thus, in all matters relating to their undertaking of trust and confidence as directors of the Law Society, Benchers must act solely in the best interests of the Law Society.

> not here to serve regional interest. We are here to serve the common interest of the entire profession of which you can take into account those regional constituencies. But you are not here to serve on one constituency. You are here to serve all…. We formally adhere to the rules of the legislative assembly, but we are not a legislature. We adhere to some rules of the corporate governance, and we are not completely a corporation in the sense of a traditional, private corporation.
>
> Convocation, May 22, 2003

105. This quote captures the dichotomy of the dual nature of Convocation, which ultimately affects the bencher's approach to his or her role in Convocation.

106. In Task Force's view, benchers must understand that they are not constituency representatives or parliamentarians. It may be that the role of bencher as a fiduciary does not come intuitively. In such an environment, the education discussed earlier in this report is important.

107. Directors' duties to an organization are informed by the organization's mandate. For the Law Society, this means that the benchers' decision-making function and activities related to it must be based on the public interest, as the Society governs the legal profession in the public interest. Decisions cannot be based on the interests of shareholders (i.e. the members of the Society) or a particular legal constituency.

108. Benchers' actions in addressing a particular constituency or advocating a position for the profession instead or at the expense of the public interest may effectively operate as a challenge to the mandate. Ultimately, this may amount to a conflict for the bencher.

109. The Bencher Code of Conduct includes a brief statement on conflicts of interest. The entire code reads:

> 1.0 The benchers commit themselves to ethical conduct.
> 1.1 Benchers must declare conflicts of interest and act in accordance with Convocation's policy on conflicts of interest.
> 1.2 Benchers must not use their positions to obtain employment or preferential treatment for themselves, family members, friends or associates.
> 1.3 No bencher shall purport to speak for Convocation or the Law Society unless designated by the Treasurer.
> 1.4 When exercising adjudicative powers, benchers shall behave in a judicial manner.
> 1.5 Benchers shall observe Convocation's policy regarding confidentiality.
> 1.6 Benchers sitting as members of the hearing panel must adhere to the provisions set out in the guidelines for applications to proceed in camera and must strictly maintain the confidentiality of all matters subsequently heard in camera.

110. The Bencher Code of Conduct is part of the Law Society's Governance Policies, and to the extent that it addresses conflicts issues, the Code should continue to be observed.[23]

[23] With respect to compliance with the Governance Policies, the Law Society's *Rules of Professional Conduct* impose certain duties on lawyers, in whatever capacity they serve. It is

Initially, the Task Force identified the Bencher Code of Conduct as a topic for review. However, after considering the Code in the context of specific bencher behaviour, as noted above, the Task Force determined that a separate examination of the Code was not warranted, and that the current environment in which the Code is observed does not call for additional instruments for regulation of bencher conduct.[24]

Conclusions on the Bencher's Role

111. The Task Force concluded that consistent with the Society's current policy on conflicts of interest [25], a bencher as a fiduciary cannot act against the interests of the Society as an organization. This means that actions of the benchers as directors must be and must be seen to be consistent with the purposes of the Society and not in derogation of its mandate to govern in the public interest.

112. The Task Force also believes that when a bencher is appointed as a Law Society representative to the board of another organization, insofar as the issues the bencher addresses affect the Law Society's mandate, a balance must be struck between the bencher's duties as a Society representative and the duties the bencher owes to the board by virtue of the appointment. On occasion, a bencher may have to refrain from offering views or opinions if doing so places the bencher in a conflict with respect to those duties.

113. With respect to the bencher's role as a fiduciary, the Task Force believes, similar to an earlier recommendation in this report, that Convocation should affirm the bencher's role as a fiduciary to the Law Society as an organization, whose mandate benchers must reflect in their discussions and decision-making. ~~In particular, Convocation should affirm that benchers in the role of benchers cannot advocate a position in Convocation or elsewhere that places the profession's interest ahead of the public interest~~. *[deleted as a friendly amendment November 24, 2005]*

IV. Benchers in the Dual Role of Policy Makers and Adjudicators

114. The Task Force considered whether the benchers' role in setting both policy and adjudicating matters on the basis of that policy affects their governance responsibilities.

115. According to section 49.21(2) of the *Law Society Act*, all benchers except for members of the Proceedings Authorization Committee and *ex officio* benchers who are the

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possible that a serious breach by a bencher of his or her duties *qua* bencher may amount to professional misconduct or conduct unbecoming a lawyer deserving of sanction.

[24] Other reasons for foregoing a detailed review of the Code include the following:

- Egregious misconduct of an elected bencher would likely amount to a breach of the *Rules of Professional Conduct* and would be dealt with through the investigations stream at the instance of the Treasurer through provisions in the *Law Society Act*, and
- If the issue about the bencher's conduct relates to procedural matters in Convocation, the proposed rules of procedure for Convocation, discussed earlier in this report, should address those concerns.

[25] In March 1995, Convocation adopted the final report of the Special Committee on Conflicts of Interest, which provides the current policy on bencher conflicts in a number of areas (see Appendix 2). It would appear that this is the policy to which paragraph 1.1 of the Bencher Code of Conduct refers.

Minister of Justice and Attorney General for Canada, the Solicitor General for Canada and current and former Attorneys General of Ontario are members of the Hearing Panel. The Hearing Panel adjudicates applications with respect to the conduct, competence and capacity of members of the Law Society and hears readmission and student member good character applications.

116. The Task Force is aware that other tribunal models exist. One is that of the chartered accountants in Ontario, through their regulator, the Institute of Chartered Accountants of Ontario (ICAO). The ICAO discipline committee's members are appointed by the 20-member Council (16 elected members, four lay appointees) and consist of Institute members and public representatives.

117. The Law Society in the past considered non-bencher involvement on Law Society committees, including the discipline function. In 1989, Convocation adopted the report of the Special Committee on Voting and Non-Bencher Appointments that recommended the appointment of non-benchers (both lawyers and lay persons) to standing committees. A 1990 Special Committee on Bencher Elections report included this comment as a related matter:

> NON-BENCHER INVOLVEMENT
>
> Whether or not the number of benchers is to be increased, your Committee is persuaded that a greater reliance on non-bencher members would be of considerable assistance to benchers in the discharge of their responsibilities. In particular, your Committee favours a greater involvement of non-bencher lawyers in the discipline process: it notes, however, that this is a matter falling within the mandate of the Special Committee on Discipline Procedures.
>
> Non-bencher involvement was favoured by 72% of the respondents.
>
> It was suggested by a number of respondents that the benchers restrict themselves to policy matters and place greater reliance on Law Society staff in administration.
>
> Your Committee recommends that:
>
> Rather than increasing the number of benchers, the Society should look to its membership for assistance in committee work of all kinds.

118. According to a 1991 Research and Planning Committee report, Convocation approved the following:

a. That greater numbers of persons who are not benchers (both lawyers and lay persons) should be appointed to committees of the Law Society; and
b. That members who run for election as benchers but who are not elected should be considered for membership of committees.

119. In the early to mid-1990s, non-bencher lawyers participated on standing committees. This practice was discontinued, largely it is thought because the non-benchers, for undetermined reasons, felt constrained to fully participate with the benchers on the committees.

120. Discipline has always been a key responsibility of the benchers and is taken seriously. The Tribunals Task Force noted the importance of the Society's adjudicative responsibilities in its report to May 26, 2005 Convocation. In Part II of its report, the Task Force discussed its examination of alternatives to the current adjudicative structure and the composition of the Hearing Panel. The Task Force began by noting the following factors or concerns that are relevant to the consideration of which model to adopt:

    a. Whether there is an inherent conflict of interest where the regulatory adjudicators are also the regulatory policy makers. This concern may be countered by the view that in a self-regulatory system, those most able to render relevant and meaningful decisions are the governors who understand the intricacies of that system;
    b. Whether there are increasing perceptions of systemic bias in a tribunals structure, even where there is no evidence of actual bias, which may be a drawback to the effectiveness of the process[26] ; and
    c. Possible limitations of a large volunteer adjudicative body whose members have different levels of adjudicative knowledge, skill, experience, writing ability and availability to sit on panel hearings and appeals.

121. The Tribunals Task Force identified five models (and in its report comprehensively explained the issues with respect to each model), as follows:

    a. the continuation of the current Law Society model …Within this model, the decision could be made to make no changes to the process and procedures (the status quo) or to enhance them to make the tribunals composition more effective…;
    b. a tribunal model made up of elected benchers, lay benchers and non-bencher lawyers, the latter either for general participation on panels or for selected cases;

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[26] This was an issue for the Ontario Securities Commission, as discussed in the *Report of he Fairness Committee To David A. Brown, Q.C. Chair Of The Ontario Securities Commission*, March 5, 2004, by The Honourable Coulter A. Osborne, Q.C., Professor David J. Mullan and Bryan Finlay, Q.C. (The Osborne Report). The report notes that as the Commission engages in policy-setting, rulemaking, investigation, prosecution and adjudication under one corporate, statutorily established, umbrella, this arguably creates a perception of bias at the level of the Commission's adjudicative function, even though a Commissioner involved in an investigation of a matter cannot act as an adjudicator in the same matter without written consent. The report says that critics of the structure contend that the perception of bias erodes the credibility of the Commission. The report concluded that:

> ...the case has been made for the separation of the Commission's adjudicative function from its other functions, as related only to proceedings in which sanctions against respondents are sought. In our view, this separation will resolve the perception problem to which we have referred in this report and will thus end what we view as an erosion of the Commission's institutional credibility. Hiving off the Commission's adjudicative function will also permit the Commissioners to take a more proactive role in the oversight of Enforcement. The Commissioners' monitoring of enforcement matters will also enhance the Commission's credibility.

c. a tribunal model with a permanent Chair and one or two permanent Vice-Chairs who occupy one seat on every panel; the remaining members of each panel to be either elected lawyer benchers and/or lawyer members, and lay benchers;
d. a model that establishes a tribunals unit within the Law Society made up entirely of non-bencher lawyers and lay people; and
e. a model that establishes a tribunal that is completely independent of the Law Society.

122. The Tribunals Task Force recommended that "Convocation undertake an examination of the different models for the composition of the Law Society tribunals, as described in Part II of this report." Convocation approved this recommendation.

123. As the Tribunals Task Force carefully considered these issues and Convocation approved the above recommendation, the Task Force makes no recommendations on this subject.

V. Other Governance Issues Raised By Members Of Convocation

Equity And Diversity Issues

124. Joanne St. Lewis, chair of the Equity and Aboriginal Issues Committee/Comité Sur L'équité et les Affaires Autochtones, referred the following three issues to the Task Force.

Representation of Francophones at Convocation

125. Section 49.24 (1) of the *Law Society Act* provides that "A person who speaks French who is a party to a proceeding before the Hearing Panel may require that any hearing in the proceeding be heard by panelists who speak French". In order to satisfy section 49.24(1), the Law Society must provide panelists who speak French.

126. Ms. St. Lewis's view is that the Law Society should ensure that Francophone or bilingual (French/English) elected benchers with knowledge of the Law Society's processes are available to sit on the Hearing Panel for a bilingual proceeding.

127. The *Law Society Act* provides a mechanism for the appointment of Francophone members of the Law Society for bilingual proceedings in cases where it is not practical to assign benchers. Section 49.24 (2) provides that "If a hearing before the Hearing Panel is required to be heard by panelists who speak French and, in the opinion of the chair of the Panel, it is not practical to assign the required number of French-speaking benchers to the hearing, he or she may appoint one or more French-speaking members as temporary panelists for the purposes of that hearing".

128. Ms. St. Lewis believes that the Law Society should ensure that at least one elected bencher is Francophone. Under this proposal, members of the Society who satisfy bilingualism criteria established by AJEFO[27] should be encouraged to run in the bencher election. The bencher candidate who satisfies the bilingualism criteria and has the most votes would be elected as a bencher regardless of his or her ranking in the

[27] L'Association des juristes d'expression française de l'Ontario

election. Ms. St. Lewis suggests that this bencher seat be designated in the pool of candidates who run for election outside of Toronto.

129. Ms. St. Lewis's view is that this procedure would ensure that the Law Society always has French language capability for hearings. She does not see this as the "thin edge of a wedge" to have designated bencher seats for other equality-seeking communities, as the *Law Society Act* already allows for bilingual French/English hearings, which must be held when requested.

The Task Force's Views

130. The Task Force recognizes the importance of ensuring French-language capability for Law Society hearings. However, the Task Force does not agree with guaranteeing a seat for a Francophone bencher, for the following reasons.

131. First, one guaranteed seat for a Francophone bencher will not resolve the issue of sufficient numbers of Francophone benchers for hearings. A larger pool is required. The current system, which draws on benchers who are capable of conducting a hearing in French and permits the selection of qualifed non-bencher Hearing Panel members, is successful in filling necessary positions on the Hearing Panel. Enhancements should be made if necessary, and the Task Force understands that the Society has consulted with AJEFO as required when a Francophone hearing panel member is required. This consultation should be encouraged.

132. Second, fixing a seat for a particular group may set a precedent that could have serious consequences for the Society. In the current environment, although certain constituencies in the profession may consider that they are "represented" by a bencher (as discussed earlier in this report), generally, candidates do not run and are not encouraged to run for election on a specific platform for an identifiable group of members. A guaranteed Francophone bencher seat could affect this dynamic, and increase the politicization of the election process at a time when it is important to emphasize that benchers represent the public interest, not the interests of the profession, or groups within the profession. The perception associated with a guaranteed seat, in spite of what may be valid reasons for it, could have the effect of undermining the Society's mandate.

133. Third, the fact is that the membership usually elects at least one Francophone bencher, or a bencher who is capable of conducting a hearing in French.

134. In the past, the Society has encouraged members of the Francophone community to run for bencher, and this will continue.[28] The Society should not only devote more effort to

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[28] Bicentennial Report Working Group in its 2004 report *Bicentennial Implementation Status Report and Strategy* noted this type of effort during the 2003 bencher election:

> In 2003, the Law Society encouraged members from equality-seeking communities, Francophone and Aboriginal members to run for election. During the 2003 Bencher Election process, an information session for members of equality-seeking, Francophone and Aboriginal communities was held. There was wide publication of the election process including the development of a web site solely for the bencher election. Every member of the profession was encouraged to run through a letter written by the Treasurer.

encouraging candidates from the Francophone community to run in the election, but expand this initiative to other communities. The diversity of communities represented in Convocation in recent years has increased substantially, and Convocation is better for it.

135. While the Task Force does not recommend a guaranteed Francophone bencher seat, it proposes that the Society increase its efforts to encourage members from all communities represented in Ontario's legal profession to run for bencher, as the public whose interests the Society represents in its governance of the profession should be reflected in those who serve as governors.

Equality Template

136. Ms. St. Lewis requested that the Governance Task Force support the use of the equality template and the definitions of equality and diversity as approved on March 10, 2005 by the Equity and Aboriginal Issues Committee/Comité Sur L'équité et les Affaires Autochtones ("the Committee"). The template was reported to March 24, 2005 Convocation for information. Law Society staff, including the Senior Management Team and the policy advisors, will use the equality template in their work. The relevant excerpt from the March 24 report and a copy of the template appear at Appendix 3.

137. Ms. St. Lewis has asked that the Governance Task Force consider requesting that Convocation and all bencher committees apply the template and definitions to Law Society related work.

The Task Force's Views

138. As the Committee's report indicates, the equality template will be used in decision-making processes, policy development activities, implementing policies, development of programs and initiatives and in consultations undertaken by the Society. This broad application, which the Task Force endorses, means that all policy matters that eventually reach Convocation's agenda will have been informed by use of the template. As such, the Task Force's view is that Ms. St. Lewis's suggestion will have been effectively implemented once the template is applied.

<u>The Equity Advisory Group's Membership on the Equity and Aboriginal Issues Committee/Comité Sur L'équité et les Affaires Autochtones</u>

139. The Bicentennial Report Working Group suggested in its 2004 report *Bicentennial Implementation Status Report and Strategy* that the Equity Advisory Group (EAG) be permanently represented as a voting member on the Equity and Aboriginal Issues Committee/Comité Sur L'équité et les Affaires Autochtones ("the Committee"). Ms. St. Lewis requested that the Task Force consider this issue.

140. The mandate of the EAG is to assist the Committee in the development of policy options for the promotion of equality and diversity in the legal profession by:

a. identifying and advising the Committee on issues affecting equality communities, both within the legal profession and relevant to those seeking access to the profession;

b. providing input to the Committee on the planning and development of policies and practices related to equality, both within the Law Society and the profession; and
c. commenting to the Committee on Law Society reports and studies relating to equality issues within the profession.

141. The EAG is composed of up to 22 members of the legal profession (including organizational members) who have direct experience with or commitment to access and equality for Aboriginal, Francophone and/or equality seeking communities, including but not limited to communities of ethno racial people, people of colour, immigrants and refugees, people with disabilities, gays, lesbians, bisexuals, transgender persons, Francophones, Aboriginal people and women. Such experience is in areas of employment equity, access to the legal system and to justice, human rights, anti racism and anti oppression, equity and diversity training or social justice issues. The membership reflects gender parity and balance among the various equity seeking communities.

142. Given the EAG's mandate as a Law Society advisory group to the Committee and the fact that the EAG is composed of a diversity of experts in the area of equality and diversity, Ms. St. Lewis requested that the Task Force consider recommending that the EAG become a permanent and voting member of the Committee.

The Task Force's Views

143. The Task Force supports the role fulfilled by the EAG as described above, but does not agree that it should become a permanent and voting member of the Committee, for the following reasons.

144. The EAG is structured as an advisory group, and its input is valued. The EAG need not be a member of the Committee to fulfil this advisory function.

145. The risk in extending membership on the Committee to advisory groups like the EAG is that other groups may make requests to join the Committee once the precedent is set. Input from various communities helps to inform the work of the Committee, but membership of such representative groups on the Committee could be counter-productive to its decision-making on policy issues. Managing expectations and requests of the various groups and arriving at consensus on issues could be a difficult and delicate task. The Committee's current practice of receiving advice from and consulting with these groups provides the necessary input on the issues and concerns of the representatives, but permits the Committee to make recommendations, including those that relate to the profession's governance, that collectively account for equity and diversity issues of the broad range of communities, in keeping with the Committee's mandate.[29]

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[29] By-Law 9, s. 16.1 reads:
The mandate of the Equity and Aboriginal Issues Committee is,

(a)to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal peoples and French-speaking peoples; and

146. The Committee, as a standing committee of Convocation, is composed of elected and lay benchers who are required to make policy recommendations in the public interest for Convocation's consideration and who have fiduciary responsibilities to the Law Society as an organization. A group like the EAG is not bound by these obligations, and indeed, should not be. But because of that, it would be inappropriate to make it a voting member of the Committee.[30]

147. For these reasons, the Task Force does not recommend that the EAG be made a permanent and voting member of the Committee.

Entrenchment of the Independence of the Chief Financial Officer

148. Bradley Wright requested that the Task Force consider entrenching the independence of the Law Society's Chief Financial Officer (CFO) in the by-laws.

149. The Task Force acknowledged that ensuring the independence of the CFO is an important aspect of corporate governance. However, the Task Force did not see the need to codify various aspects of and protections for the CFO's office in the by-laws, for the following reasons.

150. First, the CFO's employment contract covers all necessary aspects of her role within the Society's management, including protections for her independence.

151. Second, the Task Force was of the view that the general issues of independence and the ability to address compliance issues are not unique to the CFO position, but extend to all senior managers, and perhaps even middle managers. The Task Force concluded that it is not necessary and may be undesirable to include in a by-law obligations of managers that are more appropriately the subject of an employment contract.

152. Third, the Law Society has adopted a Business Conduct Policy (November 2004, superseding an initial 1997 policy) to which all staff must adhere that addresses a variety of circumstances relating to employment, including corporate compliance.

153. The section of the Policy entitled "Compliance With Laws" states that honesty and fairness must characterize the Society's activities with the public and the profession, and that the Society strives to comply with applicable laws, regulations and internal policies. The section provides that if any Society employee is concerned that the Society is not operating in compliance with applicable laws, regulations or established policies, the employee should immediately report the concern to a superior or, if necessary, to the Chief Executive Officer. The section also provides that the reporting employee is fully protected against recrimination.

154. Another section entitled "Reporting To Management And Auditors" requires a Law Society employee who has knowledge of a matter which he or she believes might adversely affect the Law Society's reputation or operations to bring such knowledge

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(b)to consult with the Treasurer's Equity Advisory Group, Roti io' ta'-kier, AJEFO, women and equity-seeking groups in the development of such policy options.

[30] There may also be a legal impediment – *quaere* whether the fiduciary obligation of a bencher can be delegated to a non-fiduciary.

promptly to the attention of senior management. Similarly, an employee must not conceal such information from the Society's auditors.

155. For these reasons, the Task Force does not recommend by-law amendments with respect to the office of the CFO.

APPENDIX 1

TERMS OF REFERENCE
(approved by Convocation November 25, 2004)

a. The Task Force will study specific issues related to governance, including the following:

i. The bencher qualification process and how Convocation is constituted;
ii. The size of Convocation as a board;
iii. The role of the Treasurer as chair of the board (Convocation);
iv. The notion of an executive committee;
v. The frequency and the procedural and substantive efficacy of Convocation, including the process of setting priorities for Convocation;
vi. Benchers in the dual roles of directors of a corporation and representatives in what has been characterized as a parliamentary assembly;
vii. Benchers in the dual roles of policy makers and adjudicators;
viii. A bencher code of conduct.

The Chair invites benchers to advise him within the next month of any other discrete issues that should be included in the Task Force's study.

b. As the Society has received a number of reports on governance based on previous studies and reviews, the Task Force will use these existing reports in its study and does not propose to commission further reports for its use on the subject of Law Society governance.

c. If necessary, the Task Force will conduct additional research and consultation on the issues it has identified for study. This may include consultation with other benchers and non-benchers, as appropriate, to obtain the views of those who have an interest in and are able to contribute to the Task Force's study.

d. The Task Force anticipates that its expenses for research or consultation will be such that funds allocated for such purposes within the budget of Policy and Tribunals ($100,000 annually) will be sufficient.

e. The Task Force will provide interim reports to Convocation as needed.

f. The Task Force will aim to conclude its work and prepare a final report to Convocation by June 2005.

APPENDIX 2

REPORT OF THE SPECIAL COMMITTEE ON CONFLICTS OF INTEREST
MARCH 24, 1995

AS AMENDED BY CONVOCATION ON FEBRUARY 24TH, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON CONFLICTS OF INTEREST begs leave to report:

The Special Committee on Conflicts of Interest was struck on March 25, 1994 to consider the issue of conflicts of interest with respect to benchers and bencher firms; its members being Arthur Scace (Chair), Lloyd Brennan, Kevin Carroll, Maurice Cullity, Carole Curtis, Susan Elliott, Marie Moliner, Ross Murray and Hope Sealy.

Your Committee has met on April 21st, August 10th, September 7th, November 9th and November 25th, 1994 and January 26th and February 10th, 1995.

I Background

This Committee was created as a result of the debate in Convocation concerning the report of the Special Committee on Lawyers' Fees. That Special Committee was charged with recommending guidelines for the selection and compensation of counsel to represent the Law Society in a variety of matters. When its report came before Convocation, a lively debate ensued in which the need for a comprehensive policy for benchers and their firms on conflicts of interest vis a vis the Law Society was identified. Convocation voted to establish this special committee for that purpose.

Your Committee has explored various approaches to the problem of conflicts of interest which arise by virtue of the bencher's role.

In so doing your Committee has examined in some detail the different functions that benchers perform and the nature and context of the problems that arise in each of those roles.

At the outset your Committee recognized that there is an enormous variety and number of conflicts arising out of the bencher role. It is acknowledged that it is not practical to attempt to deal with every such conflict. Accordingly your Committee has limited its consideration to those conflicts which are significant.

II Discussion

As a general principle, it is acknowledged that benchers are elected precisely because of the combination of interests, talents and experience which they as individuals can bring to the work of Convocation. Furthermore, your Committee feels that benchers have an obligation to carry those attributes into Convocation.

In addition, your Committee recognizes that there are certain conflicts of interest which are inherent in any self-governing body. Every elected bencher is by definition also a member of

the Law Society and therefore has a self-interest in the matters coming before Convocation. That self-interest is, however, essential to the effective governance of the profession. The question your Committee has focused on is, "At what point does an individual bencher's self-interest become so significant that a conflict of interest arises which interferes with that bencher's ability to make a decision in the best interest of the Law Society and the public?".

There is a clear distinction between voting on issues which affect the profession as a whole and necessarily affect benchers as members and voting on issues where the bencher is in a position to benefit, either financially or otherwise, in a fairly specific and direct way from a particular decision of Convocation.

Further, there may well be instances where a bencher not only ought not to vote on an issue but ought not to speak or even attend in Convocation while certain issues are considered.

The Committee has attempted to formulate a general statement of principle by which individual benchers may govern themselves. As well, it has tried, where possible, to enumerate specific rules and guidelines for particular situations. The Committee recognizes that the problem is complex and does not lend itself to a simple straightforward solution. In any solution proposed, there will be areas of disagreement. That this is necessarily so was evident from the discussion in the Committee. There are some situations which will be resolved ultimately by the exercise of the personal judgment of the bencher involved.

III Sample Issues

In order to provide Convocation with a sense of the scope of the issues that the Committee identified, a sampling of some of the questions posed during the course of the Committee's deliberations is included here:

1. May a bencher whose firm acts for LPIC in insurance defense matters participate in debate or decisions concerning such matters as

(a) an increase or decrease in the schedule of rates for counsel to LPIC;
(b) changes to the amount and structure of the member's deductible; or
(c) changes to the coverage provided by LPIC.

2. May a bencher whose practice includes a substantial proportion of legally aided clients participate in debate or decisions involving such matters as:

(a) Legal Aid service cuts in the area of law in which the bencher primarily practises;
(b) changes to the Legal Aid Tariff which would affect the bencher's practice;
(c) funding of disbursements by Legal Aid where the bencher's practice would be affected; or
(d) the introduction of a staff delivery model for services in the bencher's area of practice.

3. To what extent may a bencher who is employed by the provincial government participate in debate or decisions involving:

(a) any matters concerning the Legal Aid Plan;
(b) negotiations with the government; or
(c) proposals for amendments to the Law Society Act which would materially affect the relationship between the Law Society and the government.

These examples serve to illustrate the kinds of issues that were considered by the Committee which went beyond the conflicts usually identified in relation to benchers, such as, direct retainer by the Society or involvement in the discipline process.

Your Committee struggled to answer these and other questions and could not in every case provide a complete response that was acceptable to all Committee members. In some instances, however, the Committee, after a thorough analysis of the issue, reached a consensus on the response. It is important to state, however, that even in those cases where the Committee reached agreement that in the particular circumstances a bencher ought not to be prohibited from participating, it at the same time recognized that individual benchers might well, in the exercise of their personal judgment, decide they ought not to participate. In other words, the fact that there is no absolute prohibition does not necessarily settle the matter. Benchers must be aware of and alert to situations which require them to exercise independent judgment.

For example, as to the matters outlined in question #2, the Committee initially felt that there are special considerations surrounding Legal Aid which bear on the issue of who may vote. Perhaps the most significant of these is that Convocation's authority with respect to the Legal Aid Plan differs somewhat from its authority over many of the other programs administered by the Law Society. This difference arises by virtue of the fact that funding for the Ontario Legal Aid Plan is provided primarily by the government of Ontario. Thus the conflicts may not be as direct and immediate as they might seem to be at first. Taking this into account, your Committee concluded that there should be no absolute prohibition against any bencher voting on all the issues outlined in question #2. Each bencher must assess their own personal situation and decide whether or not to participate. After exploring the Legal Aid issues further, however, the Committee concluded that while there are some special considerations surrounding Legal Aid, on balance, there should not be a different standard applied to conflicts arising in a Legal Aid context than would be applied in any other context.

IV Types of Conflicts

The Committee identified a number of different situations in which conflicts or potential conflicts needed to be addressed. To the extent possible, this report will describe each of them and suggest an approach for dealing with them.

A. Proceedings involving an individual member's rights and privileges - benchers acting in a quasi-judicial capacity

This category includes:

Discipline, incapacity, admission, readmission and competency proceedings and any other proceeding involving an individual member's rights and privileges.
The Committee is of the view that even the slightest perception of a conflict of interest in these proceedings must be scrupulously avoided at every stage in the proceeding.

Accordingly, your Committee suggests the following specific rules:

1. Bencher prohibited from appearing as counsel

A bencher may not appear as counsel before a Committee of benchers or Convocation in a discipline, incapacity, admission, readmission, or competency hearing or any other matter involving an individual member's rights and privileges.

2. Member of bencher firm appearing as counsel

A member of a bencher firm may appear as counsel before a Committee of benchers or Convocation in a discipline, incapacity, admission, readmission, or competency hearing or any other matter involving an individual member's rights and privileges, provided the bencher in question does not in any way participate in the matter.

3. Member of bencher firm providing evidence

Where a member of a bencher firm provides evidence (other than a written testimonial) in any hearing or other matter before a Committee of benchers or Convocation involving an individual member's rights and privileges, the bencher in question will be excluded from all deliberations.

4. Bencher participating who knows member

It is a matter of individual judgment whether a bencher who knows a member either personally or professionally should participate as a bencher in any stage (e.g. investigation, authorization, pre-hearing, hearing) of the process in respect of a discipline, incapacity, admission, readmission or competency hearing or any other matter involving that member's rights and privileges, subject to the usual considerations governing bias or reasonable apprehension of bias in proceedings before an administrative tribunal.

In this context your Committee considered one example of a fairly common situation ie: where the bencher is on a discipline panel and a member is before the panel who is known to the bencher. In this particular instance the following steps are suggested, assuming that the bencher concludes that he or she can continue to participate:

The bencher should:

(l) state on the record that the bencher knows the member and provide particulars of the circumstances;

(2) indicate on the record that the bencher does not feel that he or she is unable to continue to participate by virtue of the knowledge or relationship;

(3) invite the member to take a few moments to consider whether he or she wishes to raise any objection to the bencher's continued involvement.

The advantage of this approach is that the panel is then able to deal with the issue at the outset and where the member raises no objection, he or she will, in most cases, be precluded from raising it at some later date, as, for example, a ground for appeal.

5. Bencher as witness

It is a matter of individual judgment whether a bencher who knows a member either personally or professionally should participate as a witness or in some other capacity in support of the member in respect of a discipline, incapacity, admission, readmission or competency hearing or any other matter involving that member's rights and privileges.

Your Committee in formulating these rules suggests that benchers should be alert to the consequences both for them as individuals and for Convocation and the Society's admissions and discipline process, should they or members of their firm provide character evidence on behalf of an individual member in a proceeding before Convocation or a hearing panel. Your Committee urges benchers to weigh carefully any request for their participation on behalf of an individual member, bearing in mind the need to ensure that a sufficiently large and diverse pool of benchers is maintained for hearings in Committee and Convocation.

B. Direct Retainer by the Law Society or the Lawyers' Professional Indemnity Company of a bencher or a bencher firm

In considering the elements which should be included in this policy, your Committee, after some discussion, concluded that it was not in the best interests of the Law Society or LPIC to exclude benchers and bencher firms from the pool of counsel eligible for selection. The Committee felt that some of these individuals and firms possess substantial expertise in the area of solicitor's negligence, which expertise the LSUC and LPIC have made a significant investment in developing. To exclude them would, in effect, be throwing away that investment as well as denying LPIC access to experienced counsel. Accordingly, your Committee does not recommend that Convocation adopt a policy under which the Society or LPIC would be prohibited from directly retaining benchers or members of bencher firms.

Instead, the following guidelines are proposed for the retaining of counsel generally by the Society or LPIC. The Committee made the observation that in the vast majority of instances, counsel will be selected and retained by senior Law Society or LPIC staff and not by Convocation. The guidelines have been prepared with this in mind.

1. The Law Society or LPIC should establish criteria for the selection of counsel having regard to the following goals:

(a) To ensure that the Society or LPIC is represented by counsel who will provide competent and cost effective legal services and, in particular, to ensure that the services are provided by individuals whose skills, training and experience are most appropriate to the task.
(b) To ensure that the Society's or LPIC's work is distributed as equitably as possible having regard to considerations of specific expertise, geographic location, gender, equity and resources.

2. In each instance where the Society or LPIC retains counsel, there should be a written notation confirming that the selection criteria have been applied and setting out in brief terms the justification for the particular choice.

3. There should also be an independent review of the selection process on a periodic basis.

4. There should be a semi-annual report to Convocation of all law firms retained during the preceding six months, specifying the amounts billed for fees and disbursements by firm.

It is also suggested that LPIC avoid, wherever possible, retaining a bencher to represent LPIC and a member in an insurance matter where that matter is also the subject of a Law Society complaints investigation.

C. Policy Issues Considered by Committees or Convocation

For the balance of matters considered in Committee or Convocation, it is suggested that it is up to the individual bencher to decide whether or not to participate in the decision.

On a very simplistic basis, it is recognized that each bencher brings to their work at the Society a unique combination of personal and professional experience which will affect their approach to and ultimately their decisions upon the matters before Convocation. It is both understood and

expected that this is the case. To require individual benchers to declare a conflict of interest by virtue of the fact that some aspect of their personal or professional experience impinges upon or in some way relates to the issue before Convocation, would significantly impair not only the individual bencher's freedom to participate but also Convocation's ability to deal with business.

The Committee wrestled with how to offer useful guidance to benchers in reaching a decision.

Two situations were raised by way of example to illustrate instances where, in the Committee's view, benchers ought to refrain from participating.

1. Solicitor-Client Relationship

A bencher ought not to participate in a matter where:

1. the bencher or the bencher's firm acts for a client whose interests will be significantly affected by Convocation's decision, or
2. the bencher or the bencher's firm is, by virtue of a solicitor-client relationship, in possession of confidential information pertaining to the issue under consideration which may tend to influence the bencher's decision on the matter.

2. Employment Relationship

Where a bencher is an employee, the bencher ought not to participate in a matter where:

1. the bencher's employer has a significant interest, which is distinct from the interest of the profession at large, in a matter before Convocation, or
2. the bencher, by virtue of his or her employment, is in possession of confidential information pertaining to the issue under consideration which may tend to influence the bencher's decision on the matter.

V Rulings by Convocation

Lastly, your Committee considered whether there should be some procedures introduced to assist benchers in recognizing and dealing appropriately with conflicts of interest. There was unanimous support for this proposal. Accordingly, your Committee recommends as follows:

1. Benchers are invited to consult informally with the Treasurer to seek guidance in situations involving the appearance of, or a potential or actual conflict of interest relating to their responsibilities as benchers.

2. Benchers may also seek a ruling by Convocation on any situation involving the appearance of, or a potential or actual conflict of interest relating to their own or any other person's responsibilities as bencher.

3. Where a ruling is sought, Convocation may rule that the bencher or benchers who are the subject of the ruling:

(a) be required to withdraw from Convocation while the matter in question is under consideration;

(b) may remain in Convocation and be available to inform Convocation but may not otherwise participate in the debate or decision on the matter in question;

(c) may remain in Convocation and participate in the debate but may not vote on the matter in question; or

(d) may participate fully in the debate and decision on the matter in question.

4. Convocation shall maintain a record of such rulings as are made and where appropriate, such advice as is given, so that it is available for reference as required.

All of which is respectfully submitted
Arthur Scace, Chair

It was moved by Mr. Scace, seconded by Ms. Sealy that the amended Report of the Special Committee on Conflicts of Interest be adopted.
Carried

THE REPORT WAS ADOPTED

APPENDIX 3

EXCERPT FROM MARCH 24, 2005 REPORT TO CONVOCATION FROM THE EQUITY AND ABORIGINAL ISSUES COMMITTEE/ COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES

INFORMATION
EQUALITY TEMPLATE, DEFINITIONS OF EQUALITY AND DIVERSITY AND RECOGNITION OF ABORIGINAL AND FRANCOPHONE COMMUNITIES

1. In 1997 the Law Society adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report)*, which made sixteen recommendations seeking to provide a coherent approach to advancing new policies and enhancing the implementation of existing policies directed at advancing the goals of equality and diversity within the legal profession.

2. The recommendations were grouped under the following categories: policy development, advancement of equality and diversity policies, governance, education, regulation and employment/contracting for legal services.

3. In 2003 Convocation established the Bicentennial Report Working Group to review and report on the implementation status of the recommendations contained in the *Bicentennial Report*. The Bicentennial Report Working Group noted in its 2004 *Bicentennial Implementation Report* that,

> Advancing equality requires effective tools of measurement and analysis. The Law Society has an impressive array of initiatives but no coherent standards by which to measure their effectiveness and mark their progress. It is for this reason the Working Group has highlighted the need for an equity template that would include definitions of the terms "equity" and "diversity". Staff, bencher committees and Convocation would use the template to analyze the impact of policies on persons from equality-seeking, Aboriginal and Francophone communities.

4. The Bicentennial Report Working Group proposed that a definition of "equality" and "diversity" be developed and an equality decision-making template be formulated to guide the Law Society in its policy development activities.

Definitions of "Equality" and "Diversity" and Recognition of Aboriginal and Francophone Communities

5. In 1997 the Law Society confirmed its commitment to the promotion of "equity" or "equality" and "diversity" in the legal profession without providing a definition of those terms. The Bicentennial Report Working Group proposed that a definition of "equity" or "equality" and "diversity" be developed to provide consistency and to guide the Law Society in its policy and program development activities.

6. There has been much debate over the preference between "equity" and "equality" to characterize initiatives aimed at promoting diverse community representation and access to various spheres of the legal profession. The term "equity" focuses on treating people fairly by recognizing that different individuals and groups require different measures to ensure fair and comparable results.

7. "Equality" advocates on the other hand, focus on equality of result, access and opportunity – all of which translate to substantive equality. Equality does not mean sameness. The attainment of equality demands that equal consideration, deference and respect ought to be given to diverse perspectives, experiences and positions. In order to assess whether equality is reflected in the decision-making and policy-making activities of the Law Society, one must be concerned not only with equality of the end result (in that the final decision or policy can be fairly applied to all), but also with equality in the process. At all stages, there should be, and should be seen to be diversity in the consultation, access and end result.

8. Diversity by definition takes into account the different perspectives and positions that individuals occupy in society. However, this difference should not be interpreted as inequality – for each perspective is given equal acknowledgement and consideration. Diversity does not mean that <u>all</u> identifiable groups must directly participate, but rather that the development of the policy or the decision reflects a consideration of all identifiable groups and their possible intersections.

9. A comprehensive definition of "equality" and "diversity" must take intersectionality into account. Intersectionality has been defined as "intersectional oppression that arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone".[31] Intersectionality recognizes the unique experience of an individual based on the simultaneous membership in more than one group. For example, a Black woman who has been the victim of harassment by colleagues will experience the harassment in a completely different way than Black men or White women. This is because groups often experience distinctive forms of stereotyping or barriers based on a combination of race and gender, and not on race or gender separately. Another example would be the experience of a Muslim woman who is the victim of discrimination. Her experience would likely be different than the experience of a Muslim man victim of discrimination, and it is unlikely that the Muslim woman could categorize the discrimination as based on gender only, separately from race or religion. An intersectional analysis uses a contextual approach

[31] See Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims, Discussion Paper* (Toronto: Ontario Human Rights Commission, October 2001) at 3

by taking into account the simultaneous membership in more than one group, instead of categorizing each ground separately.[32]

10. Aboriginal communities hold a unique and distinct position within society and the legal profession. The *Charter of Rights and Freedoms* entrenches Aboriginal and treaty rights as distinct from equality rights recognized in the Charter. The Law Society recognizes and respects that Aboriginal communities are distinct from equality-seeking communities.

11. The *Canadian Charter of Rights and Freedoms*[33] also recognizes the unique position of Francophone communities within Canada. The Charter provides that English and French are the official languages of Canada. Both languages have equal status, rights and privileges as to their use in all institutions of the federal and New Brunswick governments. In Ontario, the *French Language Services Act*[34] guarantees each individual the right to receive provincial government services in French in the designated areas of the province. Also, the *Court of Justice Act*[35] provides that the official languages of the courts of Ontario are English and French. The Law Society recognizes and respects that Francophone communities are distinct from equality-seeking communities.

12. On March 10, 2005, the Committee adopted the following definitions of "equality" and "diversity" to be applied by the Law Society. The Committee also recognized the unique position of Aboriginal and Francophone communities.

> "Diversity": Diversity recognizes, respects and values individual differences to enable each person to maximize his or her own potential. The Law Society acknowledges the diversity of the community of Ontario, respects the dignity and worth of all persons and promotes the right of all persons and communities to be treated equally without discrimination.
>
> "Equality": Equality means equality of substantive access, opportunity nad result without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability.
>
> The Law Society recognizes and respects the uniqueness of the Aboriginal and Francophone communities and is committed to the promotion of rights for Aboriginal and Francophone communities.
>
> The Law Society recognizes that individuals may experience discrimination due to their membership in one or more of the identified grounds, groups or communities.

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[32] *Ibid.*
[33] Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the *Canadian Charter*).
[34] R.S.O. 1990, c. F. 32.
[35] R.S.O. 1990, c. C.43.

Application of template

13. A general Equality Template has been developed and is presented at Appendix 2. The questions included in the Equality Template have also been integrated within the Senior Management Team Initiative Proposal Form and the Policy Secretariat Policy Development Template. This ensures that equality considerations will be given to projects and initiatives considered for approval by the Senior Management Team and in policy development activities undertaken by the Law Society.

14. The Equality Template does not attempt to determine whether an initiative, project or policy should proceed. It assists in identifying the potential impact, positive or negative, of policies and initiatives on Aboriginal, Francophone and equality-seeking communities. The instrument is also useful to determine whether there are alternative ways to proceed that would alleviate negative impacts on Aboriginal, Francophone and equality-seeking communities and promote equality.

15. The Equality Template will be used in decision-making processes, policy development activities, implementation of policies, development of programs and initiatives, and in consultations undertaken by the Law Society. For example, the template may be used in:
    a. Senior Management Team's decision making processes;
    b. Policy development activities;
    c. Implementation of programs;
    d. Development and management of projects;
    e. Development of resources and tools; and
    f. Training and education programs.

16. The questions outlined in the general Equality Template may be integrated within already existing processes, or may be used as an Equality Template to be applied on its own.

17. The Senior Management Team will be responsible for the implementation of this initiative and the application of the template. The Senior Management Team has approved the proposed template.

18. A glossary of terms has also been developed for the Law Society and is presented at Appendix 3.

Appendix 2

Equality Template

The Equality Template does not attempt to determine whether an initiative, project or policy should proceed. It assists in identifying the potential impact, positive or negative, of initiatives, projects and policies on Aboriginal, Francophone and equality-seeking communities. The instrument is also useful to determine whether there are alternative ways to proceed that would alleviate negative impacts or that would accentuate the positive impacts on Aboriginal, Francophone and equality-seeking communities and promote equality.

The Law Society recognizes and respects the uniqueness of the Aboriginal and Francophone communities and is committed to the promotion of rights for Aboriginal and Francophone

communities. In addition, the Law Society is committed to the promotion of rights of members of equality-seeking communities. The Law Society defines members of “equality-seeking communities” as people who consider themselves a member of such a community by virtue of, but not limited to, ethnicity, ancestry, place of origin, colour, citizenship, race, religion or creed, disability, sexual orientation, marital status, same-sex partnership status, age, family status and/or gender. The Law Society also recognizes that people may be more vulnerable due to their membership in more than one of the identified groups or communities.

Managers and project leads should apply the instrument to initiatives, projects or policy development such as the development of internal policies and guidelines and significant projects and initiatives.

The questions outlined below may be integrated within already existing processes, or may be used as an equality template to be applied on its own.

1. What are the potential benefits for Aboriginal, Francophone and equality-seeking communities?

_____
_____
_____

2. What are the potential risks that may affect members of Aboriginal, Francophone or equality-seeking communities?

_____
_____

3. What are potential hurdles/barriers that may affect members of Aboriginal, Francophone and equality-seeking communities?

_____
_____

4. What is the foreseeable impact on members of Aboriginal, Francophone and equality-seeking communities?

_____
_____
_____

5. If foreseeable impact on members of Aboriginal, Francophone and equality-seeking communities, how could the initiative, project or policy be modified to eliminate or reduce negative impact, or create or accentuate positive impact?

_____
_____
_____

6. What, if any, additional research or consultation is desirable or essential to better appreciate the impact of the initiative, project or policy on diverse groups?

_____
_____
_____

7. Have issues of accessibility for persons with disabilities been considered?

_____
_____
_____

8. What, if any, aspects of the initiative, project or policy should be undertaken in both official languages?

_____
_____
_____

9. What benchmarks and measures can be used to assess the success and impact of the initiative, project or policy on members of Aboriginal, Francophone and equality-seeking communities?

_____
_____
_____

10. Is there an intended or unintended impact with respect to equality or diversity?
Yes □ No □

Appendix 3

Glossary of Terms

· *Aboriginal Peoples of Canada* – is defined in the *Constitution Act, 1982*[36] as including the Indian, Inuit and Métis peoples of Canada. The use of the term Indian is preferably restricted to the *Indian Act* and is usually viewed as inappropriate. The names of Aboriginal organizations and associations in Canada are often a reflection of the period of incorporation. We find names such as the Indigenous Bar Association, the Assembly of First Nations and the Native Women's Association of Canada. The reader is encouraged to seek to determine the preferred terminology used by the community or organization as a fundamental component of the dignity and respect that is encompassed in an equality commitment.

  - o *Aboriginal Rights* - The *R*. v. *Van der Peet*[37] case is the leading case in establishing the test that must be satisfied to successfully prove the existence of an Aboriginal right. The Aboriginal claimant must prove that an activity, custom or tradition was integral to the distinctive culture of the Aboriginal community prior to European contact.
  - o *Métis Peoples* – has been defined by the Supreme Court of Canada as not encompassing all individuals with mixed Indian and European heritage. Rather it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears. A Métis community is a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life.

[36] Section 35 of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.
[37] [1996] 2 S.C.R. 507.

- *Age* – is defined in the Ontario *Human Rights Code* to mean an age that is eighteen years or more, except in the context of employment where age means an age that is eighteen years or more and less than sixty-five years. Until the Ontario *Human Rights Code* is amended, it is not contrary for employers to require employees to retire at age 65 or older. Similarly, workers who remain employed past age 65 cannot complain if their employer treats them differently (for example in terms of remuneration, benefits, hours, vacation) because of their age.

- *Creed or Religion* – means a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single Supreme Being or deity is not a requisite. The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed. The Supreme Court of Canada defined "freedom of religion" in *Syndicat Northcrest* v. *Amselem*[38] as "the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials. But, at the same time, this freedom encompasses objective as well as personal notions of religious belief, "obligation", precept, "commandment", custom or ritual. Consequently, both obligatory as well as voluntary expressions of faith should be protected under the Quebec (and the Canadian) *Charter*. It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection"

- *Discrimination* - occurs when a law, program or policy – expressly or by effect – creates a distinction between groups of individuals which disadvantages one group based on shared personal characteristics of members of that group in a manner inconsistent with human dignity.

    - *Direct Discrimination* – involves a law, rule or practice which on its face creates harmful differential treatment on the basis of particular group characteristics.
    - *Adverse Effect Discrimination* – occurs when the application of an apparently neutral law or policy has a disproportionate and harmful impact on individuals on the basis of particular group characteristics. It is also referred to as "indirect" discrimination or "disparate impact" discrimination
    - *Systemic Discrimination* – occurs when problems of discrimination are embedded in institutional policies and practices. Although the institution's policies or practices might apply to everyone, they create a distinction between groups of individuals, which disadvantage one group based on shared personal characteristics of members of that group in a manner inconsistent with human dignity. Systemic discrimination is caused by policies and practices that are built into systems and that have the effect of excluding women and other groups and/or assigning them to subordinate roles and positions in society or organizations. Although discrimination may not exclude all members of a group, it will have a more serious effect on one group than on others.

[38] [2004] S.C.J. No. 46.

- *Disability* – The definition of disability is not fixed, static or universal. Disability is a multi-dimensional concept with both objective and subjective characteristics. When it is interpreted as an illness or impairment, disability is seen to be located in an individual's mind or body. When it is interpreted as a social construct, disability is seen in terms of the socio-economic, cultural and political disadvantages resulting from an individual's exclusion.[39] Disability is a functional limitation that is experienced by individuals because of the economic and social environment (or because of society's reaction to the limitation)

- *Diversity*: The presence of members from Ontario's communities at all levels of the social, economic and political structures which includes their meaningful participation at the decision and policy making levels.[40]

- *Equality* – is difficult to define because it represents a continuum of concepts. In various contexts it can mean equality of opportunity, freedom from discrimination, equal treatment, equal benefit, equal status and equality of results

    - *Formal Equality* – prescribes identical treatment of all individuals regardless of their actual circumstances
    - *Substantive Equality* – requires that differences among social groups be acknowledged and accommodated in laws, policies and practices to avoid adverse impacts on individual members of the group. A substantive approach to equality evaluates the fairness of apparently neutral laws, policies and programs in light of the larger social context in equality, and emphasizes the importance of equal outcomes which sometimes require equal treatment and sometimes different treatment.

- *Equity* – focuses on treating people fairly by recognizing that different individuals and groups require different measures to ensure fair and comparable results.

- *Equity Programs* – are proactive, planned programs designed to remedy group-based problems of systemic discrimination. They are premised on the recognition of the need to take positive steps to redress institutionalized discrimination and persistent social inequalities. Equity initiatives are also referred to in the United States as "affirmative action" programs.

- *Gender* - is the culturally specific set of characteristics that identify the social behaviour of women and men, the relationship between them and the way it is socially constructed. Gender is an analytical tool for understanding social processes. Gender may refer to male or female.

    - *Gender Equity* – is the process of being fair to women and men. To ensure fairness, measures must often be available to compensate for historical and social disadvantages disproportionately experienced by women. Equity leads to equality.

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[39] Government of Canada, Defining Disability as a Complex Issue (Gatineau: Office for Disability Issues, Human Resources Development Canada, 2003)

[40] Adapted from Working Group on Racial Equality in the Legal Profession, *Racial Equality in the Canadian Profession* (Ottawa: Canadian Bar Association, February 1999).

- *Gender Equality* – will be achieved when women and men contribute equally to – and benefit equally from – political, economic, social and cultural development; and society equally values the different contributions they make.
- *Gender Equality Analysis* – is a process to help identify and remedy problems of gender inequality that may arise in policy, programs and legislation. It is premised on an understanding of the continuing reality of women's inequality in Canadian society; and a recognition that our legal rules have historically been founded on explicit or implicit assumptions about appropriate gender roles that restrict women's choices and actions. The object of gender equality analysis is to replace those assumptions with a consideration of the specific situations of women in the labour market, in the household and in the community, and thus shape laws, policies and programs that reflect and respond to women's needs and priorities.

· *Gender Identity* – refers to those characteristics that are linked to an individual's intrinsic sense of self that is based on attributes reflected in the person's psychological, behavioural, and/or cognitive state. Gender identity may also refer to one's intrinsic sense of being male or female. It is fundamentally different from and not determinative of, sexual orientation.[41]

· *Racialized* – refers to persons whose social experiences may be determined by their presumed membership in a race. It identifies their vulnerability to different treatment or the denial of rights or privileges by individuals and institutions who believe that race should factor into their decisions-making.[42]

- *Race* – is the idea of observable physical differences as the basis for categorizing people. This idea has been around for some time though it has lost its scientific validity. The selection of characteristics that define people into racial groups has been arbitrary. Skin colour has been seen as very significant where ear shape of the length of arms and legs have not. Once the person has these characteristics they are assumed to share certain cultural attributes.
- *Systemic Racism* – Systemic or institutional discrimination consists of patterns of behaviour that are part of the social and administrative structures of the workplace, and that create or perpetuate a position of relative disadvantage for some groups and privilege for other groups, or for individuals on account of their group identity. This definition focuses attention on patterns of behaviour, not attitudes, on the assumption that ridding the workplace of racism begins (though does not end) with changing discriminatory behaviours.[43]

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[41] This definition is a modification of that found in the Ontario Human Rights Commission *Policy on Discrimination and Harassment because of Gender Identity* (Toronto: Ontario Human Rights Commission, March 30, 2000).

[42] Working Group on Racial Equality in the Legal Profession, *Racial Equality in the Canadian Profession* (Ottawa; Canadian Bar Association, February 1999).

[43] Carol Agocs, *Surfacing Racism in the Workplace: Qualitative and Quantitative Approaches to Identifying Systemic Discrimination*, September 2004, Prepared for The Race Policy Dialogue, Association for Canadian Studies and Ontario Human Rights Commission.

- *Sexual Orientation* – is more than simply a status that an individual possesses; it is an immutable personal characteristic that forms part of an individual's core identity, including innate sexual attraction. Sexual orientation encompasses the range of human sexuality from gay and lesbian to bisexual and heterosexual orientations.[44]

- *Special Programs* - a right to equality without discrimination is not infringed by the implementation of special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of discrimination.[45] Such affirmative action programs have sometimes been referred to as "reverse discrimination". However, the Ontario *Human Rights Code* and relevant case law clearly indicate that those programs are not discriminatory, but are established to provide substantive equality for disadvantaged groups. Section 15(2) of the *Canadian Charter of Rights and Freedoms*[46] also states that the right to equality "does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

REPORTS FOR INFORMATION ONLY

Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report
- Action Plan for Retention of Women in Private Practice
- Equity Public Education Events Schedule – 2006

[44] This definition combines elements of that used by the Ontario Human Rights Commission and that used by the National Lesbian and Gay Journalists Association.
[45] Section 14 of the Ontario *Human Rights Code*, R.S.O. 1990, chap. H.19.
[46] Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

Report to Convocation
January 26, 2006

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

Committee Members
Joanne St. Lewis (Chair)
Paul Copeland (Vice-Chair)
Marion Boyd
Richard Filion
Thomas Heintzman
Tracey O'Donnell
Mark Sandler
Bradley Wright

Purpose of Report: Information

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

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones [the Committee] met on January 12, 2006. Committee members participating were Joanne St. Lewis (Chair), Paul Copeland (Vice-Chair), Marion Boyd, Thomas Heintzman, Tracey O'Donnell, Mark Sandler and Bradley Wright. Bob Aaron (bencher), Nathalie Boutet (representative of the Association des juristes d'expression française de l'Ontario (AJEFO)), Katherine Hensel (Representative of Rotiio> taties Aboriginal Advisory Group), Milé Komlen (Chair of the Equity Advisory Group (EAG)), Anita Balakrisna (member of EAG), Evelyn Baxter (member of EAG), Ritu Bhasin (member of EAG), Andrea Horton (member of EAG), Julie Ralhan (member of EAG) and Mehreen Raza (representative of the South Asian Legal Clinic of Ontario) also participated. Staff members in attendance were Josée Bouchard, Anne Katherine Dionne, Sudabeh Mashkuri, Marisha Roman, Rudy Ticzon and Jim Varro.

FOR INFORMATION

ACTION PLAN FOR RETENTION OF WOMEN IN PRIVATE PRACTICE

2. At its January 12, 2006 meeting, the Equity and Aboriginal Issues Committee [the Committee] adopted the Action Plan for Retention of Women in Private Practice, presented at Appendix 1.

BACKGROUND

3. At the end of 1990, the Law Society faced its first challenges with equality issues brought on by the critical mass of women joining the profession in record numbers between 1975 and 1990.[1] The proportion of female lawyers in Ontario began to increase in the mid-1970s. In the next ten years the proportion of women entering law increased by about 2 percent in each year. A further increase brought the proportion of women entering private practice to more than 50 percent in the mid-1990.[2]

4. In the beginning of the 80s, women identified a range of issues and barriers affecting their ability to perform well in the legal profession. Those issues are presented in the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*. The Law Society began to address these issues by creating a standing committee of Convocation, the Committee, and the Equity Advisory Group and by conducting research and developing resources such as model policies for the legal profession.

5. Research findings today show that women still face inequalities and barriers in the legal profession. More particularly, research findings note that women do not remain in private practice throughout their careers. On November 23, 2005, the research firm Catalyst published a new study, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance*, which revealed that while both male and female lawyers experience work-life balance difficulty, the challenge of managing work and personal/family responsibilities is felt disproportionately by female lawyers, especially female associates.

6. The Committee's mandate is to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal peoples and Francophones, and to consult with the Equity Advisory Group [EAG], Rotiio> taties Aboriginal Advisory Group, AJEFO, women and equity-seeking communities in the development of such policy options.[3]

7. Further to its mandate, the Law Society has undertaken research projects and policy development activities to address the needs of women, and to address the specific needs of Francophone, Aboriginal and equality-seeking women.

8. In 2005, the Committee identified as a policy development priority for 2006 the elaboration of strategies to address the issue of retention of women in private practice. The action plan presented at Appendix 1 outlines the following:

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[1] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997) [*"Bicentennial Report"].*

[2] Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001* (Toronto: law Society of Upper Canada, October 2004).

[3] By-law 9 – Committees.

a. What are the findings about retention of women in private practice?
b. Information available in the Law Society database
c. Initiatives adopted by the Law Society
d. Best practices, programs and initiatives
e. Action plan

9. On December 14, 2005, Joanne St. Lewis, Chair of the Committee, invited benchers to participate in a working group on the retention of women in private practice. Representatives of the EAG, the Association des juristes d'expression française de l'Ontario and Rotiio> taties Aboriginal Advisory Group were also invited to participate. To date, the working group is composed of thirteen benchers and members of the profession.

10. The Equity Initiatives Department has also undertaken research of the Law Society database to determine trends in the careers of female and male lawyers in private practice based on types of work environment (large, medium or small firm and sole practice).

APPENDIX 1

Retention of Women in Private Practice Project
January 12, 2006
1:30 p.m.

Action Plan

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

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

Proposed Action Plan

Background

1. At the end of 1990, the Law Society faced its first challenges with equality issues brought on by the critical mass of women joining the profession in record numbers between 1975 and 1990.[4] The proportion of women lawyers in Ontario began to increase in the mid-1970s. In the next ten years the proportion of women entering law

[4] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997) [*"Bicentennial Report"*].

increased by about 2 percent in each year. A further increase brought the proportion of women entering practice to more than 50 percent in the mid-1990.[5]

2. In the beginning of the 80s, women identified a range of issues and barriers affecting their ability to perform well in the legal profession. Some of the issues are presented in the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession.* The Law Society began to address these issues by creating a standing committee of Convocation, the Equity and Aboriginal Issues Committee [the Committee], and the Equity Advisory Group and by conducting research and developing resources such as model policies for the legal profession.

3. Research findings today show that women still face inequalities and barriers in the legal profession. More particularly, research findings note that women do not remain in private practice throughout their careers.

4. The Committee's mandate is to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal peoples and Francophones, and to consult with the Equity Advisory Group, Rotiio> taties Aboriginal Advisory Group, AJEFO, women and equity-seeking communities in the development of such policy options.[6]

5. Further to its mandate, the Law Society has undertaken research projects and policy development activities to address the needs of women, and to address the specific needs of Francophone, Aboriginal and equality-seeking women. Research and policies developed by the Committee are listed below.

6. The Committee has developed an action plan to address the issue of retention of women in private practice. This report outlines the following:

    a. What are the findings about retention of women in private practice?
    b. Information available in the Law Society database
    c. Initiatives adopted by the Law Society
    d. Best practices, programs and initiatives
    e. Action plan

What are the findings about retention of women in private practice?

7. The issue of retention of women in private practice has been documented in numerous studies. The following information about the legal profession provides an overview of these findings[7] :

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[5] Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001* (Toronto: Law Society of Upper Canada, October 2004).

[6] By-law 9 – Committees.

[7] See for example the following studies: Fiona Kay, *Women's Careers in the Legal Profession* (Toronto: Law Society of Upper Canada, September 2004); Fiona Kay, *The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, September 2004); Michael Ornstein, *The Changing Face of the Legal Profession, 1971-2001* (Toronto: Law Society of Upper Canada, October 2004); Merill Cooper, Joan Brockman and Irene Hoffart, *Final Report on Equity and Diversity in Alberta's Legal Profession* (Calgary: Law Society of Alberta, January 26, 2004); Report of the Gender Equality Implementation Committee of the Nova Scotia

a. Type of work environment: Women are more likely than men to be in governmental positions.
b. Practice of law:

    i. Men are more likely than women to be engaged in the practice of law (11% of men and 21 % of women are not practising law).
    ii. Twelve percent of men and 21 % of women report having at least one position outside of law in the last six years.

c. Impact on maternity: Women in private practice are likely to delay having children.
d. Responsibility for childcare: Men spend 13 hours per week compared to women who spend 35 hours per week on childcare.
e. Impact of childcare on work: Women with very young children, adult children and no children work the same mean number of hours as men. Women with school-age children work slightly reduced full-time hours.
f. Part-time employment: Women are considerably more likely to pursue part-time jobs at some point in their careers.
g. Job interruptions:

    i. Interruptions of work are more common among women.
    ii. The activities between job interruptions are, for women, more likely to be for childcare while for men, they are for education or travel.

h. Partnership:

    i. Men are much more likely than women to be partners (34% of men and 16% of women).
    ii. Fewer women are senior partners (51% of women and 71% of men).
    iii. More women have alternative forms of partnerships (40% of women and 18% of men).

i. Sole practice: Men are much more likely than women to be sole practitioners (21% of men and 15% of women).

j. Remuneration:

    i. Women continue to receive lower remuneration than men of equivalent experience and practice settings (as government lawyers, sole practitioners and law firm partners).

Barristers' Society, *Professional/Personal Choices and the Practice of Law* (Halifax: Nova Scotia Barristers' Society, 1999). The Nova Scotia Barristers' Society noted that for women, the main reasons for leaving private practice were related to an improvement in the work environment (better pay, hours etc.), a need to balance work and the rest of their life and the fact that they did not like the environment of the law firm. See also articles such as Susan Black, *The Numbers Game* (The National, August-September 2002); Jennifer Hatfield, *Taking the Lead* (The National, August-September 2002); Kevin Marron, *Equality Struggle Remains in Law* (Globe & Mail: April 19, 2004); *Carpe Diem* (Lexpert: September 2003).

ii. Twice the percentages of men earn in excess of $300,000 and five times more women earn less than $60,000.

8. Fiona Kay has written about systematic gender bias and discrimination around partnerships in law. She concludes that the transformation of the profession involves reduced partnership opportunities for women and men, and that women fare worse than men in the competitions.[8]

9. Women identify the following challenges in private practice:

a. There is a lack of part-time employment, part-time partnerships, job sharing and flexibility in hours.
b. There is a perception that part-time partnerships, job sharing and flexibility in hours have a negative impact on chances of advancement and women are discouraged from entering into such agreements.
c. When women have a family, there is a lack of workplace supports to accommodate their needs.
d. Women face challenges in balancing career and family life.
e. There is inequality for women in the legal workplace.
f. There is a lack of recognition for the value of alternative careers and also a lack of alternative choices.
g. There are inadequate maternity leave plans and workplace supports for lawyers and families.
h. There is discrimination and harassment.
i. Women feel excluded from informal internal networks.
j. Women lack role models.
k. Women have less client development/general management experience and opportunities to develop their client development skills.
l. Women lack mentoring opportunities.

10. The *Report of the Sole Practitioners and Small Firms Task Force* points to the difficulty women who are sole practitioners or women who are partners or associates in small firms may face. In the target group, 21% of respondents were women. The report indicates the following findings:

a. Women are more likely to be associates or employees of small firms, (33% of that sub-group), and less likely to be partners in those firms (13% of that sub-group).
b. In the sole practitioners and sole proprietors groups, the percentage of women is closer to the average.

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[8] Fiona M. Kay and John Hagan, "Changing Opportunities for Partnership for Men and Women Lawyers during the Transformation of the Modern Law firm" (1995) 32 Osgoode Hall Law Journal 413. Fiona Kay also looked at gender disparities in the Quebec legal profession in "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2002) 47 McGill L.J. 699. The Honourable Wendy Baker discusses the structure of the workplace in the legal profession from the perspective of a woman who has practiced law for fifteen years and who is a member of the Supreme Court of British Columbia. See "Structure of the Workplace or, Should We Continued to Knock the Corners Off the Square Pegs or Can We Change the Shape of the Holes?" (1995) 33 Alta. L. Rev. 821.

c. In the target and non-target groups, women are less likely to be partners and more likely to be associates or employees in law firms.
d. Participants in the women's group of equality seekers reported much lower annual income than did their counterparts in the men's group.
e. The focus group with women in the target group discussed the constraints imposed on having children.
f. Female focus group participants discussed issues of sexual harassment and condescension toward women within the law profession and reported that sexual harassment is pervasive in the legal profession.
g. Gender differences were perceived by women in the target group to be fundamental in shaping perceptions related to managing work and life. In the women's focus group, the conversation about specific drawbacks of the practice context spontaneously gave way to a discussion about the many disadvantages that women faced in practising law. The women all agreed that practising law in a sole practice or small firm environment imposed very serious restrictions on the viability of having children.
h. Participants noted the lack of maternity leave benefits for sole practitioners.

11. Catalyst, a research and advisory organization working to advance women in business, studied the issue of work life balance within the legal profession. The American Catalyst's 2001 study of 1400 lawyers found that 70% of both men and women report work/life conflict and a third of men, and almost half of women identify work/life balance as one of their top three reasons for choosing their employer. While those with children report the highest levels of conflict, men and women without children also find it difficult to balance their professional and personal life.[9]

12. Although both men and women are seeking better work/life balance, their experiences in law firms and in the legal profession differ significantly and may influence the way law firms and the Law Society tackle these issues. For example, women are more interested in reduced work hours than men. While half of women in law firms or in house want reduced work schedules, less than 20% of men indicate an interest in such arrangements. These issues affect women's careers more than men's.

13. Catalyst also published reports about gender related issues in Canadian law firms. Key findings indicate that 62% of women associates and 47% of men associates intend to stay with their firms for five years of less. Women and men report the same top factors as important in choosing to work at another firm: an environment more supportive of family and personal commitments, and more control over work schedules. The average total cost of an associate's departure is $315,000, approximately twice the average associate's salary. The average firm breakeven point (the point at which revenues generated by an associate equal the cost of recruitment training, and the potential cost of departure from the firm) on an associate is 1.8 years.[10]

14. Catalyst also found that men partners perceive and experience the law firm work environment differently from women partners, women associates, and men associates. Firms need to recognize that, while both men and women lawyers experience work-life

[9] Catalyst, *Women in Law – Making the Case* (New York: Catalyst, 2001).
[10] Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (New York: Catalyst, 2005).

balance difficulty, the challenge of managing work and personal/family responsibilities is felt disproportionately by women lawyers, especially women associates.[11]

15. Studies also indicate that both men and women identify family life as the aspect of their lives that give them the most satisfaction.[12] However, women are leaving law more quickly than men, due in large part to hour demands, lack of flexibility, lack of accommodation for childcare and stressful practices.[13]

16. Women from Francophone, Aboriginal and/or equality-seeking communities often face greater challenges due to their membership in those communities. For example, studies have shown that lawyers with disabilities face barriers entering and remaining in the legal profession, more particularly in private practice.[14] Lawyers with disabilities are also more likely than lawyers without disabilities to leave private practice because of illness or injury and involuntary loss of employment, inability to find a job practicing law, discrimination and credit for work. Studies also show that there is a high non-practising rate of Aboriginal lawyers compared to other segments of the legal profession.[15] Racialized lawyers are more likely than non racialized lawyers to leave the practice of law because of an inability to find a job.[16]

Information available in the Law Society database

17. The studies referred to above do not indicate gender related trends in the legal profession based on size and type of practice. The Law Society database, however, will allow us to follow the career paths of men and women called to the bar in a specific year who entered private practice within two months of entering the legal profession. The Equity Initiatives Department is studying the database of lawyers called to the bar in 1993 who have entered private practice immediately following their call. It is expected that findings about their career paths will be available for the committee's consideration in January 2006.

Initiatives adopted by the Law Society

18. To date, the Law Society of Upper Canada has undertaken research and developed the following policies and initiatives to inform and influence the legal profession about gender related issues in law. Some activities of the Law Society may not specifically focus on issues of gender within the legal profession but inform nonetheless our

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[11] Catalyst, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (New York: Catalyst, 2005).
[12] Fiona Kay, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession* (Toronto: Law Society of Upper Canada, 1996).
[13] See Catalyst studies and Jean McKenzie Leiper, "Women Lawyers Caught in the Time Crunch" (1998) 13 (2) Canadian Journal of Law and Society 117.
[14] *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession* (Toronto: Law Society of Upper Canada, 2005). See also *Lawyers with Disabilities: Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001) and *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004).
[15] *Addressing Discriminatory Barriers Facing Aboriginal Law Students* (Vancouver: Law Society of British Columbia, 2000).
[16] See Law Society of Alberta report. Also see *Racial Equality in the Canadian Legal Profession* (Ottawa: Canadian Bar Association, 1999).

understanding of barriers faced by women in private practice. Examples of such studies include the sole practitioners and small firms study and the study about access to the legal profession by students and lawyers with disabilities. The following research reports have been published by the Law Society:

a. Fiona Kay, *Women's Careers in the Legal Profession* (Toronto: Law Society of Upper Canada, September 2004);
b. Fiona Kay, *The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, September 2004);
c. Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001* (Toronto: Law Society of Upper Canada, October 2004);
d. *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession* (Toronto: Law Society of Upper Canada, December 2005);
e. *Sole Practitioners and Small Firms Task Force Report* (Toronto: Law Society of Upper Canada, March 24, 2005);
f. The Discrimination and Harassment Counsel Semi-Annual Reports;
g. *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, updated December 2004).

19. The following model policies and statement of principles have been published by the Law Society:

a. *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (updated March 2003);
b. *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (updated 2005);
c. *Guide to Developing a Policy Regarding Flexible Work Arrangements* (updated March 2003);
d. *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms* (March 2002);
e. *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment* (May 2004);
f. *Respect for Religious and Spiritual Beliefs: A Statement of Principle of the Law Society of Upper Canada* (March 2005);
g. *Dialogue with Lawyers: Religious and Spiritual Beliefs and The Practice of Law* (April 14, 2005).

20. The Law Society also offers the following programs:

a. Professional Development Programs – Promoting Equality and Diversity in the Workplace;
b. Equity and Diversity Mentoring Program; and
c. Public Legal Education Program.

21. Model policies have also been adopted by other law societies, as noted at the end of this Action Plan and in the report *Promoting Dialogue, Creating Change: Equity and Diversity in the Legal Profession – Report on Equity Initiatives and Resources in the Legal Profession* (Toronto: Law Society of Upper Canada, January 2003). The *Promoting*

Dialogue report provides an overview of policies, programs and initiatives in the area of equity and diversity that have been adopted by organizations and law societies in Canada.

Best practices, programs and initiatives

22. A number of best practices, programs and initiatives have been adopted by law societies and organizations in Canada and the United States to promote the retention of women in the legal profession, more particularly in private practice. The following provide some examples of programs and initiatives. Those programs and initiatives may be beneficial to certain types of work environment but not others. For example, some programs may apply specifically to sole practice while others apply to medium or large law firms.

23. The Law Society could be a catalyst within the legal profession by guiding law firms and sole practitioners in the development of initiatives and programs and by providing best practices and resources to the legal profession. The Committee is encouraged to consider these practices and programs when developing recommendations.

Model Policies

24. The Law Society regularly publishes model policies for the legal profession. Model policies on the following topics have not been developed and would benefit women in the legal profession:

    a. Parental and maternity leave;
    b. Bereavement leave, compassionate leave and parental responsibility leave;
    c. Workplace violence policy;
    d. Equality in employment interviews.
    e. Gender inclusive interviews or best practices for employment interviews;
    f. Respectful workplace.

Professional Development Programs and Organizational Change

25. Policies that promote, for example, flexible work arrangements and flexible partnership arrangements, are only effective if the senior partners in the law firms support them. Therefore, it may be necessary for law firms to not only adopt policies that promote flexible work practices, but also to educate members of the firm about the benefits of such policies.

26. In the U.S., major accounting firms have developed firm-wide programs to assist employees in fashioning individual work/life balance plans and provide information on others experiences with their arrangements. For instance, more than 650 administrative and client service professionals at Deloitte & Touche have flexible work arrangements that include compressed work weeks, reduced work weeks, reduced work loads, periodic reduced workloads and telecommuting. Senior management members were trained extensively on alternate work arrangements. The focus of the training was on attitudes. All employees, female and male, were encouraged to take advantage of the alternate work arrangements. The firm emphasized the idea that a happy workforce is a productive workforce and ultimately, the firm would incur less costs related to attrition rate of employees and lack of productivity.

27. The Law Society can have an educational role to play in developing professional education programs that promote such policies.

Alternative Firm Structures

28. Articles have been published about alternative firm structures that cater to the needs of women, more specifically women during childbearing years and with child or elder care responsibilities. Some firms, for example, differ from traditionally run firms in that associates have flexible schedules and divide their time between home and work. The measure of success for some firms is not based on the number of hours billed, but on whether or not the quality work gets done. Models of successful alternative firm structures have been reported for example in small firm settings.[17] The Law Society could publish information about effective models.

Workplace Wellness and Educational Programs

29. Some law firms have adopted programs to address the challenges faced by firm's professionals and working parents. For example, Borden Ladner Gervais has adopted a program entitled "Parents at Work" which includes monthly lunch and learn seminars offered at the firm. Each month, an expert makes a presentation about a parenting topic such as child discipline, education planning, family health and nutrition, childcare options, and family financial management. Experts include pediatricians, registered dieticians, speech and language pathologists, occupational therapists, safety experts, education consultants and life coaches. The program is meant to give the tools to assist in making the balancing act between work and home possible.[18] Programs could also include workplace wellness programs, such as:

    a. Health screening;
    b. Massage therapy;
    c. Walking clubs; and
    d. Yoga.

Models of Alternative Partnerships

30. Fiona Kay's findings indicate that while many men and women in private practice have ascended to positions of senior partnership, an accompanying trend can be seen of women moving into alternative forms of partnerships such as part-time, salaried and other partnership arrangements. She also notes in an article written in 1994 about opportunities for partnership, that there is a positive relationship between partnership and parental leave. What is also noteworthy in her article is that no men in the sample of her study at that time had taken parental leave.[19] She also indicated that alternative partnerships are emerging but are not well documented or understood. In her view, law

[17] See for example Jennifer Batchelor, "The Perfect Fit: Dissatisfied Female Attorneys Start Own Firms", 16 September 2002, The Legal Intelligencer available at www.law.com.
[18] See Robyn A. Grant, "Parenting help now available at workplace" October 22, 2004, Vol. 24 The Lawyers Weekly.
[19] Fiona M. Kay and John Hagan, "Changing Opportunities for Partnership for Men and Women Lawyers During the Transformation of the Modern Law Firm" (1994) 32 (3) Osgoode Hall Law Journal 413.

societies and bar associations should be involved in monitoring processes that assess the forms of associate and partnership arrangements used within firm settings. Finally, she stresses that firms should be made more accountable for their partnership decisions.

31. Therefore, the following initiatives could be undertaken by the Law Society to address issues of partnership within private practice:

a. Work with law firms to identify existing models of partnership agreements;
b. Identify the best models and make them available to the legal profession;
c. Develop a communication and education strategy to promote the importance of alternative types of partnership agreements for men and women;
d. Develop model partnership selection processes that are fair and transparent.

Child Care Assistance

32. Fiona Kay found that while men spend 13 hours per week on child care, women spend 35 hours per week on child care. Lexpert magazine, in 2003, noted "the inescapable reality is that women are the child bearers and still the primary caregivers on the home front."[20] These findings are consistent with numerous studies about gender and the legal profession. Models have been developed, within the legal profession and other professions, to meet the needs of working extended hours or of having the primary responsibility for childcare. The following programs have been implemented by organizations. The Law Society could publicize information about best models to meet the needs of those having primary childcare responsibilities, such as:

a. Models and costs related to onsite childcare;
b. Availability of off-site childcare subsidies;
c. Models of emergency back up childcare;
d. Programs that provide benefits such as free meals and laundry services.

Income Replacement Model

33. In 1991, the Barreau du Quebec created its Bebe-Bonus plan. Under that plan, the Barreau gives to members who have given birth or adopted a child, an amount equivalent to half of their membership fees for the year. This program is similar to the Law Society of Upper Canada's reduced fee category at 25%.

34. In 2005, the Barreau adopted an additional policy to compensate for loss of financial support during maternity or parental leaves. On the birth or adoption of a child, the Barreau gives to the member an amount equivalent to the operating expenses incurred while his/her professional activities are temporarily suspended. For maternity leaves, the lawyer receives up to 3-months benefits, for parental leave, up to 1-month benefits and for adoption, up to 1-month benefits. Those entitled to the plan are members not covered by other public or private parental plans, such as:

a. Employment insurance or any similar governmental plan; or

[20] Lexpert, "Carpe Diem", September 2003.

b. Parental benefits offered by the employer (through formal policy or individual agreement).

35. A member entitled to benefits under the plan receives the lesser of actual monthly operating expenses incurred (rent, telephone, staff, etc.) or $1,500 per month. Maternity and parental benefits are cumulative and a female lawyer can receive a maximum of $6,000 ($1,500 for 4 months). The program is funded by a mandatory contribution of $30 per year per member of the Barreau.

36. The program was adopted due to lack of governmental financial support for self-employed workers and was designed as a temporary measure until the government begins to fund self-employed workers on leave.

37. The Barreau du Quebec has 21,000 lawyers, 45% of whom are women and about 5,000 of lawyers, men and women, are self-employed.

38. Between January 1, 2005 and January 1, 2006, 34 members of the Barreau applied for benefits under the Barreau's income replacement plan (29 women and 5 men).

39. The Preamble of the Barreau du Quebec's income replacement plan stipulates that the necessity of such a plan should be reviewed upon the adoption of a governmental plan to provide financial support to those who are self-employed. On January 1, 2006, the Quebec Parental Insurance Plan came into effect in Quebec (the QPIP). The QPIP stipulates that financial benefits be paid to eligible workers, salaried or self-employed, who take maternity leave, parental leave, paternity leave or adoption leave. The QPIP is an income replacement plan. It is expected that the Barreau du Quebec's income replacement plan will be declared obsolete at the Annual General Meeting on May 13, 2006. Information about the Quebec's plan is available on-line at http://www.rqap.gouv.qc.ca/index_en.asp.

40. The Law Society could consider the feasibility and effectiveness of adopting an income replacement plan based on the experience of the Barreau du Quebec.

Client Development Opportunities and Training

41. Studies have shown that one key component to being successful in private practice is the ability to recruit clients and maintain a strong client base. However, the culture of law firms and private practice has traditionally included client development opportunities that focus on attracting a male client base.

42. Women at WeirFoulds have attempted to address this issue by creating WeirFoulds Women, a group of women lawyers who get together for both professional and client development, with an eye to the subtle differences between how men and women do business. The women have dinner twice a year and have developed opportunities for client development by hosting events for female clients. Recent calls to the bar are welcome to join and network.

43. It is important to ensure that women who are recent calls to the bar are provided with good and relevant client development training opportunities and opportunities to network and to recruit clients in environments that are amenable to their needs and interests.

Also, such a program aims at increasing client development opportunities for more senior female lawyers in the firm.

Mentoring and Peer Support

44. Fiona Kay noted that mentorship is not as prominent in her 2004 study Women's Careers in the Legal Profession, as it was in the earlier 1996 and 1990 surveys. Participants nevertheless mentioned the need for more formal and informal mentoring within law practice, particularly for women and ethnic or cultural groups.

45. Mentoring and peer support programs can be established within law firms or are available through the Law Society and other associations such as the Black Lawyers' Association of Canada and the Canadian Bar Association. The Law Society can assist in the development of such programs, and can provide matches for female lawyers.

Foster Better Workflow to Ensure that Men and Women have Equal Access to Files.

46. Models to foster better workflow to ensure that men and women have equal access to files could be developed for law firms.

Recognition of Pro Bono Work

47. Firms that are committed to pro bono service need to translate their principles into formal policies and reward structures. Expectations about lawyer involvement should be explicit, and assistance in identifying appropriate work should be available. Pro bono service should be counted fully toward billable hour targets, and should be valued positively in compensation and promotion decisions. Support and supervision should be provided, along with opportunities to work part-time in public interest organizations. This work is already effectively done by Pro Bono Law Ontario.

Use of Temporary Lawyers with no Expectation of Making Partners (U.S. experience)

48. Law firms in the United-States have adopted practices by which they retain temporary lawyers with no expectations of making partners. Those lawyers provide assistance on files as required. Such models could be developed in Canada.

Commitment Programs

49. In the United States, state bars have adopted pledge programs to increase participation of female lawyers and lawyers from equality-seeking groups in the profession. Through the pledge program a senior member of a firm agrees on behalf of the organization to increase the participation of female legal professionals in their organization. The programs are voluntary but the state bar provides incentives through recognition and there is positive publicity for the organizations through release of list of participants to the media. Such programs have been successfully implemented for example by the Bar Association of San Francisco in an effort to increase the recruitment and retention of women in law firms.

Action Plan

50. The above-mentioned initiatives are examples of programs and initiatives that could be developed by law firms to assist in the retention of women in private practice. The Law Society's role in the legal profession is to provide the resources, through best practices and programs, to assist law firms in developing their workplace culture and processes to meet the needs of women in private practice. The following action plan was adopted by the Committee.

Phase 1 – Creation of a Working Group of the Equity and Aboriginal Issues Committee (December 2005 – January 2006)

51. The Chair of the Equity and Aboriginal Issues Committee has invited all female benchers and representatives of the Equity Advisory Group, the Association des juristes d'expression française de l'Ontario and Rotiio> taties Aboriginal Advisory Group to join the working group. To date, we have received positive responses from nine female benchers and lawyers. The first meeting of the working will be held in January 2006. A chair of the working group will be selected at that meeting.

Phase 2 – Study of membership data base to identified trends based on work environment (Anticipated completed date January 2006)

52. The Equity Initiatives Department is compiling information from the Law Society data base about lawyers called to the bar in 1993 who entered private practice within 2 months of their call. The purpose of the study is to identify gender related trends between different work environments, such as sole practice, small, medium and large law firms. Such a study will be used as background information for the working group.

Phase 3 – Identification of ongoing work by the Committee that will not require further action by the working group (January 2006)

53. The Committee has identified gender related policy development activities that are already on the list of work in progress. For example, a model policy on maternity and parental leave is being developed for consideration before the end of term. Other activities such as exit surveys for those leaving private practice and the profession are also under development by the Committee and will not require extensive work by the working group.

Phase 4 – Working with law firms (February 2006 – May 2006)

54. The Working Group, with the assistance of the Equity Initiatives Department, will work with large, medium and small law firms to develop its recommendations and ensure effective implementation. Law firms have recognized the urgency and importance of implementing strategies for the retention of women in private practice. Large law firms have sponsored the work of Catalyst in developing its series on flexibility in Canadian law firms. The costs of associates' departures from law firms and the competitive advantage of diversity are well documented. Building strong partnerships with law firms is critical to the success of recommendations and implementation of programs and initiatives.

55. The Law Society already works closely with Directors of Associates and Directors of Professional Development in law firms. Meetings throughout the province will be arranged with them to identify:

    a. Best practices in place in law firms to promote the retention of women.
    b. The role the Law Society should play in influencing change in this area. This would include identifying policies, programs and initiatives that could assist law firms in the retention of women.

56. The Working Group will identify the law firms who which to participate more actively in this project.

57. The Working Group should also consider the role the Law Society could play in addressing the needs of female sole practitioners. This work is already under consideration by the Small Firms Sole Practitioners Task Force.

Phase 5 – Report to the Equity and Aboriginal Committee (May 2006) and to Convocation (June 2006)

58. It is anticipated that the Working Group will make preliminary recommendations to the Equity and Aboriginal Issues Committee in May 2006. It is anticipated that recommendations will be brought forward to Convocation in June 2006.

Phase 6 – Implementation and evaluation of effectiveness of initiative

59. It is anticipated that the Equity Initiatives Department will implement Convocation's recommendations in the Summer and Fall 2006 and Winter 2007. This will include developing mechanisms to evaluate the effectiveness of the initiative.

<u>Model Policies adopted by other law societies:</u>

Law Society of Alberta

Alternative Work Schedules

Guidelines for Drafting and Implementing Maternity and Parental Leave Policies

Sample Maternity and Parental Leave Policy

Guidelines for Drafting and Implementing Bereavement Leave, Compassionate Leave and Parental Responsibility Leave Policies.

Policy on Workplace Diversity and Equality Principles for Work by Outside Lawyers and Law Firms.

Guidelines for Drafting and Implementing a Workplace Violence Policy.

Equality in Employment Interviews.

Guidelines for Gender Inclusive Interviews.

Model Policy on Harassment.

Law Society of British Columbia

Model Policy on Workplace Harassment

Model Policy on Maternity and Parental Leave

Alternative Work Arrangements

Workplace Equity

Gender-Neutral language Policy

Law Society of Manitoba

Guidelines and Model Policy on Alternative Work Schedules

Model Policy on Maternity and Parental Leave

Model Policy on Respectful Workplace

Best Practices for Employment Interviews

Nova Scotia Barristers Society

Sexual Harassment Policy

Resolution of Council Regarding a Sexual Harassment Policy

Maternity and Parental Leave Policy

Guidelines on Implementing an Alternative Work Arrangement Policy

Alternative Work Arrangement Policy

Articling Interview Guide for Equity in Employment.

EQUITY PUBLIC EDUCATION SERIES SCHEDULE - 2006

1. Black History Month topic: *Lawyers Working with Communities to Assist At- Risk Youth*
   Event date: February, 22, 2006
   Location:
   3:00 p.m. – 6:00 p.m.: Workshops and panel discussion, Donald Lamont Learning Centre
   6:00 p.m. – 7:00 p.m.: Reception, Law Society Convocation Hall

2. International Women's Day topic: *Trafficking of Women and Children*
   Event date: March 8, 2006
   Location:

4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

3. International Day for the Elimination of Racial Discrimination topic: *Canadian Legal Response to Torture – Promoting Human Rights*
Event date: March 24, 2006
Location: University of Ottawa, Alumni Auditorium of the Jock Turcot University Centre building, 85 University, Ottawa.
3:00 p.m. – 6:00 p.m.: Panel discussion
6:00 p.m.: Reception

4. National Holocaust Memorial Day topic: *Eliminating On-Line Propaganda of Racial and Religious Hatred*
Event date: April 26, 2006
Location:
4:00 p.m. – 6:00 p.m.: Panel discussion, Law Society Convocation Hall
6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

5. South Asian Heritage Month topic: *How the Law Recognizes Culturally Diverse Family Structures*
Event date: May 3, 2006
Location:
4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

6. Access Awareness topic: *Disability Issues as they Relate to Federal Laws (Telecommunications, Transportation and Immigration Laws)*
Event date: TBD
Location: Ottawa

7. National Aboriginal Day topic: TBD
Event date: June 8, 2006
Location:
4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

8. Pride Week Event topic: TBD
Event date: June 15, 2006
Topic: TBD
Location:
4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

9. AJEFO Conference
Event date: 22 au 25 juin 2006
Location: Deerhurst Resort, Huntsville, Ontario

10. Louis Riel Day
Event date: November 16, 2006
Topic: TBD
Location:

4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

Portraits Task Force Report

Report to Convocation
January 26, 2006

Portraits Task Force

Task Force Members
Professor Constance Backhouse (Chair)
Hon. George D. Finlayson, Q.C.
Laura L. Legge, O.Ont., Q.C.

Purpose of Report: Information

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

TASK FORCE PROCESS

1. The Task Force was appointed in May 2005. The Task Force members are Constance Backhouse (Chair), George Finlayson and Laura Legge. Sophia Sperdakos and Terry Knott are staff to the Task Force. The Task Force met on one occasion on September 21, 2005.

INFORMATION
PROTOCOL FOR HANGING TREASURERS' PORTRAITS

Background

2. For some time there has been an *ad hoc* approach to hanging the portraits of former Treasurers. The approach has been a mixture of tradition and expediency that is becoming less and less viable as the collection of portraits grows. Because of these space issues it has become necessary to develop a clear protocol for hanging portraits.

3. The Task Force was requested to develop a workable protocol, which it has done. This report sets out, for Convocation's information, the protocol the Task Force developed. Staff will implement the protocol on an ongoing basis. The protocol includes a number of specific practices that the Task Force believes are the best solution to the congestion problem (particularly in Convocation Room), which will otherwise worsen. Moreover, the

protocol is premised on the belief that there are many locations within the Law Society's side of Osgoode Hall (hereinafter referred to as "the building") and the bencher wing, not just the Convocation Room, that are appropriate locations of recognition for the portraits.

The Protocol

4. The most recent past Treasurer's portrait will be placed in the Convocation Room directly behind the current Treasurer's chair. If a former Treasurer does not have his or her portrait painted immediately following his or her term, it will not be placed behind the current Treasurer's chair, but will be placed elsewhere in the Convocation Room in keeping with the provisions of the protocol.

5. Each time the portrait of a new former Treasurer is placed in the Convocation Room another portrait in the Room will be moved to a different location, in most cases immediately outside the Convocation Room (hereinafter referred to as "the landing").

6. The portraits of former Treasurers who are appointed to the bench will not hang in the Convocation Room while these former Treasurers are on the bench. The general rule will be that on their retirement their portraits will be returned to hang in the Convocation Room if space can be made for them, and subject to paragraph 7 below. If there is no room on the walls of the Convocation Room and subject to paragraph 7 below, the portrait will be moved to another location, in most cases to the Portrait Room (formerly the Small Dining Room) or the landing.

7. The portraits of former Treasurers who no long participate regularly in the work of Convocation or Committees or Task Forces, will be moved, at the discretion of the sitting Treasurer, out of the Convocation Room to another location, in most cases the landing or the Portrait Room or eventually elsewhere in the building.

8. The portraits of deceased former Treasurers will be moved out of the Convocation Room to another location, in most cases the landing or the Portrait Room or eventually elsewhere in the building.

9. Given the careful positioning of paintings that fit the décor and spacing in Benchers' Reception and the Benchers' Dining Room, these paintings will not be moved and other paintings will not be added to these locations, if at all possible.

10. To free up wall space on the landing to accommodate portraits being moved out of the Convocation Room as well as those portraits currently in storage, the following portraits will be gradually relocated:

    a. The portraits of the three former Treasurers who are currently on the bench will be moved to the renovated Portrait Room. These are the portraits of Mr. Justice Armstrong, Mr. Justice Spence and Mr. Justice Ferrier.[1]

[1] Renovations are currently being done to both the Small Dining Room (the Portrait Room) and the Museum Room. The portraits relocation and the renaming of the Small Dining Room will be coordinated with this renovation, expected to be complete in the summer of 2006.

b. The portraits of three former Law Society Under Treasurers/Secretaries will be moved to a location elsewhere in the building (see paragraph 11). These are the portraits of Messrs. Rendell Dick, Earl Smith and Kenneth Jarvis.

c. Other portraits will be moved over time as the progression out of the Convocation Room warrants.

11. Staff has located appropriate additional wall space in a number of locations in the building as follows:

Location		Estimated Number of Paintings
Lamont Learning Centre	(possibly)	2
Small Dining Room (to be renamed the Portrait Room)		6
Museum Room		1
1st floor corridor leading from Ct of Appeal to LSUC additional		4
Outside of Convocation room		1
Vestibule area outside of CEO's office		1
Stairway to Barristers' lounges		2-3
Outside of Museum Room and Small Dining room (PR)	(possibly)	1
Walls facing elevators in the North Wing Renovation 3rd floor (PR)		2
Total paintings		20-21

12. On an ongoing basis, the Law Society's curator will continue to be responsible for determining the location and re-location of portraits, keeping in mind the age, size, aesthetic quality, and condition of the portraits and applying this protocol.

Access to Justice Committee Report

- Proposal for New Law School in Thunder Bay

Report to Convocation
January 26, 2006

Access to Justice Committee

Committee Members
Marion Boyd, Co-Chair
Laurie Pawlitza, Co-Chair
Bonnie Warkentin, Vice-Chair
Andrea Alexander
Paul Copeland
Mary Louise Dickson
Richard Filion

Purposes of Report: Decision & Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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COMMITTEE PROCESS

1. The Committee met on January 11th, 2006. Members in attendance were Marion Boyd (Co-Chair), Laurie Pawlitza (Co-Chair), Bonnie Warkentin (Vice-Chair) and Andrea Alexander. Staff in attendance were Malcolm Heins (CEO), Josée Bouchard, Sheena Weir and Julia Bass.

FOR DECISION
PROPOSAL FOR A LAW COMMISSION OF ONTARIO

MOTION

2. That the Law Society of Upper Canada continue discussions with the other interested parties with a view to the establishment of a new Law Commission of Ontario.

Introduction and Background

3. In his speech at the opening of the courts on January 4th, 2006 the Attorney General of Ontario announced the government's intention to establish a new Law Commission of Ontario. The press release is attached at Appendix 1, together with a copy of the Attorney General's speech. The previously existing body, the Ontario Law Reform Commission, was wound up in 1995.

4. The model under consideration involves a partnership between the government, the Law Society, the Law Foundation and Osgoode Hall law school at York University. This would be similar to the model of the Alberta Law Reform Institute (ALRI) at the University of Alberta in Edmonton. An outline of the proposal, including a draft budget, was

forwarded to the Law Society by Dean Patrick Monahan of Osgoode Hall and is attached at Appendix 2.

5. The provincial government is understood to be offering contributions in kind, rather than a financial contribution to the proposed body. This is in contrast to most other bodies of this nature. The proposed budget totals roughly $1.3million, of which the Law Society is being asked to contribute $100,000 per year. (By comparison, the former Ontario Law Reform Commission had a budget of about $ 1.7 million at its peak in 1992/93).

6. On December 16th, Acting Treasurer Ruby wrote to Dean Patrick Monahan expressing reservations about the proposal. Dean Monahan replied on December 21st. This correspondence is attached at Appendix 3.

7. Five other provinces have law reform bodies: British Columbia, Alberta, Saskatchewan, Manitoba and Nova Scotia. A list of these and some similar bodies in other jurisdictions is attached at Appendix 4, together with an excerpt from a paper on the subject by Gavin Murphy. The information is summarized in the following chart:

NAME	STRUCTURE	FUNDING
B.C. Law Institute	Replaced abolished Law Reform Commission of BC in 1997. 14-member board, 8 appointed by stakeholders.	Sustaining funding from BC Law Foundation, some provincial funds since 2003, plus BC-CBA and Vancouver BA and several other supporters.
Alberta Law Reform Institute	Partnership of the province, the University of Alberta and the Law Society of Alberta since 1967. Located at University of Alberta.	Mainly funded by the three partners.
Saskatchewan Law Reform Commission	Established by Act of legislature in 1973, 9 commissioners appointed by Order in Council.	Mainly funded by Law Foundation of Saskatchewan and provincial department of justice.
Manitoba Law Reform Commission	5 members appointed by Order in Council, including 1 judge, 1law professor, 1 practising lawyer and 1 layperson.	Provincial department of justice and law foundation
Law Reform Commission of Nova Scotia	Established 1991. Six part time commissioners, including one judge, two community representatives, two N.S. Barristers' Society reps and one faculty member from Dalhousie.	Provincial government and law foundation.

The Committee's Deliberations

8. The Committee agrees that the former Ontario Law Reform Commission played a useful role and that its closing was regrettable. However, questions remain about whether the proposed model is the best approach and whether law reform is sufficiently close to the core functions of the Law Society to warrant an ongoing financial contribution.

9. Some members of the Committee felt that such a commission, while a worthwhile idea, should be a government initiative funded by the government.

10. The Committee was of the view that Convocation should consider whether further discussions should be held in connection with this proposal.

Appendix 1

For Immediate Release
January 4, 2006

ATTORNEY GENERAL TO ESTABLISH NEW
LAW COMMISSION OF ONTARIO

Commission To Make Justice System More Accessible

TORONTO — The McGuinty government intends to establish a new Law Commission of Ontario, Attorney General Michael Bryant announced today at the Opening of the Courts ceremony. "We will pursue discussions with the Law Foundation of Ontario, the Law Society of Upper Canada, Ontario's law schools, and the legal community," said Bryant. "The goal is to create a modern, relevant and responsive commission that will bring forward recommendations to improve the administration of Ontario's justice system and enhance access to justice."

Ontario has not had a law reform commission since 1995. The development of the new Law Commission of Ontario will be a joint effort. The government and its partners in the legal community will work to make this goal a reality in 2006.

"For many years, the previous Law Reform Commission was an important instrument of change in our province's legal system," said Bryant. "It was known to forward progressive ideas, ask tough questions and engage in creative, innovative, critical thinking. Our justice system needs the same capacity today."

The commission's mandate will be to work with government, the legal profession, the judiciary, the faculties and students of all Ontario law schools and the public, to:

- Examine issues of significant interest and importance
- Develop recommendations designed to improve the administration of Ontario's justice system and
- Enhance access to justice.

A significant aspect of the mandate of the commission will be to make the justice system more accessible and equitable by using modern technologies to collect and distribute legal knowledge

and research. "I look forward to working with all involved groups on this important project," said Bryant. "This is part of the McGuinty government's commitment to an effective and efficient legal system."

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Contacts:
Greg Crone
Minister's Office
(416) 326-1785

Brendan Crawley
Communications Branch
(416) 326-2210

DRAFT Jan. 4, 2006 – FINAL

Notes for Remarks by

The Honourable Michael J. Bryant

Attorney General of Ontario

Opening of Courts

January 4, 2006

Check Against Delivery

Chief Justice McMurtry, Chief Justice Smith, Chief Justice Lennox, Treasurer Ruby, members of the judiciary, distinguished colleagues, chiefs of police, special guests, ladies and gentlemen:

It is an honour to be here for the Opening of the Courts. On behalf of the government of Ontario, it is my privilege to extend greetings and best wishes.

Before speaking to Ontario justice initiatives past, present and future, I would be remiss if I did not say this: for most Ontarians the urgent justice issue of the day involves a shocking level of gun violence and a series of tragic, horrific events.

Acute public anguish includes an understandable demand for accountability. In such times, every possible connection to these tragedies comes under intense scrutiny, including our justice system itself.

It is in this climate that political and editorial calls for so-called judicial accountability continue with a vengeance.

I addressed the subject of judicial independence two years ago at my first Opening of the Courts remarks.

I will not repeat those remarks here but will continue to underscore a critical role for democratically accountable governments to prevent violence and to pass laws that deter and punish.

The role for community leadership at this time cannot be understated.

Meanwhile, the role of the courts in Ontario remains, as ever, to stand in independent judgment of evidence, laws, and due process. That is the Canadian way.

Be that as it may, this is not the appropriate forum to discuss the many initiatives this government has undertaken in the name of safety, prevention, and punishment.

I appreciate the courts indulgence on this issue of grave public interest, and will return to more traditional subjects for an Opening of the Courts Ceremony.

As Chief Justice Lennox has said, our justice system cannot and does not remain static. Change is the order of the day.

Three partners run our justice system: judiciary, government, and bar.

Change for our justice system requires partnership –each needs the other, each is independent from the other.

And change requires leadership from all three branches.

We have seen such leadership over this past year and I look forward to highlighting but some of those leaders in my remarks.

We have made tremendous progress on issues of Access to Justice.

This was identified as a priority in my speech on this occasion two years ago, and I'm pleased to note that our government has introduced in the Legislature the Access to Justice Act.

If passed, the Access to Justice Act would reform the justice of the peace system and regulate paralegals.

It would also amend the Courts of Justice Act and the Limitations Act, and create a new act that would be a single source for rules about Ontario's laws.

The extensive changes to the JP Bench contained in this bill were referred to in the remarks of Chief Justice Lennox, who has long advocated for such change, and was instrumental in facilitating and advising upon the end-result: Bill 14. The errors in the bill are mine alone.

Further, many benchers – lay, ex officio and elected – demonstrated great leadership, along with Ministry of Attorney General officials, in effecting this paralegal regulation bill.

I will single out but one person, the Honourable Frank Marrocco, for his leadership as Treasurer – his courage and skill leaves a great legacy for a great barrister and Treasurer, and a great appointment to the Superior Court.

Changes to family law are also before the Ontario legislature. Bill 27 was introduced last October.

After an extensive consultation and exhaustive report by former Attorney General Marion Boyd, the government brought forward changes to family arbitration.

New protections for the vulnerable, combined with new checks on family arbitrations are just some changes contained in the bill, which is slated for committee hearings this winter.

Thanks to Marion Boyd for the courage to wade into a debate not for timorous souls, and for her thoughtful, comprehensive recommendations, many of which are found in Bill 27.

Here are a few other updates.

Chief Justice Smith referred to initiatives where the Deputy Attorney General and Court Services Division have continued a strong partnership with the Chief Justice of the Superior Court. I appreciate our constructive working relationship.

I spoke about the creation of the Justice and Media Panel a year ago, and here too we have taken great strides forward.

The Panel has been tremendously active during this past year, consulting with the public and receiving submissions on issues including access and restrictions to information, the roles and responsibilities of the media and justice institutions, and the use of technology to enhance justice.

They are submitting a report very soon, and I'm looking forward to studying their recommendations.

Thanks to panel members Chief Paul Hamelin, John Honderich, Paul Lindsay, Mr. Justice James MacPherson, Trina McQueen, Ralph Steinberg, and Benjamin Zarnett.

* * *

I'd also like to use this occasion to look ahead.

For many years, the Law Reform Commission was one of the most important instruments of change in our province.

It brought forward progressive ideas, it asked tough questions, it engaged in creative, innovative, critical thinking.

Yet, a decade ago the Law Reform Commission was scrapped. I think it's time to re-evaluate that decision.

Today, more than ever, we need to tap the best legal minds -- for practical and creative solutions to existing challenges, and to explore new directions for the rule of law.

Otherwise, assessment and reform of our legal system amounts to *ad hoc* efforts, more often than not driven (or not) by government.

After all, it is the province which has jurisdiction to administer justice.

A provincial Law Commission is the critical means by which a provincial justice system, with independent and government partners, examines reform in a rigorous, objective fashion.

Many have called for this, and I have listened. I want to thank George Hunter and the many benchers who have spoken to me about this issue.

We are also fortunate to have the latest, but not the last, Law Reform Commissioner, Professor John McCamus of Osgoode Hall Law School, as a constant advocate for, and advisor to, the Law Commission's revival.

And I want to thank Chief Justice McMurtry, who has been calling for the revival of the Law Reform Commission for years.

To them and to the members of the legal profession I say "I agree." Let's do it. Let us revive the Commission, and let us do it together.

Today, I am announcing my intention to resurrect the Law Reform Commission. I will pursue discussions with the Law Foundation of Ontario, the Law Society of Upper Canada, Ontario's law schools, and the legal community.

Our shared goal is to establish a modern, relevant, and responsive Commission.

This will be an independent body that will work with the judiciary, academic institutions, the legal community, and the public, to examine important issues, and to develop recommendations on how to improve the administration of justice and enhance access to justice.

The new Law Commission will also have a mandate to make our justice system more accessible and equitable. There are a lot of ways to do this, for example, by using modern technologies to collect and disseminate legal knowledge and research.

I'm looking forward to seeing the new Law Commission get to work. Its reawakening is finally upon us.

* * *

On the theme of access to justice, I wanted to take a few minutes to talk about the importance of Legal Aid.

As the late John D. Arnup stated to Open Convocation, at the Law Society of Upper Canada, on April 4, 1997, modern Legal Aid in Ontario was the brainchild of the bar; it was run by the bar. Originally organized in 1951, Legal Aid saw lawyers provided legal assistance pro bono for criminal cases.

Today, with Legal Aid Ontario, Ontario can proudly boast of having the strongest and most well-funded legal aid program in the country.

There have been times over the past 50 years when legal aid has been at a crossroads:

In the fall of 1963, Treasurer John Arnup concluded that he had stretched the pro bono provision of legal aid as far as it could go.

He went to see Attorney General Fred Cass and Premier Leslie Frost and convinced them the Province should fund legal aid and that the Law Society would run it.

Four decades later, legal aid again faced a crossroads. In a time of fiscal constraint, the legal profession decided to turn over the administration of legal aid to the Province.

Many will remember that Mr. Arnup, in his 1997 address to Convocation, was opposed to this result.

He recognized that legal aid would always be a top priority for bar and bench, but that, in Mr. Arnup's words, -- quote -- "government [will] continuously regard Legal Aid as equivalent to another form of welfare," – end quote -- competing with aid for the sick, the disabled, the hungry and the homeless. For the bar, Mr. Arnup argued, legal aid was about judicature, not welfare.

Nevertheless, Mr. Arnup was in the minority. Soon after, John McCamus delivered his "Blueprint for Publicly Funded Legal Services", and Legal Aid Ontario was born in 1998.
Legal Aid Ontario was established by the Province as an independent agency responsible for delivering legal aid services across Ontario.

Legal Aid Ontario runs the legal aid program on a daily basis, but the Province maintains supervisory authority on a number of issues such as the tariff and eligibility rates.

The Province is the largest funder of Legal Aid Ontario. More than $200 Million is invested directly by the province, every year, and recently, that increased. Legal Aid Ontario also receives funding from the Law Foundation, the Federal Government and other sources.

Now, after eight years, Legal Aid Ontario is a strong, mature organization. There has been recent good news for legal aid and I hope that more is on the way.

Here is the good news: The Law Foundation has informed Legal Aid Ontario that it is significantly revising its projections for transfers to it, for this year, and for the upcoming years. That's more funding to benefit those who simply cannot afford counsel.

And it gets better: I recently informed Legal Aid Ontario that the Government of Ontario was delivering additional funding for this fiscal year. That's more funding to benefit those who simply cannot afford counsel.

Perhaps we are coming upon a time, a good time, where the primary focus of legal aid is not just about getting more money out of provincial and federal treasuries, and the Law Foundation. Surely the vision of Mr. Arnup and others was about more than that.

I believe that Legal Aid Ontario has been a tremendous success story, and I compliment the leadership of the current chair, Janet Leiper, her predecessor, Justice Sidney Linden, and the President and Chief executive officer of Legal Aid Ontario, Angela Longo.

I think legal aid in Ontario is ready for the next step.

We need to harken back to the vision of John Arnup of a partnership between the Province and the bar.

In the coming months, I intend to engage the representatives of the bar in discussions about how to strengthen legal aid; How to give LAO more room to grow; How to enable LAO to deliver more services to more Ontarians: How to ensure that legal aid in Ontario remains the strongest, most dynamic legal aid program in this country.

* * *

In closing, I applaud leaders on bar and bench who have made a difference this past year and will do so again in the year to come. I am convinced, now more than ever, that collaboration and cooperation is the only way by which our justice system evolves. If one branch takes a pass, nothing happens.

Working together, we are in the midst of a period of significant activism and reform. Our collective imagination and lassitude remain the only limits to such reform.

It was the boast of Augustus that he found Rome of brick and left it of marble. No single Augustus or Augusta in our midst will leave our justice system of gold. I look forward to working with all of you in the year to come.

Thank you.

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Appendix 4

LIST OF EXISTING LAW REFORM COMMISSIONS

Provincial Law Reform Commissions:

- B.C. Law Institute and Law Reform Database
- Alberta Law Reform Institute
- Saskatchewan Law Reform Commission
- Manitoba Law Reform Commission
- Law Reform Commission of Nova Scotia

Canadian Law Reform Commissions:

- Law Commission of Canada
- Canadian Forum on Civil Justice
- Uniform Law Conference of Canada

Foreign Law Reform Commissions:

- Australian Law Reform Commission
- England and Wales Law Commission for England and Wales
- Hong Kong Law Reform Commission of Hong Kong
- Ireland Law Reform Commission of Ireland
- New Zealand Law Commission
- Scottish Law Commission
- South African Law Commission
- U.S. - American Law Institute - descriptions of restatements only
- U.S. - California Law Revision Commission
- U.S. - New Jersey Law Revision Commission
- U.S. - Commission on Civil Rights
- U.S. - Uniform Law Commissioners National Conference of Commissioners on Uniform State Laws

LAW REFORM AGENCIES

By Gavin Murphy [EXCERPT]

Ontario

The Ontario Law Reform Commission was the first law reform commission in the sense understood within the Commonwealth, namely, a permanent body provided with stable human and financial resources. The Commission was created by statute in 1964[66], one year before its British counterparts and before any other continuing law reform institution in Canada. The *Ontario Law Reform Commission Act, 1964* contains only five sections. Section 2 specified that it was the function of the Commission to inquire into reform of the law and consider any matter relating to it. The Commission's mandate included the examination of statute law, the common law, judicial decisions, the administration of justice, or any other subject referred to it by the Attorney General. There was no restriction regarding the number or qualifications of commissioners[67].

Unlike the British Commissions, the Ontario Law Reform Commission could initiate its own projects without obtaining prior approval. Nevertheless, it was obliged to report on its work periodically to the Attorney General of the province[68]. At its funding high point in the early 1990s, the Commission had an annual budget of almost $1,700,000. By the time the Commission was closed, its financial resources had shrunk to $687,700. The following table shows the evolution of the budget of the Commission[69].

Ontario Law Reform Commission Budget
(Canadian dollars)

1965–1966	$	158,000
1966–1967	$	155,000
1967–1968	$	213,000
1968–1969	$	190,000
1969–1970	$	224,000

1970–1971	$	271,000
1971–1972	$	447,000
1972–1973	$	421,000
1973–1974	$	393,700
1974–1975	$	394,500
1975–1976	$	468,900
1976–1977	$	476,700
1977–1978	$	524,300
1978–1979	$	644,400
1979–1980	$	708,500
1980–1981	$	810,400
1981–1982	$	892,700
1982–1983	$	979,300
1983–1984	$	1,052,800
1984–1985	$	1,099,400
1985–1986	$	1,128,200
1986–1987	$	1,145,700
1987–1988	$	1,215,300
1988–1989	$	1,225,000
1989–1990	$	1,325,900
1990–1991	$	1,620,400
1991–1992	$	1,670,200
1992–1993	$	1,690,800
1993–1994	$	1,006,600
1994–1995	$	980,000
1995–1996	$	902,700
1996–1997	$	687,700

To be selected for study by the Commission in its later years of operation, a project had to demonstrate a need for law reform that could not be effectively addressed elsewhere. There had to be a likelihood that the Commission's proposals would address the needs and concerns of groups who would not otherwise have the resources or degree of organisation to make their voices effectively heard. The Commission had to have the available personnel and the financial resources to initiate the project, and the nature of the subject was required not to be under review by other government agencies. A project had to have a likelihood of completion in a reasonable period of time, be consistent with any Commission statement of current priorities and have the potential for collaboration with other law reform bodies, government ministries or non-governmental research groups. Finally, there had to be an absence of reports by law reform bodies or other agencies that rendered study on a particular subject necessary, and there had to be a reasonable expectation of implementation of proposals for reform.

In contrast to most other law reform agencies, the Ontario Law Reform Commission had a large part of its research work conducted by outside teams of academic lawyers[70]. During the 1980s, the Commission consisted of one senior legal research officer and four legal research officers. Utilising outside expertise was possible because of the existence of a large number of academics at the province's six law schools[71].

A broad-based project advisory board was also set up. The board comprised practising lawyers, academics, representatives of appropriate interest groups and other interested parties who advised the Commission with respect to its projects. Once a draft report was completed, the commissioners reviewed it and the Commission's legal staff would make any necessary

changes. A final report, which represented the Commission's views on a subject, was presented to the Attorney General. The final report sometimes included draft legislation[72].

The Commission was abolished in 1996, a victim of the government's policy to reduce the deficit and eliminate agencies considered non-essential.

Alberta

The next province to establish a permanent law reform agency was Alberta, which proceeded differently from Ontario. As noted earlier, senior members of the provincial Law Society of Alberta had set up a Law Reform Committee in 1964. By the end of 1966, the Law Society realised that the task of law reform in the province could not depend on a voluntary and unpaid committee with no permanent staff. Discussions therefore began in early 1967 between the Law Society, the Attorney General's department and the University of Alberta's faculty of law to establish a commission or institute of law reform within the university. From the beginning, all concerned felt that the faculty of law should play a significant role in the proposed body, and members of the faculty enthusiastically supported the proposal. The provincial government, the Law Society of Alberta and the University of Alberta entered into an agreement in November 1967 to provide for the establishment of the Alberta Institute of Law Research and Reform[73]. The objectives of the Institute are set out in the founding agreement and consist of four elements : conducting and directing research into law and the administration of justice, recommending ways in which the law may be made more effective, promoting legal research and reform, and working in cooperation with others, especially the faculties of law at the University of Alberta and the University of Calgary[74]. The Institute has been given a broad mandate. It has the power to engage in anything that falls within the term "law reform", and it can propose anything that will make the law more effective. The Institute commenced operations on 1 January 1968.

Research is a separate element of the Institute's objectives, and as a result, several projects have been undertaken that have not led to actual reform proposals[75]. The Institute's law reform reports have covered an extraordinary range of topics, from landlord and tenant law to compensation for victims of crime. The main criterion for the selection of a subject for consideration is its relevance to Alberta. Federal matters are not excluded, but they do not have a priority. Although the Institute has based some of its projects on government suggestions, it is not required to accept references from the government. The Institute is free to choose its own projects.

As of 1 January 2003, a board of thirteen members, including its director, who is also a member of the faculty of law at the University of Alberta, governed the Institute. The Institute is located at the university, and the government and university cover its operating expenses. The Institute is not statutorily protected, and its existence is dependent upon the continuing agreement of its three constituent bodies[76]. The name Alberta Law Reform Institute was adopted in 1989[77].

The Institute's board meets monthly to review the overall operations, approve all reports and consider the direction of research papers. Project funding for the Institute comes from the Alberta Law Foundation[78] and the provincial Department of Justice.

British Columbia

The statute creating the Law Reform Commission in British Columbia came into force on 1 July 1969[79]. The Commission began operations the following year. Its mandate and structure were

similar to those of the Law Commission for England and Wales, including the requirement that the provincial Attorney General approve its research programs. The Commission's mandate was to recommend the examination of law needing reform and to suggest an agency, whether itself or another body, to carry out the review. The Commission was usually composed of practising and academic lawyers. Despite numerous changes in staff during its early years, the Commission managed to produce a high volume of work.

The Commission ceased to exist at the end of March 1997, when the provincial government cut its funding. Over its 27 years of existence, the Commission produced more than 140 reports on a wide variety of topics[80]. It also initiated several Internet-based projects, including a law reform database and an index of its collection of law reform materials from throughout the Commonwealth.

Prior to the Commission's demise, the British Columbia Law Institute was created in January 1997 through incorporation under the province's *Society Act*. The Institute was formed in response to the decision by the Attorney General's department to withdraw funding for the Commission. At the time of the announced cuts, there was widespread concern that the disappearance of the Commission would create a void and result in the loss of tangible and intellectual assets.

Section 2 of a text, called its "Constitution", creates the Institute[81]. This section states that the purpose of the Institute is to promote the clarification and simplification of the law and its adaptation to modern social needs, to promote improvement of the administration of justice and respect for the rule of law, and to promote and carry out scholarly legal research. The internal rules[82] of the Institute provide that it is to be composed of fourteen members. Of these fourteen members, two are appointed by the Attorney General, two by the executive committee of the Law Society of British Columbia[83], two by the executive committee of the British Columbia branch of the Canadian Bar Association and one each by the deans of the law faculties of the University of British Columbia (Vancouver) and the University of Victoria. Every member of the Institute is also a director. Membership is for a term of five years, with the possibility of reappointment.

The British Columbia Law Institute did not receive any funds from the provincial government for its regular operations until the spring of 2003. At that time, the province's Ministry of Attorney General committed to provide funding to the Institute over the next three years. Sources of funding in the past have included the Law Foundation of British Columbia[84], the Law Society of British Columbia, the Canadian Bar Association and the Vancouver Bar Association[85]. Since 1998 the Institute has had charitable status, which means that any donation to the Institute can be used to reduce personal income tax. In 1999 it undertook a fundraising initiative, which proved successful. That same year, it received a grant from the federal Law Commission of Canada for the compilation of a database of federal legislative references to family-like relationships.

As of March 2003, the Institute had completed 24 reports. But efforts are not solely confined to law reform matters. The Institute is also mandated to prepare publications that will improve access to the law or provide a base from which reform work can be done. One example of the Institute's work that goes beyond law reform is a report on gender-neutral legal writing.

Nova Scotia

The province of Nova Scotia created the Law Reform Advisory Commission in 1969. The Commission began operations in 1972[86]. It consisted of between five and ten members, all drawn from the legal community, and it could inquire into any matter relating to reform of the law. However, its activities could only be carried on with the support of the province's Attorney General[87]. The Commission shared support staff with a senior provincial law officer known as the legislative counsel, who was to be appointed secretary and executive officer of the Commission[88]. In 1976 the statute was amended to expand membership to between 10 and 15 members[89]. Up to five non-legal commissioners were permitted, although none was ever appointed. Also around this time the Commission hired a full-time permanent legal research officer, having previously relied on external consultants working under contract and its own members serving as volunteers[90].

The Commission continued to exist in law until its governing statute was repealed in 1990. But it was not active after 1981, when the terms of all of its members expired and no reappointments were made. The Commission's demise appears to have been due to financial concerns, lack of a consistent approach to law reform and the view that the provincial Ministry of the Attorney General could as effectively develop any necessary changes[91].

The Commission examined 17 areas of the law during its lifetime, including matters such as mechanic's liens, matrimonial property, changes of name and reciprocal enforcement of judgments. Some of its recommendations were in the form of separate reports, while others were presented as draft bills sent to the Attorney General. Publication of both annual and law reform reports could only take place with the approval of the Attorney General[92].

With the closure of the Law Reform Advisory Commission came the creation in 1990 of a new body, the Law Reform Commission of Nova Scotia[93]. The Commission acts as an independent advisor to the government, and this independence gives it the possibility to make recommendations on law reform in a non-partisan manner[94]. The Commission reports to the public and elected representatives of Nova Scotia through the provincial Attorney General.

The Law Reform Commission of Nova Scotia consists of between five and seven full-time or part-time commissioners drawn from the community : one judge appointed by Cabinet who is selected by the judges of Nova Scotia, two community representatives selected by the Cabinet, two representatives appointed by the Nova Scotia Barristers' Society, one member from the Dalhousie University faculty of law and one commissioner who must not be a law school graduate.

Under the provisions of the *Law Reform Commission Act*, the Commission reviews the laws of the province and makes recommendations for improvement. One of the Commission's priorities is to discuss law reform with the general public. These talks then form the basis on which the Commission determines if existing laws are adequately serving the people or whether legal reform is required. The Commission's projects cover an extensive range of social and legal issues[95]. Judges, the legal community and the public suggest the majority of projects for review, while others have been references from the government of Nova Scotia.

The Commission's final reports and recommendations are formally presented to the Minister of Justice and Attorney General for Nova Scotia. These reports are available to the public without cost. Commission reports once included draft legislation, but this is no longer the case. The Commission has neither the resources nor the expertise to prepare draft legislation[96].

In April 2000 the Commission was advised that the provincial government would provide no further financial assistance after 2000–2001. From April 2001 the Law Foundation of Nova Scotia[97] funded Commission activities in the entirety. However, discussions with the provincial Attorney General's office led to the restoration of government support in 2004[98].

Prince Edward Island

Prince Edward Island adopted a statute in 1970[99] establishing a law reform commission. The statute was modelled on the *Ontario Law Reform Commission Act*, 1964. The Prince Edward Island Law Reform Commission did not commence work until 1976. The chairman of the Commission was the Chief Justice of the province, and the other commissioners were prominent members of the legal profession. The Commission ceased to operate after the discontinuation of its budget in 1983. Throughout the Commission's existence, its staff consisted of only one lawyer. The Commission did not release formal reports or working papers. All recommendations were made briefly or in the form of draft legislation. The Commission evidently did not have strong support from the government or the legal community[100]. The founding statute was repealed in 1989 by virtue of its omission from the 1988 Revised Statutes of Prince Edward Island. Through provisions found in the provincial *Legal Profession Act*[101], the Law Foundation of Prince Edward Island[102] is now responsible for any law reform activities that may take place.

Manitoba

It was not until 1970 that the Manitoba legal community called for a full-time law reform agency patterned after the Ontario commission. Later that year, Manitoba enacted a statute[103] establishing its own law reform commission, and membership of the Manitoba Law Reform Commission was completed in February 1971.

The first chairman of the Commission was Francis Muldoon, later to become the third president of the Law Reform Commission of Canada. Until 1979, three of the seven commissioners were non-lawyers, and since that time there has always been at least one non-lawyer commissioner. Non-lawyers were appointed to encourage a wide range of viewpoints, and their inclusion resulted in reports being drafted in simple and easy-to-read, non-legal language. Like most other commissions, the Manitoba Law Reform Commission was given a wide mandate. Its duties were to inquire into and consider any matter relating to law in Manitoba and to formulate recommendations for reform. The Commission had to accept references from the provincial Attorney General and give them priority, but its activities were not restricted to responding to such references.

While the Commission functioned effectively from 1970 to 1986, by 1987 the government clearly intended to abolish it. However, the Commission was soon restored by a new government, which regarded the agency's existence and independence as a matter of priority. A new *Law Reform Commission Act* was assented to by the provincial government on 8 March 1990[104].

The Manitoba Law Reform Commission[105] is funded through grants from the provincial Department of Justice and the Manitoba Law Foundation[106]. The Commission is composed of at least five, but not more than seven commissioners appointed by the provincial Cabinet[107]. The membership must include a judge of the Court of Queen's Bench, a full-time member of the teaching staff of the University of Manitoba faculty of law, a lawyer entitled to practise in

Manitoba who is not employed by the provincial government and a non-lawyer. One of the members is appointed president, and that person must be a lawyer.

In March 1997 the government announced its intention of finally eliminating the Commission. After protests, the government backed down and provided modest support to the Commission. As of 30 June 1997, all of the Commission's permanent staff were dismissed, and it operated with only a part-time administrator. There was no in-house legal research staff, and the Commission had to hire outside consultants to undertake projects on its behalf. The Commission even acknowledged in 2001 that it lacked staff and resources to be active[108]. But with an increase in annual funding from the Manitoba Law Foundation from $50,000 to $65,000, it was able to hire a full-time legal researcher in August of that year. The law foundation increased its annual grant to $100,000 for financial year 2002–2003[109].

Since its inception in 1970, the Commission has issued over 100 formal papers, of which over 75 percent have been implemented. Some of the Commission's most important recommendations acted upon by the provincial legislature have been in the areas of the administration of justice, family law and municipal law.

Saskatchewan

The Saskatchewan Law Reform Commission was established by law in 1971 [110]. The statute came into effect in 1973, and the Commission began work in February 1974. The Commission's functions are described in section 6 of the Act. These provisions are almost identical to those for the former British Columbia Law Reform Commission, which themselves were inspired by the requirements found in the United Kingdom's *Law Commissions Act 1965* and the Canadian *Law Reform Commission Act* of 1971. The Saskatchewan Law Reform Commission is primarily mandated to keep all the law of the province under review. This objective is achieved through the systematic development and reform of the law, including codification, elimination of anomalies, repeal of obsolete and unnecessary enactments and, more generally, simplification and modernisation of the law[111].

Since 1973 the Commission has consisted of at least three members[112] who are appointed by Cabinet and hold office with Cabinet approval. As of February 2003, there were six members of the Commission. The chair, who is designated by Cabinet and acts as chief executive officer, is always a legal academic from the University of Saskatchewan. The governing statute allows the Commission to appoint committees to consider and report on any aspect of the Commission's work. Members of these committees need not be members of the Commission itself. Funding for the Commission comes from both the provincial government and the Saskatchewan Law Foundation[113].

Project suggestions can come from a number of sources, including the Minister of Justice, the Commission itself and its staff, the judiciary, the legal profession, professional organisations and the general public. After preliminary research, the Commission usually issues a background or consultation paper to facilitate public discussion. Tentative proposals may be released if the legal issues involved in the matter under review are complex. Upon completion of a project, the Commission's recommendations are submitted to the province's Minister of Justice as final proposals.

The Commission has made recommendations in a number of substantive areas over the years, including family law, commercial and contract law, insurance law, trust law, personal property security law and medical-legal law. The Commission completed three research projects during

the 2001–2002 fiscal year[114]. The June 2001 report on a proposed law for the division and sale of land among co-owners included draft legislation.

Newfoundland

Legislation was enacted in 1971 to permit the creation of a law reform commission in Newfoundland[115]. It was not until a decade later, in 1981, that the first commissioners were appointed and the Newfoundland Law Reform Commission commenced activities. The Commission was established to inquire into and consider matters relating to reform of the law in Newfoundland. Furthermore, the provincial Minister of Justice could refer any subject to the Commission.

The provincial Cabinet determined the number and names of Commission members, who were appointed for three-year, renewable terms. The Commission was not obliged to present an annual report to the government. Rather, it was required to report when it seemed advisable based on the progress of its work or when requested by the Minister of Justice. The Minister of Finance provided funding, on the request of the Minister of Justice, out of the provincial government revenues. Provision was made in 1991 for the Commission to receive funding from sources other than the government.

In the provincial Budget Speech of 1992, the Minister of Finance for Newfoundland announced that the government would no longer fund the Commission[116]. The principal motivating factor behind the Commission's abolition was, as so often the case, fiscal restraint.

New Brunswick

In 1971, New Brunswick established a Law Reform Branch within its Department of Justice, rather than creating a separate law reform agency. The Legal Research Section of the Law Reform Branch carried out the province's law reform work. In 1993, the Legal Research Section was closed and the Law Reform Branch was renamed the Legislative Services Branch[117].

Quebec

Quebec established a Civil Code Revision Office in 1955 to work on reform of the entire field of private law in the province. The primary role of the Office was to assess the fundamental principles behind the Civil Code's institutions[118]. From 1955 to 1960, the Office consisted of only one person. In 1960 it was expanded to four members and was asked to produce a new Civil Code.

The intensity of this undertaking increased significantly from 1966. Work was structured around 43 committees composed of between three and seven jurists, who were assisted by researchers and experts. Committee reports were prepared in both English and French, and each study was accompanied by a commentary. These reports were circulated among interested persons and groups for comments. A total of 64 reports were then compiled into one single document on the Civil Code, which was released in 1978[119]. The 1978 draft Civil Code was never implemented as such. However, the revision exercise led to reforms on several issues, including parental authority, and provided the basis for the final effort that eventually led to the adoption in 1991 of an entirely updated Civil Code. The work in that last phase was conducted on a different basis, this time without a law commission-type formal structure.

In 1992, the province enacted legislation to create the Quebec Law Reform Institute (Institut québécois de réforme du droit). According to the statute, the mission of the Institute is essentially the same as that of law reform bodies in the other provinces of Canada[120]. As with the federal Law Commission of Canada model, the Institute is required to consult the provincial Minister of Justice on its research programs and give priority to the Minister's requests for advice or research. Unlike the practice of the federal commission, the Quebec legislation provides that the majority of members, including the chair and vice-chair, are appointed on a full-time basis. Full-time members must be legally trained or have a long-standing interest in the law. They are appointed for a term of not more than five years. Part-time members, whose terms shall not exceed three years, must be knowledgeable in the Institute's research areas. The Institute is to fulfil its mission by conducting or commissioning research, and it is to receive initial funding from the provincial government alone. The bill creating the Institute was assented to in the province's National Assembly on 23 June 1992. It is to come into force on a date to be fixed by the government[121]. As of March 2004, this statute had not been brought into force, so the proposed Institute has not yet come into existence.

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Source: http://www.justice.gc.ca/en/ps/inter/law_reform/page2.html

FOR INFORMATION

LEGAL AID

11. In his speech referred to above, the Attorney General described Legal Aid Ontario as a “mature” organization and said “legal aid in Ontario is ready for the next step”. This seems to indicate a desire to change the structure of LAO. While there is no definite information at this point on the sort of changes contemplated, the Committee will continue to monitor this issue.

PROPOSAL FOR A LAW SCHOOL IN THUNDER BAY

12. Lakehead University in Thunder Bay, Ontario is developing plans for a new law school to be based at the university. The law school would have a particular emphasis on serving northern and aboriginal communities. It would improve access to law school for students from northern Ontario and might increase the number of lawyers willing to stay in northern communities to practise law. It would also have implications for the number of lawyers called to the bar each year.

CONVOCATION ROSE AT 1:05 P.M.

Confirmed in Convocation this 23rd day of February, 2006.

Acting Treasurer