MINUTES OF CONVOCATION

Thursday, 23rd February, 2006
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Alexander, Backhouse (by telephone), Banack, Bobesich, Boyd, Campion, Carpenter-Gunn, Caskey, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, Dickson, Dray, Eber, Elliott, Feinstein, Filion, Finkelstein, Finlayson, Furlong, Gold, Gotlib (by telephone), Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrence, Legge, Martin, Minor, Murray, Pattillo, Pawlitza, Porter, Potter, Robins, Ross, Ruby, St. Lewis, Silverstein, Simpson, Swaye, Symes, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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ELECTION OF TREASURER

The Acting Treasurer, Clayton Ruby addressed Convocation.

Benchers who had not voted at the advance poll cast their ballots for the election of the Treasurer.

The Secretary announced the results of the votes cast:

Gavin MacKenzie – 32

Clayton Ruby – 26

Mr. MacKenzie was declared elected as Treasurer.

The Treasurer addressed Convocation.

MOTIONS – ELECTION OF BENCHERS

WHEREAS Peter Bourque, who was elected from the Central West Electoral Region on the basis of votes cast by electors residing in that electoral region, has been appointed a judge of the Ontario Court of Justice; and

WHEREAS upon being appointed a judge of the Ontario Court of Justice, Peter Bourque became unable to continue in office as a bencher, thereby creating a vacancy in the office of bencher elected from Central West Electoral Region on the basis of votes cast by electors residing in that electoral region;

It was moved by Mary Louise Dickson, seconded by William Simpson,

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

Carried

WHEREAS Gavin MacKenzie, who was elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of the votes cast by all electors, has been elected as Treasurer to take office on February 23, 2006; and

WHEREAS upon being elected as Treasurer, Gavin MacKenzie became a bencher by virtue of that office and ceased to hold office as an elected bencher in accordance with subsection 25 (2) of the *Law Society Act*, thereby creating a vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of the votes cast by all electors;

It was moved by Carole Curtis, seconded by Judith Potter,

THAT under the authority contained in By-Law 5, Janet E. Minor, having satisfied the requirements contained in subsection 50 (1), subsection 50 (2) and subsection 52 (1) of the By-Law, and having consented to the election in accordance with subsection 52 (2) of the By-Law, be elected by Convocation as bencher, to take office immediately after her election, to fill the vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of the votes cast by all electors.

Carried

Mr. Ruby addressed Convocation.

Convocation adjourned and convened as a Committee of the Whole in camera.

Convocation assembled as Convocation.

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IN CAMERA

IN CAMERA Content Has Been Removed

IN PUBLIC

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DRAFT MINUTES OF CONVOCATION – JANUARY 26, 2006

The Draft Minutes of Convocation of January 26, 2006 were confirmed.

REPORT OF THE GOVERNANCE TASK FORCE

Professor Krishna presented the Governance Task Force Report for discussion.

Final Report to Convocation
February 23, 2006

Governance Task Force

NOTE:

DEFERRED FROM NOVEMBER 24, 2005 CONVOCATION (AS AMENDED)
AND DECEMBER 9, 2005 AND JANUARY 26, 2005
CONVOCATIONS

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.

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;"

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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).

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

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

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

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.

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

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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.

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

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

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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)

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 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.

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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.

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 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

[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%

[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.

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 referendum. Computershare manages shareholder voting or 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.
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*

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.

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.

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.

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.

<u>Overview of the Treasurer's Duties</u>

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:

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

> …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);
   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);

---

[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.

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.

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

[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.

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.

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

[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.

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.

[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

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 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

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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.

> 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] Initially, the Task Force identified the Bencher Code of Conduct as a topic for review.

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[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 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.

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 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

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[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.

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;
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

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[26] This was an issue for the Ontario Securities Commission, as discussed in the *Report of The 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.

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 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

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

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 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.

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[28] Bicentennial Report Working Gorup 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.

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.

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

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]

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,

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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
(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.

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 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.

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

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 all 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 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.

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[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

[32] *Ibid*.

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.

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.

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[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.

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."

[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.

GOVERNANCE AT THE LAW SOCIETY OF UPPER CANADA: REPORT

Tim Plumptre
Institute On Governance
September 25, 2003

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GOVERNANCE AT THE LAW SOCIETY OF UPPER CANADA

1. Why this report?

Mandate

In March of 2003, the Institute On Governance (IOG) was approached by the CEO of the Law Society to conduct a preliminary review of governance policies and related issues at the Society. A particular reason was the CEO's desire to see what measures might be taken to enhance the efficiency of decision-making of the Society. More generally, this review allowed the IOG an opportunity to consider the current situation of the Law Society vis-à-vis its

governance, to provide with our views on this matter and our recommendations as to whether any action on this front might make sense.

What we did

It should be noted that as we had been asked to undertake an overview study, not an in-depth governance review, our work program was quite limited. It involved the following steps:

- ☐ a review of some governance-related documentation provided by LSUC staff[1]
- ☐ interviews with small number of Benchers whose terms had recently ended
- ☐ interviews and discussions with three senior staff members
- ☐ an examination of governance arrangements at seven other organizations responsible for regulation of a profession in Ontario. (Details in Appendix A.)

Finally, we considered the situation of LSUC in relation to developments generally in governance in both private and public sectors, a subject of ongoing review at this Institute.

2. What is at issue?

The Law Society of Upper Canada is a public institution with responsibilities conferred on it by the Government of Ontario. Its mandate is articulated in a most general way in the Law Society Act: "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 to enrolment to practise as solicitors in Ontario." (10) A somewhat longer role statement was adopted by Convocation in October 1994, in which the obligation of the Society to govern "in the public interest" is specifically cited.[2] An extensive commentary on this role statement, also adopted by Convocation in 1994, elaborates on the meaning and implications of key concepts such as the public interest, access to legal services, competence, independence and integrity.[3]

Governance is hardly a new issue at the Society. A review of Society documents over the past two decades and more reveals a procession of reports, surveys and studies which address problems of governance from one angle or another. It also leads to an impression that in the sphere of governance, the Society is rather better at problem identification than at implementation.

Among the issues most commonly raised are the lack of any manner of setting priorities, and the need for some kind of mechanism to help guide the work of Convocation. A salient development, now more than two decades old (1981), was a decision by Convocation to adopt

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[1] Including the Law Society Act, relevant bylaws, the 1996 Report of the Committee on Governance Restructuring, existing and proposed governance policies, the proposed draft rules of debate and related papers including those associated with the work of the Strategic Planning Committee of Convocation in 2000-1.

[2] "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 professional 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." This role statement was subsequently included in the Society's "Governance Policies" as a mission statement (adopted in updated form by Convocation in April 1999).

[3] Cited in *Self Regulation and the Independence of the Legal Profession in Ontario*, Sperdakos, Sophia, Law Society working paper, 2003.

an Executive Committee with the apparently anodyne role to help set priorities, direct work to the right place and ensure implementation of Convocation decisions.[4] This arrangement remained in place until 1983 when the then Treasurer decided to disband it because she believed it was causing too much divisiveness.

Another salient development was the decision by Convocation on December 7, 1995 to "adopt" an approach to governance promoted by consultant John Carver known as the "Carver model" or the Policy Governance model. "Adopt" appears in quotations here for two reasons: first, because despite its approval by Convocation it would appear that many Benchers were not convinced of its suitability to the Law Society, and second, because the Society has not chosen to implement significant features of this model despite having approved it.[5] The Society is thus in the curious position (especially for a *law* Society) of having adopted a framework or model for its governance which it does not, in fact, follow.

Yet another important milestone was the publication of a report, after 15 committee meetings, *Change through Leadership: A Blueprint for Law Society Governance*, authored by a Committee on Governance Restructuring and dated June 1996. We discuss the content of this report below.

The governance responsibilities of the Law Society bear in two directions: first, there is an overall responsibility for the governance of the profession (a substantively different responsibility from the governance of the affairs of a business corporation, although similar in some regards). Second, there is a governance responsibility in relation to a large organization with several hundred staff and a budget in the millions. One would hope that both these aspects of governance are being discharged effectively. However, interviews conducted in the course of this brief project raised a number of concerns with respect to the Society's governance; these mirror many issues raised in previous years in the documentation cited above.

Convocation

- Convocation was criticized by all interviewees. As one interlocutor said, it is "enormously cumbersome and inefficient in its current configuration…. You have 50-plus persons able to speak on any issue, either on or not on the agenda; the result is it's almost unworkable in two ways: (a) it affects the number of issues you can deal with and (b) the depth with which you can deal with them. The more you get into an issue the more time it takes. So the process becomes self-defeating."

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[4] Specific terms of reference were to “ensure that problems are channeled to the appropriate committee, that the work of these committees is progressing properly and finding appropriate space on Convocation’s agenda, and ensure close liaison with the Society’s senior administrators to ensure implementation of Convocation’s policies. Where necessary, it could assist and advise the Treasurer in responding to important issues until these can be dealt with through regular channels. The Executive Committee would not possess any decision-making powers currently vested in Convocation.”

[5] Notable areas not implemented include a sustained focus in board discussions on “ends” and results rather than means, a more systematic planning process through which Convocation would identify and focus its work around agreed priorities, and the adoption of “executive limitations” as a framework for accountability for the CEO. (This provision was specifically rejected by the current CEO as a condition of employment at the Society.)

- Most interlocutors cited a too-frequent tendency of some Benchers to address questions from the perspective of "their constituency" rather than examining issues from the perspective of the benefit to the community and large and the public interest (as required by the Society's 1994 role statement). This would be hard to change apparently, as for some, constituency representation is a deeply held conviction. One interviewee stated, "Too many people have private agendas to make it feasible to really work things through."
- Most persons interviewed thought more deference should be accorded to work done in Committees. We were told that Convocation has a tendency to re-cover ground already covered well in Committee reports; debate is often prolonged by Benchers who have not had the benefit of the prior, focused Committee discussions and who may also have no particular expertise on the topic. Apparently good Committee work is sometimes overturned at Convocation by individuals with no particular depth of knowledge; as one interviewee stated, "Lawyers peck the thing to death. If Committee work is inadequate the issue should be sent back; Convocation should not try to assume the Committee's role."
- A particular concern was voiced with respect to behaviour in Convocation as election time approaches. Individuals interviewed indicated that election proximity led to an increase in "grandstanding": "Benchers proposing motions to get on the record for their constituency, with no follow through and without prior Committee debate … too much activity just for personal political gain, to boster individuals' personal platforms".

Role of the Chair

- The Treasurer, we were told, sometimes has difficulty setting limits on debate or ensuring adherence to the agenda. The incumbent can fail to "blow the whistle on inappropriate behaviour" at times when this may be needed.
- Some interlocutors expressed regret that the Treasurer is not able to participate actively in discussion due to the referee role associated with the position.
- The rules of procedure within which the Treasurer is expected to operate were criticized as unsuitable and unworkable. "What we have are the Legislature Standing Orders - they are ridiculous and inapplicable, but efforts to get (new) rules of procedure approved failed."
- Too much time is sometimes spent on issues. "More time spent on issues does not necessarily make for better decisions."
- Some Benchers table motions with no notice. This practice is very disruptive of the work of Convocation.[6]
- A wider set of questions was raised in one interview concerning the position of Treasurer. This individual suggested that it might be useful to consider several issues related to this position, including: the formal length of the term of office; the relationship of the Treasurer's term to that of other Benchers; the role description for the Treasurer and the powers accorded to the office; orientation; succession planning.
- Questions were also raised with respect to the relationship between the Treasurer's office and a possible executive committee. Some Benchers have apparently expressed concerns about how a committee of this kind might take powers away from Convocation. However it was suggested that the presence of such a committee could have a mellowing or democratizing impact on the office of Treasurer which would be beneficial to Convocation. As several individuals said, 'in the absence of a formal executive

[6] This problem is not helped by the existence of Bylaw 1 of the Society which entitles any Bencher at any time to propose a change to a current bylaw without notice.

structure that is transparent and open, we wind up with an informal structure that performs much the same functions but in a private manner'.

Setting Agendas and Priorities

- Interviewees stressed the lack of a process to set priorities systematically. "We start the year with ten ideas and we wind up with sixty. We can't possibly cover all this material. So the result is that *de facto*, staff wind up setting the priorities, which is not the way it should be." A related problem is that Convocation approves more initiatives than staff has the resources to work on.
- The timing of a motion tends to determine its precedence or priority rather than its substance: "earlier motions get more attention even if they are not very important. If everyone wants to speak for one minute we'll spend an hour on it. There's no discipline or party process."
- Similarly, "once an issue is studied, there is no process for determining its ripeness for debate" other than the Treasurer's personal judgement.
- The process of agenda-setting was criticized as undemocratic as well as inefficient: "under the present system if a Treasurer does not want to put an issue on the agenda of Convocation he can just stop it." One interviewee's impression was that many Benchers resented this kind of autocratic behaviour. The ability of the Treasurer, if so inclined, to manipulate the system to his or her own ends sometimes leads to "a very unhappy group of Benchers."

Committees

- Committees - and what was described as "very valuable staff work" in support of Committees - were seen by interviewees as critical to the success of Convocation. Substantial improvements in the use of committees were instituted in the wake of the governance reforms adopted by Convocation in 1996 (prior to '96 there were 28 committees and each had decision-making powers. Making it clear that decision-making rested with Convocation rather than committees appears to have been the most significant governance improvement arising from the "adoption" of the "Carver" model.)
- However committees continue to suffer from some of the same kinds of problems as Convocation:
  - too much work
  - one interviewee thought committees met more often than necessary
  - no central review process exists (as in government, for instance, in the Cabinet office) to coordinate committee work, to exercise quality control, or to feed this work into the decision-making process
  - there is no transparent process for determining how a committee report makes it on to the the agenda of Convocation, leaving much discretion - some interviewees thought too much - in the hands of the Treasurer.

Governance Policies

We were asked to comment on the Law Society's governance policies. The Law Society does not in fact appear to have a clear definition of what constitutes a "governance policy". The Carver model enjoins its adherents to adopt a set of governance policies and it defines subjects that these must fall under. The Law Society has adopted some of the kinds of policies promoted by Carver, but one has the impression that in many cases their adoption has not influenced the work of the Society in a very material way. Further, when one undertakes a

comparison of the LSUC Carver-related governance policies with the comparable policies of the Law Society of Manitoba, those of LSUC do not emerge particularly favourably. One has the impression that Manitoba may have taken this task somewhat more seriously than did Ontario at the time.

Even where LSUC has a policy in place in theory, the policy may not be followed in practice. For example, the CEO of the Law Society, with the agreement of the Society, has been excluded from the notion of "executive limitations" - an important part of the Carver doctrine - as a framework for his responsibilities and accountability.

We have a number of serious reservations with respect to the Carver model. Others have also criticized it. If there was some diffidence among Benchers when it was adopted, we can understand why. In the work of this Institute we have had occasion to learn about the model at work in a number of settings. Among our concerns are the following:

- the model seems to work far better in theory than in practice. The great majority of organizations that we have encountered that have tried to adopt Carver have encountered serious difficulties, leading in some cases to outright abandonment of the model.
- it was designed with non-profit organizations in the voluntary sector in mind but has subsequently been touted as a universally applicable approach to governance, a claim we view as overblown - our own view is that different organizations should craft their approach to governance based on their mission, traditions, history and people. While there are some general principles that can usefully be drawn upon in this connection[7] (for example, in documents produced by organizations such as the UNDP and the UN's Universal Declaration of Human Rights), the rigid principles that Carver enunciates are too specific and confining.]
- Furthermore, the very idea of there being "a model" for governance that organizations should adopt is objectionable in our view. The notion that organizations should adopt a "model" of management was touted by early theorists of management such as Frederick Taylor, author of the school of what used to be called 'scientific management'. The idea that there was 'one best way' to manage organizations was discredited in the first half of the last century, and replaced by the idea of 'situational' management - that is, the notion that how to define good management depends on context. The same logic should prevail in respect of efforts to promote a Taylor-type approach to governance.
- The Law Society is in certain respects much closer to a legislative body than a conventional board of directors. The Carver model does not take this distinction into account adequately.
- The model frowns on the use of board committees - a key aspect of the work of Convocation.
- The model creates a kind of gray zone with respect to governance policies. Many policies that have a bearing on how the organization works are typically contained, for example, in its bylaws, and in other decisions by the board of directors. Some of these other governance-related polices may not conform to the orthodox Carver definitions as to what should comprise the suite of governance policies. What, then, is, should be viewed as a "governance policy"?

[7] See, for example, the recently published Institute On Governance policy brief on the principles of good governance on our website at www.iog.ca.

> The Carver insistence that such policies should conform to a particular construct strikes us as a needless source of confusion.

In summary, we believe some useful gains have been achieved through the process of "adopting" Carver. However, the model itself is ill-suited to the Society. LSUC is at present in a kind of never-never land with respect to Carver: neither in nor out. If a decision is taken to pursue governance reforms at the Society it would be our recommendation that the Carver model be set aside, the gains made through its adoption retained, and that a simpler, less ideological approach to governance be adopted that is more closely tailored to the mission, character and traditions of the Society.

More generally, it seems clear to us that the Society would benefit from the adoption of certain new bylaws or policies related to governance that would address the issues outlined above. But how to secure action? The *Change through Leadership* report alluded to above cites virtually all the problems that we have mentioned. Many of the issues cited in this report were cited in a survey of Benchers that took place seven years ago. For example, that report inter alia raises the following concerns:

- Committee work takes too much time
- Need for an improved decision-making and policy process
- The inadequacy of Convocation itself; its excessive size
- Grandstanding by Benchers
- Meetings that accomplished little
- The need for term limits for Benchers
- Many Benchers' lack of understanding of their roles - and of the direction of the Law Society itself.

While we are not at one with all aspects of this report, there are many sensible proposals within it.

In summary, the Law Society seems caught in a profound paradox. On the one hand, this is an organization whose very purpose under its legislation is "to govern the legal profession in the public interest". This sets it apart from a business corporation whose purpose is to make money for its shareholders, and whose board exists simply to steer the affairs of the corporation.

Yet, despite the centrality of the Society's governance responsibilities, we got the sense that governance was an issue that many Benchers found tiresome or unpalatable. Further, it is obvious from an examination of the Society's own papers that sensible proposals for needed reforms are often ignored. An independent observer might well be led to wonder whether the Society takes its governance responsibilities seriously - a suggestion which we are sure many Benchers who work hard at their responsibilities within Convocation would find highly offensive.

The paradox remains. Thus, the challenge facing the Law Society is not, primarily, one of problem identification. It is the challenge is of building a constituency for constructive change and of crafting a change strategy that will deal with more than superficial issues. A related task would be to ensure that if changes are approved and policies are adopted, they are actually followed.

3. Governance at the Law Society in perspective

Governance: recent developments

Governance is a topic of growing interest in society. In the corporate sector, this interest has been fuelled by a series of high profile business failures, not only in the United States but, less well known, in Britain, Canada, Australia and elsewhere. In many of these failures, inadequate attention to governance issues played a significant part. As a consequence, securities regulators and government agencies in these countries have been examining each others' policies and developing new guidelines and legislative frameworks.

Specifically, in Canada, amendments to the Canada Corporations Act are under review in the Department of Industry while in Ontario, new legislation related to corporate governance is also under consideration. Similar reviews are under way in many other countries. The Ontario legislation may introduce some stringent new governance requirements. In September 2003, the Toronto Stock Exchange decided to cede its efforts to develop corporate governance standards to the Ontario Securities Commission, which in turn, at time of writing, is in the process of deciding what standards it will require of corporations in Ontario.

Many corporations interested in doing business in the U.S.A. will have to comply with the new Sarbanes-Oxley Act and with governance guidelines promulgated by the New York Stock Exchange. The Law Society is aware that corporate governance developments will have significant implications for the practice of law in Canada and, to its credit, it is in the process of considering what those implications may be.

In the late 1990s, a wide-ranging review of the voluntary sector led by former NDP leader Ed Broadbent affirmed that governance played an important role in institutional performance. Despite this, he stated, "Governance is often approached as trial and error since there are few standards, published best practices or guides to assist organizations." In the wake of this report, there has been renewed concern to improve governance in this sector. Clients in the non-profit sector often turn to lawyers for incorporation and for advice in developing bylaws, just as they do in the for-profit sector. In our view, lawyers assuming such responsibilities should be in a position to craft bylaws with an understanding of sound governance principles, and how such principles might apply to a particular client's situation and needs. It is questionable at present whether many lawyers are in fact equipped to do this. This may be an issue of professional competence that the Society will wish to explore.

Among international organizations, according to interviews conducted by staff of this Institute in September 2003, governance is a topic of very contemporary concern. In New York, the UN Secretary General has tabled two proposals for governance reform of the United Nations system. In Washington, at the World Bank and the International Monetary Fund as well as the Inter-American Development Bank, governance issues are under active consideration in three respects: in relation to the operation of the boards of directors of these institutions, in relation to their lending activities and programs in developing countries, and in relation to their need to raise funds on international bond markets. Both the World Bank and the Fund are reviewing what "sound governance" means in a development context.

Similarly, in the late 1990s, the United Nations Development Program promulgated its view of what constitutes "good governance". The UNDP has taken a democratically oriented point of view which contrasts to some degree with the more financially oriented perspectives that characterize the approach of the Bank and Fund, (and, for that matter, the approach taken to good governance that one tends to find in the corporate sector). For a representative and somewhat political organization such as the Law Society, the UNDP definition of "good

governance" may have more salience than that of, say, the Toronto Stock Exchange, though both viewpoints have their merits.

Five principles of good governance

The UNDP sets forth a set of nine principles that have deep roots in human experience and political philosophy. They relate both to the results of power and to how well it is exercised. Our Institute has found it helpful to bear these principles in mind when considering what approach to governance might be best suited to a particular organization or situation; for convenience we have compressed the nine principles to five overarching ones. In applying these principles we have found that "the devil is in the details" since they may overlap or conflict with each other in certain regards. This does not invalidate them - rather, it illustrates why the quest for good governance requires judgement and balance. It is not a matter of simply applying formulas or models. The principles are set forth below.[8]

1. Legitimacy and Voice

Participation – all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

Consensus orientation – good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures.

2. Direction

Strategic vision – leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.

3. Performance

Responsiveness – institutions and processes try to serve all stakeholders.
Effectiveness and efficiency – processes and institutions produce results that meet needs while making the best use of resources.

4. Accountability

Accountability – decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external.

Transparency – transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and

[8] United Nations Development Program. “Governance and Sustainable Human Development, 1997”.

enough information is provided to understand and monitor them.

5. Fairness

Equity – all men and women have opportunities to improve or maintain their wellbeing.
Rule of Law – legal frameworks should be fair and enforced impartially, particularly the laws on human rights.

How LSUC looks in relation to other professional bodies

During this study we examined Law Society practices in relation to practices in several other organizations with a mandate for the regulation of professional bodies.[9] Organizations were compared on a number of parameters; the most salient for our purposes are the following:

- ☐ Nature of the board - size, composition, frequency of meetings
- ☐ Agenda-setting - existence, role of an Executive Committee or some comparable body
- ☐ Rules of debate.

What does the situation in these other bodies suggest with regard to governance at the Law Society?

1. Most regulatory organizations use either Robert's or Bourinot's Rules of Order. Rules of order are a basic building block of intelligent debate in formal settings, and they are especially important in larger deliberative bodies (such as the Convocation). The continued use of the Ontario Legislature's Standing Orders by the Law Society, apparently viewed by many Benchers as unsuitable and characterized by one of our interlocutors as "ridiculous", is a blemish on LSUC governance practices. The blemish is the more serious in view of the apparent difficulties faced by the Treasurer in enforcing adherence to even these problematic rules.

2. Most regulatory boards, even in the case of organizations whose boards are much smaller than Convocation, meet only a few times a year (quarterly being the norm). One wonders why Convocation, as the largest and perhaps most unwieldy of these boards, has to meet as often as it does, and whether the expense associated with such meetings is warranted - particularly if, as some of our interlocutors asserted, Convocation spends a good deal of its time on issues of secondary importance.

   Would it, for example, be possible for the Law Society to place more reliance on its Committees to prepare policy? Under such an arrangement, the

[9] Specifically: the Professional Engineers of Ontario, the Ontario Association of Architects, the College of Physicians and Surgeons of Ontario, the Ontario College of Teachers, the Royal College of Dental Surgeons of Ontario, the Ontario Securities Commission and the Investment Dealers' Association (the latter two included at the request of the Law Society). See Appendix A for details. Note that this review was not exhaustive: it was principally based on written materials (websites, bylaws and legislation) and on a limited number of interviews. A more in-depth review would have involved more interviews in these organizations to explore both formal and informal aspects of governance.

Convocation would generally either approve, or send back Committee work, avoiding (as some of our interlocutors suggested) the temptation to try to re-do this work in what is in effect a committee of the whole. Further, assuming it had appropriate rules of order and a better way of setting priorities, under such arrangements Convocation could devote more of its time to debating the more difficult or important questions facing the profession.

3. Size. Most regulatory boards in the organizations we examined fell in the range of roughly 25-30 members. This contrasts with Convocation, which, if ex officio and honorary members are included, has well over 50 members. The Professional Engineers of Ontario, with 66,000 members, has twice the membership of the Law Society (33,000); yet it functions with a board of approximately half Convocation's size (23-32 members).

   Interestingly, most boards appeared to have a mix of elected and appointed board members.

4. Priority-setting and coordination of work: in every regulatory organization we examined there was an executive committee. In most cases, where the organization is established by provincial statute, an executive committee is required by the legislation. As one would expect, the executive meets more often than the whole board. The Law Society stands alone in its decision to operate without the benefit of such a body, with the consequences for focus and direction already discussed in this report.

Governance developments and the practice of law

Governance is important to the Law Society not only because lawyers will be required to advise their clients on how to operate in an increasingly complex and rule-bound environment, but also because there is growing evidence of the link that Broadbent alluded to, between good governance practices and institutional performance. Several studies of economic and social development among Aboriginal peoples provide evidence of a positive correlation between progress in these areas and sound governance practices on Aboriginal reserves.[10]

In the corporate sector, a study recently published in the USA found that investors consider board practices important when making decisions about their investments and that they will pay a premium to invest in well-governed firms.[11] The lead editorial in the *Globe and Mail* on September 24, 2003 asserted. "Corporate bosses who fail to take the reform drive seriously in the mistaken belief that it's a passing fad…will find some of their biggest shareholders voting with their feet. And that should be a a bigger concern than the cost of changing their practices."

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[10] See, for example, Lemont, Eric (2002), "Developing Effective Processes of American Indian Constitutional and Government Reform: Lessons from the Cherokee Nation of Oklahoma, Hualapai Nation, Navajo Nation, and Northern Cheyenne Tribe", in *American Indian Law Review*, Volume 26:2, 2002, or Lee, Andrew J. (2001), "Statement Before the United States Senate Committee on Indian Affairs Regarding Tribal Good Governance Practices and Economic Development"; July 18, 2001.

[11] Coombes, Paul and Watson, Mark, (2000), "Three Surveys on Corporate Governance", in *The McKinsey Quarterly*, 2000 Number 4..

The Institute's study involved only a very limited number of interviews with recent Benchers. A wider sampling of opinion would have permitted us to comment more confidently on Benchers' own views of the state of governance at the Law Society. It is notable, however, that the survey of Benchers on governance issues conducted in the mid-90s revealed a fairly general dissatisfaction ("All parties consulted unanimously agree that the Law Society's governance is significantly flawed…of the 43 people who responded to the survey, only one rated the Law Society's governance as highly effective.") Based on our discussions and our review of the Society's governance policies and related materials, we believe that a more contemporary survey of Benchers - or of the general membership of the Society - would yield similar results. It is notable also that all staff included in this survey, and a majority of Benchers, rated governance as a function of "high importance" to the Society.

Other papers developed in the context of the work of the Society's Strategic Planning Committee over the period 2000-2001 examined several of the comparable regulatory organizations cited in the present review. Many of the criticisms of the Society cited above were noted in this Committee's deliberations, including the size of Convocation, the frequency of meetings (both Convocation and committees), and the attendant costs.

The Strategic Planning Committee, rightly in our view, also drew attention to the threat posed to self regulation by inadequate governance arrangements. It noted that at the time, self regulation of the legal profession was at risk in both England and New South Wales, and that in the field of health, the relevant professions had recently been subordinated to the *Regulated Health Professions Act* requiring each College to report annually to the Minister on its activities and financial affairs. Advisory Councils were also established to undertake reviews of patient relations, quality assurance and complaints and discipline procedures. Despite these warnings, little action appears to have been taken to deal with the main problems surfaced by the Strategic Planning Committee.

4. Where to from here?

The Law Society is an organization with an honourable history and a long pedigree. Its members are rightly proud of the goals that it has achieved, and the many rich traditions that have developed. Change in organizations with such a pedigree is often regarded with deep suspicion, and the maxim that "reform is a fine and noble thing - but let it proceed elsewhere" comes to mind in this connection. There is no doubt that change which addressed some of the issues raised in this brief report would be difficult, contentious, and perhaps painful for some members of the Society. In light of these considerations, would change be advisable? What options are available to the Society?

Option I: Dolce far niente

Doing nothing is one option. Broadly speaking, this has been the Society's approach to governance issues since the 1996 "adoption" of the Carver model. What would be the consequences of leaving governance issues aside?

On the positive side of the ledger, such a decision would allow the Society to focus its attention on the many other issues facing the profession, and to carry on without doing violence to some of its cherished traditions. Governance reform often gives rise to controversy, so inaction might help to avoid this friction. Further, since the Society has great difficulty achieving progress in governance, a decision not to address governance issues would prevent energy from being devoted to an exercise with perhaps little chance of success.

On the downside, such a decision would, of course, lead to the persistence of the problems documented in this and in previous studies. Presumably, in the absence of reform, these problems would simply persist into the indefinite future with the attendant costs, risks and loss of effectiveness associated with them.

Option II: Build and act on a governance reform program

One of the principal functions of boards of directors is risk management: the identification of significant risks facing the organization, the assessment of their severity and probability, and the taking of appropriate actions to anticipate or palliate the risk. What conclusion would a risk assessment of *Option A* reach?

It is our opinion that an independent outside review of the Law Society's governance arrangements - of the kind that might readily be precipitated by some unexpected scandal like Bre-X or Enron - would give rise to significant public criticism. Such criticism would be very damaging to the reputation of the Society, and to the legal profession generally. What defences could the Society mount?

A report prepared on public attitudes toward the Law Society by Earncliffe consultants in 1999 painted a gloomy picture. "The Law Society continues to appear to be remote and largely irrelevant to most lawyers, and is a target of anger and suspicion among a significant segment…. On balance, participants did not believe that the Law Society provided value for money." The report noted that in particular, the issue of self-regulation was seen by many as inconsistent with the Society's advocacy responsibilities.

Obviously, running standard-setting and disciplinary procedures and taxing members is not the way to win a popularity contest. Nonetheless, the Earnscliffe conclusions suggest that in the event of controversy, the Society would not have a well-spring of public support to draw upon - not even among its own membership. Yet given the increase in interest in governance in recent years, it appears to us that the risk of an unfavourable review of this kind, whether mandated by the Society or not, has risen significantly. Even absent a law-related scandal, the searchlight of public scrutiny might be turned on the Law Society at any point simply as a result of some investigative initiative by the media such as a W5 story. The fact that legislatures in other jurisdictions have taken a tough-minded look at self-regulatory professions suggests that complacency may not be a sound strategy for the Society.

Self-regulation and sound governance: companion concepts

A decision as to what should be done about governance at the Society should take account of the relationship between self-regulation and governance. Since the Strategic Planning Committee raised concerns about developments abroad in relation to self-regulation, it appears that the principle has suffered further erosion. For example, in the Spring of 2003, the legislature of Queensland, Australia, stripped the Queensland Law Society of its principal regulatory functions. There are a number of trends under way currently, all of which constitute threats to the concept of professional self-regulation, as documented in the insightful study prepared for Convocation by Sophia Sperdakos. "The direct and fundamental connection between self-regulation and governance in the public interest has been confirmed by the courts including the Supreme Court of Canada, and in judicial inquiries and studies."[12]

[12] Sperdakos, *op cit.*, p 6.

In light of the foregoing considerations, it will be apparent that we do not believe Option I is an advisable course of action for the Law Society. Rather, it is our recommendation that the Society should set itself the goal of having a system of governance that is, as far as possible, above reproach. Further the Society should be, *and be seen to be*, constantly vigilant with respect to the quality of its own governance.[13] Beyond vigilance, the Society should be able to demonstrate through its actions rather than simply through studies that it takes governance seriously, and that it has the capacity to implement reforms when the need is identified.

In suggesting that LSUC's policies and practices should be "above reproach", we recognize that in governance, it is in fact difficult to be entirely above reproach. In the application of principles of good governance, there is room for much discussion and many different points of view as to how those principles should find expression in practice. (There are, for instance, those who believe that self-regulation is fundamentally at odds with the advocacy responsibilities of Convocation, whereas others will believe, as asserted in the Commentary on the Society's role statement, that there is no necessary conflict.) Informed persons may differ as to what "good governance" may mean in different circumstances. In view of this, we believe it is all the more important that the Society be able to demonstrate that it is alert to governance issues, sensitive to the need to address them, and able, once options have been debated, to move beyond debate and take practical step. This will help to reassure observers or critics that it would not be necessary to have reforms imposed on the Society from outside.

In summary

The main points of the argument in this report are as follows:

- ☐ The state of governance at the Society is in need of significant attention:
  - · The problems of governance are amply documented.
  - · Past surveys of benchers indiate that. unless things have changed recently, a majority believe that the "Law Society's governance is significantly flawed".
  - · The Society does not emerge particularly well from a comparison with similar organizations.
- ☐ The Society's approach to governance should be derived from its mission, history and context, not from the application of a model or formula.
- ☐ When it comes to reform, the Society is a victim of its own governance system: reform runs into the sand due to considerations such as the size and unwieldy nature of Convocation and the lack of an effective priority-setting process, (coupled with the apparent disinterest of many lawyers in the procedures and policies that support what is actually the central role of the Society - governance).
- ☐ Governance should be a priority issue. Good governance would provide a bulwark against what may become a real and present threat to the Society in the near future - as it has in other jurisdictions - namely, the threat of ending the regime of self-regulation.

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[13] One way in which some business corporations are dealing with this challenge is through the establishment of committees of the board which are specifically responsible for monitoring the state of governance, for ensuring adherence to agreed governance policies, and for recommending improvements.

If there were a will to act…

We conclude this report with some initial thoughts on where reform might have to focus and how reform might be brought about.

Leadership

Governance reform tends to occur only under these conditions:

a) when there is a change of top leadership, and the new leader believes governance change is warranted and makes it a personal priority,
b) when an individual or small group within the organization decides to focus on governance reform and pushes this issue through the inertia that typifies most organizations,
c) when an crisis occurs that causes the organization to shift its attention to governance issues, or
d) when change is imposed from the outside.

Benchers may wish to consider which of these scenarios would be preferable in the case of the Law Society. Our view is that alternatives (c) and (d) would be very unpalatable, which leaves the other two for consideration. Leadership of reform in the Society would have to come from the political, not the administrative level of the organization.

The root of many of the Society's governance problems lies in the size and unwieldy nature of Convocation. Reform proposals drive into the sand because of Convocation's weakness as a decision-making body. Indeed, the Society might be likened to the private business corporation that is saddled with an unworkable shareholders' agreement. The existing agreement causes serious business problems but its provisions make change highly contentious. In these circumstances, the long term health of the business as a whole may come into conflict with the parochial self-interest of management and shareholders. Only corporations with exceptional and far-sighted leadership are able to overcome problems of this nature.

These considerations suggest that the pathway to change must lie in the willingness of the Treasurer, or a group of leaders within Convocation, to take on the reform task and to develop of a carefully crafted strategy.

The need for sound strategy

This strategy should draw Convocation into a process of reflection and decision-taking where Benchers are made aware of the risks of inaction. They should be invited to focus on the broad public interest and the well-being of the legal profession as a whole. This would suggest that reform should be considered in the context of some kind of special meeting or retreat for Convocation with a carefully considered agenda and process, not in a conventional Convocation meeting. Given that governance is what the role of Convocation is supposed to be, perhaps it may not be as difficult as it might first seem to develop a strategy that has the possibility of succeeding.

Further, a significant advantage facing Convocation is that there has been a great deal of thoughtful work done by its own members on what issues should be addressed and how.

There are interesting parallels - in other law societies, in other regulatory organizations - to draw upon. Much work has already been done and could easily be mined.

What is required is the will to proceed and the appropriate leadership.

Memorandum

To: Tim Plumptre

From: Kirk Michaelian

Date: 18/08/03

Re: LSUC Governance

This memo makes a number of observations about the governance structure of the LSUC. It should be read after the draft appendix to the LSUC project, "Analysis of governance structures of self-regulating professions", which makes only general observations about the governance structures of self-regulatory organizations. In particular, this memo compares and contrasts the governance structure of the LSUC to the characteristic governance pattern of self-regulatory organizations described in the appendix, in light of the concerns about LSUC governance which form the background to the LSUC project. The characteristic governance pattern in question is summarized in Table 1 of the appendix, and is based on the data collected in Table 2 of the appendix. For ease of reference, Table 1 is reproduced below.

Note on the research

The first phase of the research surveyed five organizations: the Professional Engineers of Ontario, the Ontario Association of Architects, the College of Physicians and Surgeons of Ontario, the Ontario College of Teachers, and the Royal College of Dental Surgeons of Ontario. The information gathered was summarized in a table, of which a preliminary analysis was made (see the memo of 09/07/03). In addition to the preliminary analysis, the following directions for further research were identified (see the aforementioned memo for more detail).

(1) An explicit comparison between the governance patterns of the LSUC and those of the organizations covered in the table.

(2) Integration of the information contained in the table with that gathered in your interviews.

(3) Development of a more complete list of self-regulating professions.

Task (1) is carried out here. Task (2) will presumably be carried out by you in a subsequent phase of research. Regarding task (3), please see the separate memo entitled "LSUC Governance – various items".

In addition to the three tasks mentioned above, the LSUC requested that we add several organizations to our survey: the Ontario Securities Commission, the Investment Dealers Association, and the LSUC itself. Information on those organizations, as well as more complete information on those surveyed previously, is summarized in Table 2 of the appendix.

Note that the relevance of the OSC appears to be limited, as it is not a self-regulatory organization in the traditional sense. The IDA, on the other hand, although it is a national, rather than a provincial, organization, appears to be especially relevant, as it combines both regulatory and advocacy functions. In light of the de facto advocacy role of the LSUC, this feature of the IDA assumes special importance. Note, however, that this importance might be limited by the fact that, in contrast to that of the LSUC, the IDA's advocacy role is both de jure and de facto.

The LSUC and the characteristic governance pattern

Table 1 The characteristic governance pattern of self-regulatory organizations

aspect of governance	question/answer
rules of order	• Robert's/Bourinot's • are the rules followed, or is business conducted informally?
membership meetings	• annual
board	• quarterly meetings • both elected and provincially appointed members • both lay and professional members • terms < three years • number of members < thirty • agenda set prior to meetings
executive	• appointed by the board • frequent meetings
president	• chief executive officer • chair of meetings of the executive, the board, and the membership • various representative functions • direction-setting • functions can be delegated
committees	• what standing committees are there? • is there a mechanism for ensuring their work is used?
staff	• how is the intended division of responsibilities between board members and staff enforced?
chief executive officer	• are the roles of president and chief executive officer distinguished and, if so, how?

It is hoped that the characteristic governance pattern will be of use to the LSUC as it attempts to improve its own governance structure. The salience of the information given about each organization will, of course, depend to some extent on the similarity of the organization in question to the LSUC. And the extent to which the arrangements canvassed here suggest a desirable alternative to the present governance structure of the LSUC will depend in part on whether the organizations in question are susceptible to the sorts of difficulties which the LSUC

has encountered. Answering this question will require further interviews. Note that this question, and others which become apparent over the course of the comparison, are listed in my notes regarding questions for future interviews (attached).

Rules of order

Most self-regulatory organizations use either Robert's or Bourinot's Rules of Order. The exception is the RCDSO, which uses Sturgis' Standard Code of Parliamentary Procedure. All three sets of rules of order are quite similar to each other. In an interview with the Secretary of the IDA, it was mentioned that, although the IDA officially uses Robert's Rules, in practice business is conducted more informally. The suggestion was that this is made possible by a particular organizational culture. Whether this is the case in the other organizations surveyed is unknown, but bears investigating.

The LSUC uses the Standing Orders of the Legislative Assembly of Ontario, which it has found to be ill-suited to its requirements. Given the pervasive use of Robert's and Bourinot's rules, perhaps the LSUC should consider adopting one of those sets of rules.

Membership meetings

The frequency of LSUC membership meetings (annual) fits the characteristic pattern.

The governing board

In all the cases surveyed, the self-regulating organization has a governing board, responsible for setting the overall direction of the organization. The board of the LSUC ("Convocation") is typical in this respect, but atypical in many of its details.

The frequency of LSUC board meetings (monthly) is unusual. The characteristic pattern has board meetings occurring quarterly. Most likely, if the LSUC were to adopt an executive, the frequency of meetings of Convocation could be reduced.

In terms of its ratios of elected to appointed members, the LSUC is typical. The length of term on the board is slightly longer in the case of the LSUC (four years) than among most of the other organizations surveyed (where a maximum term of three years is the norm), but this would seem to be a relatively minor difference. Another relatively minor difference concerns the frequency of elections to the board (higher than the norm in the case of the LSUC).

What is more striking (and probably more significant, in light of the results of the survey of LSUC members, which reveal a dissatisfaction with the size of the board)[14] is the discrepancy between the size of the LSUC's board and those of the other organizations. In general, there is no correlation between the size of an organization's membership and the size of its governing board. Compare, for example, the PEO and the OAA: the former has a membership many times the size of the membership of the latter; yet their boards are virtually the same size. This suggests that there is an optimum upper limit on the size of the governing board. This fact should be noted, especially in light of the expressed concerns over the inefficiency of Convocation. Again, adding an executive could perhaps serve to render a large board unnecessary.

[14] Law Society of Upper Canada. "Report of the Committee on Governance Restructuring: Change through Leadership: A Blueprint for Law Society Governance".

Note also that there is some mechanism for setting the agenda ahead of meetings. Given the expressed concerns about the way in which agendas for Convocation are set, it seems that the mechanisms employed by other organizations are worth further investigation.

The executive

In the characteristic pattern (indeed, in all the cases surveyed, with the exception of the LSUC), the self-regulatory organization has an executive. In most cases, an executive committee is required by the relevant provincial legislation. Typically, the executive is appointed by the board. It is empowered to deal with most routine business, and, to this end, meets relatively frequently.

The LSUC, of course, has no executive. Should the LSUC wish to explore the possibility of adding an executive in order to make some of the improvements noted above, perhaps the characteristic pattern would provide a model.

The president

I have less information available about the role of the Treasurer (the LSUC's equivalent of a president), so my remarks in this section are necessarily tentative.

In the characteristic pattern, the president of the organization has a variety of roles:

- chief executive officer
- chair of meetings of the executive, the board, and the membership
- various representative functions
- direction-setting

Note that the president typically can delegate a number of his functions.

The LSUC diverges from the characteristic pattern at least in that the Treasurer is not the chief executive officer. Presumably, you will know whether the Treasurer has the other three functions listed, and how easily the functions of the Treasurer can be delegated.

Note that the addition of an executive might also help to counter the expressed concern that the Treasurer on occasion wields an inappropriate amount of influence over the direction of the LSUC.

Committees

Apparently, the LSUC has difficulty ensuring that the work of the various committees of Convocation is put to use. I was not able to determine whether similar problems occur in other self-regulatory organizations or, if not, how they are prevented.

Staff

There is an expressed concern among the LSUC membership about the division of responsibilities between Benchers and staff (see the LSUC report cited above). I was not able to determine whether such a concern has arisen in the other organizations surveyed here, nor, if so, what steps have been taken to deal with it.

I hope this analysis makes clear the respects in which the LSUC's governance structure is unusual, and that the suggested possible alternatives are useful. For specific follow-up questions, see the accompanying notes on questions for future interviews.

Kirk Michaelian

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

Copy of a table entitled "Governance of professional associations and other organizations with primarily regulatory functions."

(Appendix A, pages 17 – 19)

It was moved by Ms. Ross, seconded by Mr. Heintzman that the in camera Report of the Institute of Governance dated September 25, 2003 be made public.

Carried

The Governance Task Force Report was received.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. Pattillo presented the Professional Regulation Committee Report.

Report to Convocation
February 23, 2006

Professional Regulation Committee

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)

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COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 9, 2006. In attendance were Carole Curtis (Chair), Mary Louise Dickson and Lawrence Pattillo (Vice-chairs), Patrick Furlong, Alan Gold, Allan Gotlib, Gavin MacKenzie and Judith Potter. Staff attending were Naomi Bussin, Anne-Katherine Dionne, Malcolm Heins, Zeynep Onen, Jim Varro and Miriam Weinfeld.

FOR DECISION

AMENDMENTS TO BY-LAWS 4

MOTION

2. That By-Law 4 [Office of Secretary], made by Convocation on January 28, 1999 and amended by Convocation on March 26, 1999, April 26, 2001, January 24, 2002 and October 23, 2003, be further amended as follows:

    a. Subsection 3 (1) of By-Law 4 [Office of Secretary] is amended by deleting "Senior Counsel, Discipline" / "avocat principal du service de la discipline" wherever it appears and substituting "Professional Regulation Counsel" / "avocat de la réglementation professionnelle".
    b. Subsection 3 (3) of the By-Law is amended by deleting "Director, Policy and Legal Affairs" / "direction des politiques et des affaires juridiques" wherever it appears and substituting "Director, Policy and Tribunals" / "direction des politiques et des tribunaux".
    c. Subsection 3 (6) of the By-Law is amended by deleting "or Senior Counsel, Discipline" / "ou à l'avocat principal du service de la discipline" wherever it appears.
    d. Section 3 of the By-Law is amended by deleting subsection (2).

Reasons for the Amendments

3. The Committee considered the request of the Director of Professional Regulation, Zeynep Onen, to address the matter of the Secretary's delegation authority in By-Law 4. By-Law 4 appears at Appendix 1.

4. Currently, subsections 3(1) and (2) of By-Law 4 provide that if the Secretary is unable to exercise the powers or perform the duties outlined in the section, Senior Counsel, Discipline or Discipline Counsel may exercise the powers and perform the duties. A similar delegation authority is found in subsection 3(6). These subsections reads as follows:

Delegation of powers and duties of Secretary: Senior Counsel, Discipline

3. (1) If the Secretary for any reason is unable to do so, an officer or employee of the Society who holds the office of Senior Counsel, Discipline may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) sections 35, 40, 49.2 and 49.3 of the Act;
(b) section 45 of the Act, as it relates to an order made for failure to comply with a conduct or capacity order;
(c) sections 4 to 6 of By-Law 17;
(d) subsection 4 (2) of By-law 19;
(e) By-law 21 as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the conduct of a member, group of members or student member, a referral to the Committee of a matter respecting the capacity of a member or student member, a request to the Committee to withdraw an application for a conduct or capacity order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of an audit, an investigation, a search or seizure related to an investigation, a conduct proceeding or a capacity proceeding; and
(f) the rules of practice and procedure.

Delegation of powers and duties of Secretary: Discipline Counsel

(2) If the Secretary or the Senior Counsel, Discipline is unable to do so, an officer or employee of the Society who holds the office of Discipline Counsel may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) sections 35, 40, 49.2 and 49.3 of the Act;
(b) section 45 of the Act, as it relates to an order made for failure to comply with a conduct or capacity order;
(c) sections 4 to 6 of By-law 17;
(d) subsection 4 (2) of By-law 19;
(e) By-law 21 as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the conduct of a member, group of members or student member, a referral to the Committee of a matter respecting the capacity of a member or student member, a request to the Committee to

withdraw an application for a conduct or capacity order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of an audit, an investigation, a search or seizure related to an investigation, a conduct proceeding or a capacity proceeding; and

(f) the rules of practice and procedure.

…

Delegation of powers and duties of Secretary: Professional Regulation Counsel or Senior Counsel, Discipline

(6) If the Secretary is unable to do so, an officer or employee of the Society who holds the office of Professional Regulation Counsel or Senior Counsel, Discipline may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under section 51 of the Act.

5. Sections of the *Law Society Act* and the By-Laws, recited in clauses 3(1)(a) through (d) and 3(2)(a) to (d) appear at Appendix 2.

6. The functions enumerated in this section include a variety of regulatory responsibilities in both the pre-and post-hearing streams, including instructing investigations. In the Director's view, these are functions that should be dealt with outside of the office of Senior Counsel, Discipline or Discipline Counsel and within the office of the Secretary (Director).

7. The Committee agreed with this approach. In the Committee's view, to avoid even an appearance of conflict, these functions should remain within the Director's office, and not be undertaken by the counsel who may eventually be prosecuting these matters or may have prosecuted the matters.

8. The Committee proposes that the By-Law be amended to make Professional Regulation Counsel the Secretary's delegate for the purposes of subsection 3 (1) and to delete subsection 3(2) as superfluous. A companion amendment is made to subsection 3(6) for consistency with the above, and a housekeeping amendment is proposed to subsection 3(3) to provide the correct the title of the Director, Policy and Tribunals (currently shown in the By-Law as "Director, Policy and Legal Affairs"). The specific amendments are as follows, as reflected in the motion on page 4:

   a. Subsection 3 (1) would be amended by deleting "Senior Counsel, Discipline" wherever it appears and substituting "Professional Regulation Counsel";
   b. Subsection 3 (3) would be amended by deleting "Director, Policy and Legal Affairs" wherever it appears and substituting "Director, Policy and Tribunals"
   c. Subsection 3 (6) would be amended by deleting "or Senior Counsel, Discipline" wherever it appears; and
   d. Section 3 would be amended by deleting subsection (2).

APPENDIX 1

BY-LAW 4
OFFICE OF SECRETARY

Appointment of Secretary
1. Convocation shall, on such terms as it considers appropriate, appoint a person as Secretary of the Society.

Secretary's duties
2. (1) The Secretary shall perform the duties imposed upon the Secretary by the Act, regulations, by-laws and rules of practice and procedure and such other duties as the Secretary may be instructed to undertake by the Chief Executive Officer.

Delegation of powers and duties of Secretary: Senior Counsel, Discipline
3. (1) If the Secretary for any reason is unable to do so, an officer or employee of the Society who holds the office of Senior Counsel, Discipline may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) sections 35, 40, 49.2 and 49.3 of the Act;

(b) section 45 of the Act, as it relates to an order made for failure to comply with a conduct or capacity order;

(c) sections 4 to 6 of By-Law 17;

(d) subsection 4 (2) of By-law 19;

(e) By-law 21 as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the conduct of a member, group of members or student member, a referral to the Committee of a matter respecting the capacity of a member or student member, a request to the Committee to withdraw an application for a conduct or capacity order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of an audit, an investigation, a search or seizure related to an investigation, a conduct proceeding or a capacity proceeding; and

(f) the rules of practice and procedure.

Delegation of powers and duties of Secretary: Discipline Counsel
(2) If the Secretary or the Senior Counsel, Discipline is unable to do so, an officer or employee of the Society who holds the office of Discipline Counsel may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) sections 35, 40, 49.2 and 49.3 of the Act;

(b) section 45 of the Act, as it relates to an order made for failure to comply with a conduct or capacity order;

(c) sections 4 to 6 of By-law 17;

(d) subsection 4 (2) of By-law 19;

(e) By-law 21 as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the conduct of a member, group of members or student member, a referral to the Committee of a matter respecting the capacity of a member or student member, a request to the Committee to withdraw an application for a conduct or capacity order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of an audit, an investigation, a search or seizure related to an investigation, a conduct proceeding or a capacity proceeding; and

(f) the rules of practice and procedure.

Delegation of powers and duties of Secretary: Director, Policy and Legal Affairs
(3) An officer or employee of the Society who holds the office of Director, Policy and Legal Affairs may exercise the powers and perform the duties of the Secretary under By-laws 6, 8, and 10.

Delegation of powers and duties of Secretary: Director, Membership Services
(4) An officer or employee of the Society who holds the office of Director, Membership Services may exercise the powers and perform the duties of the Secretary under subsection 31 (2) and sections 27.1, 46, 47 and 49 of the Act.

Delegation of powers and duties of Secretary: Chief Financial Officer
(5) An officer or employee of the Society who holds the office of Chief Financial Officer may, in the absence of the Director, Membership Services and the Secretary, exercise the powers and perform the duties of the Secretary under sections 46, 47 and 49 of the Act.

Delegation of powers and duties of Secretary: Professional Regulation Counsel or Senior Counsel, Discipline
(6) If the Secretary is unable to do so, an officer or employee of the Society who holds the office of Professional Regulation Counsel or Senior Counsel, Discipline may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under section 51 of the Act.

Delegation of powers and duties of Secretary: Senior Counsel, Legal Affairs
(7) An officer or employee of the Society who holds the office of Senior Counsel, Legal Affairs may perform the duties of the Secretary under subsection 62 (3) of the Act.

Commencement
4. This By-law comes into force on February 1, 1999.

APPENDIX 2

LAW SOCIETY ACT

R.S.O. 1990, CHAPTER L.8

Conduct orders
35. (1) Subject to the rules of practice and procedure, if an application is made under section 34 and the Hearing Panel determines that the member or student member has contravened section 33, the Panel shall make one or more of the following orders:

1. An order revoking the member's or student member's membership in the Society and, in the case of a member, disbarring the member as a barrister and striking his or her name off the roll of solicitors.

2. An order permitting the member or student member to resign his or her membership in the Society.

3. An order suspending the rights and privileges of the member or student member,

i. for a definite period,

ii. until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Secretary, or

iii. for a definite period and thereafter until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Secretary.

4. An order imposing a fine on the member or student member of not more than $10,000, payable to the Society.

5. An order that the member or student member obtain or continue treatment or counselling, including testing and treatment for addiction to or excessive use of alcohol or drugs, or participate in other programs to improve his or her health.

6. An order that the member or student member participate in specified programs of legal education or professional training or other programs to improve his or her professional competence.

7. In the case of a member, an order that the member restrict his or her practice to specified areas of law.

8. In the case of a member, an order that the member practise only,

i. as an employee of a member or other person approved by the Secretary,
ii. in partnership with and under the supervision of a member approved by the Secretary, or
iii. under the supervision of a member approved by the Secretary.

9. In the case of a member, an order that the member co-operate in a review of the member's practice under section 42 and implement the recommendations made by the Secretary.

10. In the case of a member, an order that the member maintain a specified type of trust account.

11. In the case of a member, an order that the member accept specified co-signing controls on the operation of his or her trust accounts.

12. In the case of a member, an order that the member not maintain any trust account in connection with his or her practice without leave of the chair or a vice-chair of the standing committee of Convocation responsible for discipline matters.

13. In the case of a member, an order requiring the member to refund to a client all or a portion of the fees and disbursements paid to the member by the client or, in the case of a student member, an order requiring the student member to pay to a person an amount equal to all or a portion of the fees and disbursements paid by the person in respect of work done by the student member.

14. In the case of a member, an order requiring the member to pay to the Society, for the Lawyers Fund for Client Compensation, such amount as the Hearing Panel may fix that does not exceed the total amount of grants made from the Fund as a result of dishonesty on the part of the member.

15. In the case of a member, an order that the member give notice of any order made under this section to such of the following persons as the order may specify:

i. The member's partners or employers.
ii. Other members working for the same firm or employer as the member.
iii. Clients affected by the conduct giving rise to the order.

16. In the case of a student member, an order that the student member give notice of any order made under this section to his or her articling principal.

17. In the case of a student member, an order revoking any credit in the Bar Admission Course to which the student member would otherwise be entitled.

18. An order that the member or student member report on his or her compliance with any order made under this section and authorize others involved with his or her treatment or supervision to report thereon.

19. An order that the member or student member be reprimanded.

20. An order that the member or student member be admonished.

21. Any other order that the Hearing Panel considers appropriate.

Same

(2) The failure of subsection (1) to specifically mention an order that is provided for elsewhere in this Act does not prevent an order of that kind from being made under paragraph 21 of subsection (1).

Test results
(3) If the Hearing Panel makes an order under paragraph 18 of subsection (1), specific results of tests performed in the course of treatment or counselling of the member or student member shall be reported pursuant to the order only to a physician or psychologist selected by the Secretary.

Report to Secretary
(4) If test results reported to a physician or psychologist under subsection (3) relate to an order made under paragraph 5 of subsection (1), the Secretary may require the physician or psychologist to promptly report to the Secretary his or her opinion on the member's or student member's compliance with the order, but the report shall not disclose the specific test results. 1998, c. 21, s. 21.
…

Capacity orders
40. (1) Subject to the rules of practice and procedure, if an application is made under section 38 and the Hearing Panel determines that the member or student member is or has been incapacitated, the Panel may make one or more of the following orders:

1. An order suspending the rights and privileges of the member or student member,

   i. for a definite period,
   ii. until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Secretary, or
   iii. for a definite period and thereafter until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Secretary.

2. An order that the member or student member obtain or continue treatment or counselling, including testing and treatment for addiction to or excessive use of alcohol or drugs, or participate in other programs to improve his or her health.

3. In the case of a member, an order that the member restrict his or her practice to specified areas of law.

4. In the case of a member, an order that the member practise only,

   i. as an employee of a member or other person approved by the Secretary,
   ii. in partnership with and under the supervision of a member approved by the Secretary, or
   iii. under the supervision of a member approved by the Secretary.

5. An order that the member or student member report on his or her compliance with any order made under this section and authorize others involved with his or her treatment or supervision to report thereon.

6. Any other order that the Hearing Panel considers appropriate.

Same
(2) The failure of subsection (1) to specifically mention an order that is provided for elsewhere in this Act does not prevent an order of that kind from being made under paragraph 6 of subsection (1).

Test results
(3) If the Hearing Panel makes an order under paragraph 5 of subsection (1), specific results of tests performed in the course of treatment or counselling of the member or student member shall be reported pursuant to the order only to a physician or psychologist selected by the Secretary.

Report to Secretary
(4) If test results reported to a physician or psychologist under subsection (3) relate to an order made under paragraph 2 of subsection (1), the Secretary may require the physician or psychologist to promptly report to the Secretary his or her opinion on the member's or student member's compliance with the order, but the report shall not disclose the specific test results. 1998, c. 21, s. 21.
…

Audit of financial records
49.2 (1) The Secretary may require an audit to be conducted of the financial records of a member or group of members for the purpose of determining whether they comply with the requirements of the by-laws.

Powers
(2) A person conducting an audit under this section may,

(a) enter the business premises of the member or group of members between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the member or by any member in the group of members;

(b) require the production of and examine the financial records maintained in connection with the practice of the member or group of members and, for the purpose of understanding or substantiating those records, require the production of and examine any other documents in the possession or control of the member or group of members, including client files; and

(c) require the member or members, and people who work with the member or members, to provide information to explain the financial records and other documents examined under clause (b) and the transactions recorded in those financial records and other documents. 1998, c. 21, s. 21.

Investigations
Investigations: members' conduct
49.3 (1) Subject to section 49.5, the Secretary may require an investigation to be conducted into a member's conduct if the Secretary receives information suggesting that the member may have engaged in professional misconduct or conduct unbecoming a barrister or solicitor.

Powers
(2) A person conducting an investigation under subsection (1) may require the person under investigation and people who work with the person to provide information that relates to the

matters under investigation and, if the Secretary is satisfied that there is a reasonable suspicion that the person under investigation may have engaged in professional misconduct or conduct unbecoming a barrister or solicitor, the person conducting the investigation may,

(a) enter the business premises of the person under investigation between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the person under investigation; and

(b) require the production of and examine any documents that relate to the matters under investigation, including client files.

Investigations: student members' conduct
(3) Subject to section 49.5, the Secretary may require an investigation to be conducted into a student member's conduct if the Secretary receives information suggesting that the student member may have engaged in conduct unbecoming a student member.

Powers
(4) A person conducting an investigation under subsection (3) may require the person under investigation and people who work with the person to provide information that relates to the matters under investigation and, if the Secretary is satisfied that there is a reasonable suspicion that the person under investigation may have engaged in conduct unbecoming a student member, the person conducting the investigation may,

(a) enter the business premises of the person under investigation between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the person under investigation; and

(b) require the production of and examine any documents that relate to the matters under investigation, including client files.

Investigations: capacity
(5) Subject to section 49.5, the Secretary shall require an investigation to be conducted into a member's or student member's capacity if the Secretary is satisfied that there are reasonable grounds for believing that the member or student member may be or may have been incapacitated.

Powers
(6) A person conducting an investigation under subsection (5) may,

(a) enter the business premises of the person under investigation between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the person under investigation;

(b) require the production of and examine any documents that relate to the matters under investigation, including client files; and

(c) require the person under investigation and people who work with the person to provide information that relates to the matters under investigation. 1998, c. 21, s. 21.

Suspension for failure to comply with order

45. (1) On application by the Society, the Hearing Panel may make an order suspending the rights and privileges of a member or student member if the Panel determines that the member or student member has failed to comply with an order under this Part.

Parties
(2) The parties to the application are the Society, the member or student member who is the subject of the application, and any other person added as a party by the Hearing Panel.

Nature of suspension
(3) An order under this section may suspend the rights and privileges of the member or student member,

(a) for a definite period;

(b) until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Secretary; or

(c) for a definite period and thereafter until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Secretary. 1998, c. 21, s. 21.

By-law 17

Filing Requirements

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

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

Member's obligation to provide access to files, etc.
(3) For the purpose of permitting the public accountant to complete the report, the member shall,

(a) grant to the public accountant full access, without restriction, to all files maintained by the member;

(b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and

(c) provide to the public accountant such explanations as the public accountant may require.

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

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

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

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

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

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

Investigation: application of subss. 4 (3) and (4)
(2) Subsections 4 (3) and (4) apply with necessary modifications to the investigation under this section.

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

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

By-Law 19

Handling Of Money And Other Property

Permission to withdraw other money
4(2) A member may withdraw from a trust account money other than the money mentioned in subsection (1) if he or she has been authorized to do so by the Secretary or, in the absence of the Secretary and all persons authorized to exercise the powers and perform the duties of the Secretary under this By-Law, the Chief Executive Officer.

MEMBER'S REPORT OF CRIMINAL AND OTHER CHARGES IN THE *RULES OF PROFESSIONAL CONDUCT*

Motion

9. That Convocation amend the *Rules of Professional Conduct* to add the reporting requirement currently in By-Law 20 (Reporting Requirements) as a rule of professional conduct.[1]

Background

10. On December 9, 2005, Convocation adopted By-Law 20 (Reporting Requirements), which requires members and student members of the Law Society to report criminal and other charges and the dispositions of charges. A copy of the By-Law appears at Appendix 1. The policy on which the By-Law is based appears at Appendix 2.

11. During Convocation's discussion of the By-Law, Gavin MacKenzie requested that the Committee consider whether the reporting requirement should also appear in the *Rules of Professional Conduct* ("the Rules"). Convocation agreed with this request, and the matter was sent back to the Committee for review.

The Difference Between By-Laws and Rules

12. By-Laws are executive legislation made pursuant to authority in the *Law Society Act.* The purpose in having the reporting requirement in a by-law is to use the same instrument used for other Law Society reporting requirements for members of the Society. For example:

    a. By-Law 17 (Filing Requirements) requires a member to report to the Society, by March 31 of each year, on his or her practice of law and other related activities during the preceding year (using the Member's Annual Report);
    b. By-Law 35 (Bankruptcy of Member) requires a member to immediately notify the Society whenever the member receives notice of or is served with a petition for a receiving order against him or her filed in court under subsection 43 (1) of the *Bankruptcy and Insolvency Act* (Canada), or the member makes an assignment of all his or her property for the general benefit of his or her creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada);

13. The *Rules of Professional Conduct* are made by Convocation. There is by-law- making authority for a code of conduct but it has not been exercised.[2] Currently, Rule-making authority is found in the mandate of the Committee under By-Law 9.[3]

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[1] If the motion carries, a draft of the rule amendment will be provided to a future Convocation.
[2] Section 62. (0.1) 10. of the *Law Society Act* provides that Convocation may make by-laws authorizing and providing for the preparation, publication and distribution of a code of professional conduct and ethics.
[3] By-Law (Committees) in section 15 provides as follows:

Rules of professional conduct
(2)Except when Convocation has established a committee other than a standing committee to prepare rules of professional conduct, subject to the approval of Convocation, the Professional Regulation Committee may prepare rules of professional conduct.

Authority of Convocation

14. The Rules, unlike the By-Laws, are not executive legislation. They are standards for professional conduct and provide ethical guidance. The Rules are enforced in discipline proceedings before the Society's Hearing Panel. They specifically provide that the Society may discipline a lawyer for professional misconduct or conduct unbecoming a barrister and solicitor (Rules 6.11(2) and (3)). Professional misconduct and conduct unbecoming a barrister or solicitor are defined terms in the Rules.[4] Section 33 of the *Law Society Act* includes a prohibition on "professional misconduct" and "conduct unbecoming a barrister or solicitor". [5]

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(3)Despite subsection (2), Convocation may at any time adopt rules of professional conduct.

[4] Rule 1.02 includes the following:
"*professional misconduct"* means conduct in a lawyer's professional capacity that tends to bring discredit upon the legal profession including:

(a)violating or attempting to violate one of the rules in the *Rules of Professional Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws;

(b)knowingly assisting or inducing another lawyer to violate or attempt to violate the rules in the *Rules of Professional Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws;

(c)knowingly assisting or inducing a non-lawyer partner or associate of a multi-discipline practice to violate or attempt to violate the rules in the *Rules of Professional Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws;

(d)misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property;

(e)engaging in conduct that is prejudicial to the administration of justice;

(f)stating or implying an ability to influence improperly a government agency or official; or

(g)knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law

"conduct unbecoming a barrister or solicitor" means conduct in a lawyer's personal or private capacity that tends to bring discredit upon the legal profession including, for example:

(a)committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;

(b)taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another; or

(c)engaging in conduct involving dishonesty;

[5] 33.(1)A member shall not engage in professional misconduct or conduct unbecoming a barrister or solicitor.

(2)A student member shall not engage in conduct unbecoming a student member.

15. The Rules currently include some mandatory "reporting" and disclosure requirements, as follows:

    a. disclosure of confidential information as required by law or pursuant to a court order (rule 2.03(2));
    b. subject to confidentiality, disclosure of an error or omission that if done or omitted knowingly would have been a breach of rule 4.01 (advocacy) (rule 4.01(5));
    c. disclosure to the court and opposing counsel of conflicts of interest or improper conduct on the part of jurors (rule 4.05(2) and (3));
    d. informing the local police of a dangerous situation likely to develop at a court facility (rule 4.06(3));
    e. reporting misconduct of a lawyer (rule 6.01(3));
    f. notifying the lawyer's insurer of circumstances that may reasonably give rise to a claim (rule 6.09(2)).

    The report in f. would be made to LawPRO, and is a requirement of the lawyer's policy of insurance.[6]

The Merits of the Reporting Requirement in the Rules

16. The Committee considered whether there was merit in including a reporting requirement already in the By-Laws in the Rules, and in particular discussed the following:

    a. the enforceability of the reporting requirement in the Rules;
    b. whether such a requirement should appear in rules of professional conduct, given their nature and purpose;
    c. whether lawyers would access the Rules first, with the expectation that such a requirement would in fact appear in the Rules.

17. The Committee concluded that while it is important that the reporting requirement remain in a By-Law, given its legislative force, it is appropriate that the requirement also appear in the Rules. The Committee was of the view that, generally, in respect of non-financial matters, members look first and foremost to the Rules and not the By-Laws to determine their professional obligations. For this reason, it makes sense to include the reporting requirement in the Rules.

18. While the reporting requirement would then exist in two instruments, the By-Laws and the Rules, the latter would typically be accessed by a greater number of lawyers for guidance on expected professional responsibilities. The Committee determined that the possibility of greater awareness of the requirement if it appears in the Rules warrants the amendment to the Rules.

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[6] Section F. (Notice of Claim) of the LAWPRO policy states:
If during the POLICY PERIOD the INSURED first becomes aware of any CLAIM or circumstances of an error, omission or negligent act which any reasonable person or LAW FIRM would expect to subsequently give rise to a CLAIM hereunder, such INSURED shall immediately give notice thereof or cause notice to be given to: Lawyers' Professional Indemnity Company ("LAWPRO")...

19. The Committee is mindful of the need to ensure that no differences exist between the requirement in the By-Laws and the requirement that will appear in a rule to be drafted. The Committee will ensure that the language is consistent and that the Rule cross-references the By-Law.

20. If Convocation approves this proposal, the Committee will prepare a draft rule for Convocation's consideration at a future date to implement the amendment to the Rules.

APPENDIX 1

BY-LAW 20

REPORTING REQUIREMENTS

OFFENCES

Requirement to report offences: members

1. (1) Every member shall inform the Society in writing of,

(a) a charge that the member committed,

(i) an indictable offence under the *Criminal Code* (Canada),

(ii) an offence under the *Controlled Drugs and Substances Act* (Canada),

(iii) an offence under the *Income Tax Act* (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the member or relates in any way to the practice of law by the member,

(iv) an offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the member or relates in any way to the practice of law by the member, or

(v) an offence under another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the member or relates in any way to the practice of law by the member; and

(b) the disposition of a charge mentioned in clause (a).

Requirement to report offences: student members

(2) Every student member shall inform the Society in writing of,

(a) a charge that the student member committed,

(i) an indictable offence under the *Criminal Code* (Canada),

(ii) an offence under the *Controlled Drugs and Substances Act* (Canada),

(iii) an offence under the *Income Tax Act* (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the student member or relates in any way to the conduct of the student member as such,

(iv) an offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the student member or relates in any way to the conduct of the student member as such, or

(v) an offence under another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the student member or relates in any way to the conduct of the student member as such; and

(b) the disposition of a charge mentioned in clause (a).

Requirement to report: private prosecution

(3) Despite subsection (1) and (2), a member or student member is only required to inform the Society of a charge contained in an information laid under section 504 of the *Criminal Code* (Canada), other than an information referred to in subsection 507 (1) of the *Criminal Code* (Canada), and of the disposition of the charge, if the charge results in a finding of guilt or a conviction.

Time of report

(4) A member or student member shall report a charge as soon as reasonably practicable after he or she receives notice of the charge and shall report the disposition of a charge as soon as reasonably practicable after he or she receives notice of the disposition.

Same

(5) In the circumstances mentioned in subsection (3), a member or student member shall report a charge and the disposition of the charge as soon as reasonably practicable after he or she receives notice of the disposition.

Interpretation: “indictable offence”

(6) In this section, “indictable offence” excludes an offence for which an offender is punishable only by summary conviction but includes,

(a) an offence for which an offender may be prosecuted only by indictment; and

(b) an offence for which an offender may be prosecuted by indictment or is punishable by summary conviction, at the instance of the prosecution.

APPENDIX 2

REPORTING REQUIREMENTS POLICY APPROVED BY CONVOCATION
DECEMBER 2005

1. The mandatory reporting requirement extends to all members, including articling students, and all applicants for admission or reinstatement, who are to report to the Law Society, as soon as practicable, and in writing,

    a. any outstanding charges under the *Criminal Code,* the *Controlled Drugs and Substances Act,* the *Income Tax Act of Canada* or any Province of Canada, any *Securities Act* of any Province of Canada, or under any other federal or provincial statute that involve, implicitly or explicitly, an allegation of dishonesty, or, relate to the practice of law;
    b. the disposition of any of the above charges, including findings of guilt and convictions.

2. No notification is required where the member or applicant has been charged with an offence under the *Criminal Code* that can only be proceeded with summarily. This exemption does not apply to hybrid offences where the Crown has elected, or may elect, to proceed summarily.

3. No notification is required where the member or applicant has been charged under a private prosecution, as contemplated by section 507.1[7] of the *Criminal Code*, unless and until any finding of guilt has been made against the member or applicant.

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[7] 507.1 (1)A justice who receives an information laid under section 504, other than an information referred to in subsection 507(1), shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information.

(2)A judge or designated justice to whom an information is referred under subsection (1) and who considers that a case for doing so is made out shall issue either a summons or warrant for the arrest of the accused to compel him or her to attend before a justice to answer to a charge of the offence charged in the information.

(3)The judge or designated justice may issue a summons or warrant only if he or she

(a)has heard and considered the allegations of the informant and the evidence of witnesses;

(b)is satisfied that the Attorney General has received a copy of the information;

(c)is satisfied that the Attorney General has received reasonable notice of the hearing under paragraph (a); and

(d)has given the Attorney General an opportunity to attend the hearing under paragraph (a) and to cross-examine and call witnesses and to present any relevant evidence at the hearing.

FOR INFORMATION

REPORT FROM THE PROFESSIONAL REGULATION DIVISION

21. The Professional Regulation Division's Quarterly Report (fourth quarter 2005), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period October to December 2005.

Highlights of the Director's Report

Case Management System

22. The new case management system (IRIS for Integrated Regulatory Information System) was implemented on October 31, 2005 for Intake, Complaints Resolution, Investigations and Discipline. With this implementation, for the first time these four departments have an integrated system to support their work, track information and provide reports. The system will be extended to the other departments of Professional Regulation (Trustee Services, Director's Office, Monitoring Enforcement and Compensation Fund) during 2006. The Complaints Services Centre will also convert to IRIS during this year.

Complaints Resolution Commissioner (CRC)

23. The new Commissioner, Clare Lewis, assumed office in April 2005, and processes have been implemented for his office's operation, including his interaction with the Law Society's regulatory process and the conduct of the complaints review meetings. The

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(4)The Attorney General may appear at the hearing held under paragraph (3)*(a)* without being deemed to intervene in the proceeding.

(5)If the judge or designated justice does not issue a summons or warrant under subsection (2), he or she shall endorse the information with a statement to that effect. Unless the informant, not later than six months after the endorsement, commences proceedings to compel the judge or designated justice to issue a summons or warrant, the information is deemed never to have been laid.

(6)If proceedings are commenced under subsection (5) and a summons or warrant is not issued as a result of those proceedings, the information is deemed never to have been laid.

(7)If a hearing in respect of an offence has been held under paragraph (3)*(a)* and the judge or designated justice has not issued a summons or a warrant, no other hearings may be held under that paragraph with respect to the offence or an included offence unless there is new evidence in support of the allegation in respect of which the hearing is sought to be held.

(8)Subsections 507(2) to (8) apply to proceedings under this section.

(9)Subsections (1) to (8) do not apply in respect of an information laid under section 810 or 810.1.

Commissioner's observations, insights and analysis on cases have been helpful in informing improvements in complaints and investigative processes and practices. Discussions with the Commissioner on the best ways to receive and respond to CRC results will continue during 2006.

Summary Hearings

24. Approved by Convocation in June 2005, this process permits some cases to proceed directly to a hearing without a first attendance at the Hearings Management Tribunal. The process is intended primarily for those matters in which the member has failed to respond to the Law Society when it is attempting to resolve or investigate a complaint. It is expected that the first of these cases, which have now been authorized for prosecution by the Proceedings Authorization Committee, will be scheduled for hearings to begin in March 2006.

Production and Case Process

Complaints Resolution

25. Complaints Resolution's target at the end of 2005 for an investigation was a median age of 110 days. However, the department's actual experience was a median of 135 days. The department has an increasingly complex caseload, and it received the majority of the additional intake in regulatory caseload in 2005. The department's resources and case process will be reviewed during 2006 to ensure continued quick and effective response to complaints.

Investigations

26. During 2005 Investigations was engaged in a focused drive to reduce the aging of its case inventory. The result is that the department closed 903 complaints in the year, well in excess of its intake. Its aging at the end of the year was a median of 233 days, which exceeded targets.

Discipline

27. At the end of 2005, Discipline has a significantly increased caseload as a result of the reduction in cases in Investigation. The number of complaints increased from 498 to 627 in the year, and the number of members in discipline increased from 117 to 174. This includes cases awaiting PAC and the issuance of the conduct application. Discipline will continue to process its cases to meet the requirements of the hearings schedule.

Mortgage Fraud

28. The mortgage fraud investigations continue to comprise about 70 members, with two new members reported each month on average. Thirty percent of these complaints are closed and the remainder require a regulatory response. With increased resources, there are 25 members in the Discipline department for mortgage fraud prosecution in various phases of process.

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

Copy of the Quarterly Report of the Professional Regulation Division – October – December 2005.

(pages 34 – 75)

Re: Amendments to By-Law 4

It was moved by Mr. Pattillo, seconded by Ms. Dickson, that By-Law 4 [Office of Secretary], made by Convocation on January 28, 1999 and amended by Convocation on March 26, 1999, April 26, 2001, January 24, 2002 and October 23, 2003, be further amended as follows:

a. Subsection 3 (1) of By-Law 4 [Office of Secretary] is amended by deleting "Senior Counsel, Discipline" / "avocat principal du service de la discipline" wherever it appears and substituting "Professional Regulation Counsel" / "avocat de la réglementation professionnelle".

b. Subsection 3 (3) of the By-Law is amended by deleting "Director, Policy and Legal Affairs" / "direction des politiques et des affaires juridiques" wherever it appears and substituting "Director, Policy and Tribunals" / "direction des politiques et des tribunaux".

c. Subsection 3 (6) of the By-Law is amended by deleting "or Senior Counsel, Discipline" / "ou à l'avocat principal du service de la discipline" wherever it appears.

d. Section 3 of the By-Law is amended by deleting subsection (2).

Carried

Re: Member's Report of Criminal and Other Charges in the *Rules of Professional Conduct*

It was moved by Mr. Pattillo, seconded by Ms. Dickson that Convocation amend the *Rules of Professional Conduct* to add the reporting requirement currently in By-Law 20 (Reporting Requirements) as a rule of professional conduct.

Carried

Mr. Pattillo presented the Professional Regulation Division Quarterly Report for information.

Mr. Swaye addressed Convocation regarding fraud.

REPORT OF THE FINANCE & AUDIT COMMITTEE

Re: Law Society Member Directory

Mr. Heins presented the Report of the Finance & Audit Committee for information.

Report to Convocation
February 23, 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: Information

Prepared by the Finance Department

COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on February 9, 2006. Committee members in attendance were: Abdul Chahbar (vc.), Marshall Crowe (vc.), Holly Harris, Alan Silverstein and Gerald Swaye.
Staff present were Malcolm Heins, Wendy Tysall, Fred Grady and Andrew Cawse.

FOR INFORMATION

LAW SOCIETY MEMBER DIRECTORY

2. As reported in the CEO's report to Convocation in January 2006, the Law Society is intending to issue a Request for Proposal (RFP) and subsequently enter into a contract with a publisher to produce, market and sell a directory ("the Directory) in hard copy and/ or electronic form, providing the contact details of all members of the Law Society. The length of the contract will probably be up to five years. These types of agreements typically do not expose the Law Society to financial loss as we are normally allocated a fixed and /or variable share of revenues.

3. The motivation for this project is to use the Law Society's membership data to provide reliable, useful information to both the public and the profession. Although there are a number of legal directories already on the market and the Law Society's website

currently provides a member directory, staff believes the Directory will contain comprehensive, current, reliable and useful information. Directories currently available are based on sources other than the Law Society's member database, which is the most reliable source for this information. The Directory will allow the Law Society to obtain some financial benefit from maintaining membership data.

4. Other Law Societies, such as British Columbia, have been issuing Member Directories for a number of years.

Publishing

5. The successful firm used to publish the Directory will be determined by a Request for Proposal process administered by the Director, Professional Development & Competence. It is expected that this process will be completed in the first half of this year. Data for the first Directory will be drawn from Law Society's membership database updated by the Member's Annual Return for 2005 due by March 31, 2006.

6. It is expected that the successful firm emerging from the RFP process will be the publisher for the Directory for a period of five years from the date the publishing agreement is signed. The Law Society will reserve the right to terminate the publishing agreement if dissatisfied in any way with the performance, or any other element of the service provided.

7. The provision of other content within the Directory will be negotiated with the successful publisher and it could be used as a vehicle to market other Society programs. The Society may permit the publisher of the Directory to publish such advertising of a high professional standard not objectionable to the Society as the publisher may wish to print at its own expense. This advertising would be similar to the announcements and "business card" type advertising in the Ontario Reports.

8. The Law Society will reserve the right to make changes to any part of the Directory's content, structure, associations and cosmetics / aesthetics.

Content

9. There are nearly 36,000 members who may be included in the Directory. Members will all be notified of the Directory prior to its content being finalised. The final number of members to be included in the Directory is dependant on how many positively opt out of inclusion in the Directory. The communication for members to positively opt out of inclusion will be in the next Member's Annual Return, so the first Directory will be published after April 2007. Some members have applied to the Law Society to have personal information withheld from public access due to concerns about their own safety and security. We will continue to comply with these members' wishes.

10. Contemplated member information for inclusion in the Directory is:

- First Name
- Last Name
- Firm Name
- Business Address

- Business Phone Number
- Business Fax Number
- Business E-mail Address.

The initial concept is that the formatting will be the same for all members, but there may be opportunities for members to pay for an upgraded profile or other marketing.

11. The Directory will not give any information about a member's practising status or discipline history and former members' names will not appear. The services of the Law Society Client Service Centre will still be available to the profession and the public to assist in obtaining appropriate member information, as will the Lawyer Referral Service.

Financial Implications

12. Detailed financial implications of the Directory will be clarified by the RFP process providing details such as:

- envisaged selling prices for the Directory analyzed for individual sales, advance subscriptions and volume discounts
- envisaged selling volumes for the Directory
- envisaged advertising revenues for the Directory
- envisaged revenue streams from any other sources for the Directory
- detailed marketing plans for the Directory
- viable alternatives for the publishing of the directory in both hard copy and electronic formats including web-based access
- revenue sharing between publisher and the Law Society.

13. These types of agreements typically do not expose the Law Society to financial loss as we are normally allocated a fixed and /or variable share of revenues. The RFP will be sent to the major legal publishers.

REPORT OF THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Mr. Heins presented the Report to Convocation for information.

Report to Convocation
February 23, 2006

Lawyers Fund For Client Compensation Committee

Committee Members
Allan Gotlib, Vice-Chair and Acting Chair
Robert Aaron
Marshall Crowe
Richard Filion
Alan Silverstein
Gerald Swaye

Bradley Wright

Purpose of Report: Information

Prepared by the Lawyers Fund for
Client Compensation

COMMITTEE PROCESS

1. The Committee met on February 8, 2006. Members in attendance were Allan Gotlib (Vice-Chair and Acting Chair), Marshall Crowe, Richard Filion, Alan Silverstein and Gerald Swaye. Staff and others in attendance were Zeynep Onen, Dan Abrahams, Maria Loukidelis, Fred Grady, Leslie Greenfield and Craig Allen (LawPRO VP & Actuary).

2. The Committee acknowledged the recent appointment to the Ontario Court of Justice of the Committee Chair, Mr. Peter Bourque. The Committee expressed appreciation and thanks for Mr. Justice Bourque's substantial contribution to its activities, and wished him success in his new position.

FOR INFORMATION

APPOINTMENT TO THE REVIEW SUB-COMMITTEE

3. Because Peter Bourque has been appointed to the Ontario Court of Justice, he is no longer a bencher and hence is not a member of the Lawyers Fund for Client Compensation Committee. He also ceases to be on the Review Sub-Committee, which reviews staff recommendations for all grants in excess of $5,000.00.

4. The Committee formally approved the appointment of Alan Silverstein to the Review Sub-Committee, to sit together with Dr. Gotlib and Dr. Filion.

SPOT AND FOCUSED AUDIT PROGRAM

5. Leslie Greenfield, Manager, reported on the performance of the Spot and Focused Audit Program during 2005. The program is entirely funded by the Lawyers Fund for Client Compensation levy. Approximately 1000 audits are conducted each year. Mr. Greenfield's written report is attached at Appendix A.

PER CLAIMANT LIMIT

6. The Committee discussed some of the issues associated with a possible increase in the limit for individual grants, from its current level of $100,000.

7. The Committee asked staff to provide additional information and background related to a possible grant increase and a review of the pertinent Guidelines. The discussion of this item will continue at the Committee's next meeting.

REFEREE PANEL

8. The Committee was informed of the need to expand the panel of Referees to conduct Compensation Fund hearings pursuant to section 51 of the *Act*. Currently, only four Referees are on the roster approved by Convocation. A sufficient number of available, qualified Referees will ensure that hearings occur in a timely fashion.

9. The Committee agreed to authorize the recruitment of potential new Referees.

FUND STATUS

10. Craig Allen, Vice-President and Actuary at LawPRO, reported that the Fund's balance was $18.2 million as of December 31, 2005. This is an improvement on the Fund balance as of June 30, 2005, which was $17.1 million. The improvement is attributable to a favourable claims pattern over the second half of the year. Mr. Allen's written report is attached at Appendix B.

GRANTS PAID BY THE FUND

11. The Committee wishes to report that the following grants were approved and paid from the Fund between October 27, 2005, and January 23, 2006, in the amounts shown. (Only members whose discipline proceedings are completed or who are deceased are identified by name).

Member (Status if Disciplined)	Number of Claimants	Total Grants Paid ($)
Adler, Edwin W. (Disbarred July 27, 2005)	3	69,371.62
Campbell, Gordon N. (Disbarred October 19, 2005)	2	69,000.00
Griffith, Gordon Neil (Suspended May 31, 2005)	1	4,500.00
Hawkins, Bernard H. (Deceased September 8, 2004)	1	400.00
Howard, Graham I. (Disbarred May 1, 2003)	1	300.00
Noel, Guylaine S. (Permission to Resign Oct. 22, 2002)	1	3,000.00
Pollitt, George T. (Permitted to Resign Sept. 29, 2004)	2	160,500.00
Sabetti, Francesco (Disbarred July 31, 2004)	1	350.00
Solicitor #133 (Permitted to Resign December 5, 2005)	3	1,374.73
Solicitor #134 (Suspended October 8, 2004)	3	14,317.50
Solicitor #138 (Suspended September 30, 2005)	4	3,850.00
Solicitor #141 (Retired/Not Working Jan. 18, 2006-Pending Discipline)	15	113,995.00
Solicitor #144 (Suspended September 30, 2005)	1	500.00
Solicitor #145 (Retired/Not Working Nov. 26, 2004-Pending Discipline)	13	191,253.57
Solicitor #148(Admin. Suspended October 21, 2002-Pending Discipline)	1	270.00
Solicitor #149 (Sole Practitioner)	1	34,000.00
TOTAL		$666,982.42

PROFESSIONAL DEVELOPMENT & COMPETENCE
DEPARTMENT

THE SPOT AUDIT PROGRAM

STATUS REPORT 2005

Prepared for:
The Lawyers Fund for Client Compensation

Prepared by:
Leslie Greenfield, Manager
Spot Audit Division
Professional Development & Competence
416-947-5264
lgreenfi@lsuc.on.ca

February 8, 2006

Executive Summary

The Law Society of Upper Canada implemented the Spot Audit Program (Program) in 1998 as a remedial/educational complement to the Law Society's adoption of the self-reporting model, and also as a means to maintain public confidence in the Law Society's governance of lawyers' trust accounting compliance. It achieves this objective by conducting compliance audits to assess a law firm's financial filing, record keeping and money handling to the Law Society's requirements, and providing guidance to members. The Spot Audit Division has been successful in achieving its objectives and targets by implementing a more focused audit approach and improving operational efficiencies.

The Program conducts approximately 1,000 audits a year. Initially, the majority of the spot audits were randomly selected. This approach often resulted in audits being conducted on practices that were low risk or had very little activity in trust accounts. In 2002, the Program introduced a risk management approach in their selection of members for an audit. A variety of indicia were used to identify and select potentially higher risk members.

Program Effectiveness

The merits and benefits of Spot Audit's risk based strategy, in combination with its remedial approach, has been evident in the following areas:

- reduction in the number of financial type complaints,
- increase in the proportion of closed audit files,
- increase in the longevity of new firms,

- increase in the number of files being escalated to Investigations

The benefits of the Program are also evidenced in the reduction in the amount of claims paid from the Lawyers Fund for Client Compensation since 1999. While the Lawyers Fund for Client Compensation and other compensation funds in North America could not directly correlate spot audit program results and the impact on claims, anecdotal evidence indicates that the efforts of a spot audit program mitigates the risk to a compensation fund.

Program Efficiencies

In early 2003, we identified areas of improvements in the program's operations and audit processes. Changes were implemented to capitalize on operational enhancements. Some of our major accomplishments include:

- Cost control of audits
- Reduction in the audit cycle times
- Aging of monitored files (2002: 8 months vs 2005: 2 months).

As a result, audits are completed and issues dealt with on a timelier basis.

Membership Feedback

The survey results from members who were audited in 2005 continue to be very positive and indicate that the members appreciate and find value in the remedial approach that is utilized to assist them in their record keeping practices. Our surveys indicate a very high percentage (93%) of the members found the spot audit process to be constructive. Almost 100% of the members responded that they found the spot auditor's conduct to be professional and helpful, and the audit report to be useful (98%).

In summary, the Law Society's Spot Audit Program has been recognized as a successful program and provides many benefits to the membership and public through its remedial/educational approach. This approach has resulted in the reduction of claims and complaints, and has improved the longevity of new firms, while providing these services in an economical fashion.

Audit Selection Indicia

The Spot Audit Program has used several indicia in the selection of audits that were approved by Convocation at the commencement of the program in 1998. These selection criteria were:

- Random
- Firms with estate practices or private mortgages (M&E)
- Newly formed practices (NF)
- Referrals from other Law Society departments
- Reaudits
- Late filings of Member's Annual Report (MAR) (Fail to File or FF)
- Complaints History
- MAR financial information indicating potential risk factors

Since inception of the spot audit program, the majority (62%) of audits have been randomly selected.

Selection Criteria of Audits

Selection Criteria of Audits Conduct (1998 – 2002)

(see graph in Convocation Report)

In 2002/2003, Spot Audit enhanced its risk management approach and improved the selection process using specified indicia in conjunction with a data extraction/analysis tool. This allowed Spot Audit to extend its analysis over all MAR's recorded in the AS400, and reduced the risk of omitting higher risk members from being selected.

As a result, the percentage of audits randomly selected declined from 62% of total number of audits conducted during the 1998-2002 period to 23% in the 2003 to 2005 period, while the percentage of focused audits increased. Mortgages & estates (M&E) and newly formed sole practitioners (NF) are the primary indicia used in the focused audit selections.

Selection Criteria of Audits Conducted (2003 – 2005)

(see graph in Convocation Report)

The graph below demonstrates that since 2002 the ratio of focused and random audits has recently changed as a result of concentrating our efforts on potentially higher risk members.

Random vs Focused Audits

(see graph in Convocation Report)

Escalated Audit Files

Indicia of Escalated Files

In 2002, Spot Audit saw a significant increase in the number of escalated audit files. This was due to a change in our selection approach and a higher proportion of focused audits. As a result, we have seen a doubling of the number of escalated files since 2001.

Relationship between Audit Type & Escalated Files

(see graph in Convocation Report)

Our recent efforts in the application of indicia in the audit selection process of potentially higher risk members, has resulted in these audits engagements gaining predominance as escalated files. For example, in the chart above, we see that in 2000 and 2001 the majority of escalated files were selected through the random process. Since the implementation of a risked based approach in the selection process, indicia have now emerged as the selection basis for escalated files and, additionally, has resulted in an overall increase in the number of files escalated or undertakings prepared by members.

Survey Results

The survey responses from members audited in 2005 were extremely favourable. Members found the spot audit process to be constructive, the Audit Report to Member to be useful and the spot auditors to be very professional and helpful.

From the 227 surveys received in 2005, the members responded that:

Spot audit process was constructive	93%
Auditor's conduct was professional and helpful	~100%
The Audit Report to Member was useful	98%
The Internal Control List was useful	94%

See Appendix 1 for survey results and member comments.

Program Effectiveness

The effectiveness of the Program was defined as the ability to mitigate the risk to the Lawyers Fund for Client Compensation and reduce the number of financial type complaints. This was to be accomplished through a remedial/educational approach in conducting a review of a firm's financial records to ensure compliance with the Law Society's authorities, rules and regulations.

This assessment of the Program's effectiveness was conducted using the following criteria:

- Claims to the Lawyers Fund for Client Compensation
- Financial type of complaints
- Longevity of newly formed sole practices
- Audit dispositions

Claims to the Lawyers Fund for Client Compensation

Our contact with assurance compensation funds of other jurisdictions have found that they could provide no evidence to link their spot audit programs to the reduction of claims to their compensation funds. The Law Society's Lawyers Fund for Client Compensation (CompFund) recent report on claims also concurred with the findings from other jurisdictions. However, CompFund did make reference to anecdotal evidence suggesting that there are a number of factors that contributed to the reduction in claims.

One of these factors was the Spot Audit Program and its objective of auditing every firm on a 5-year cycle. The member's expectation that their financial records could be audited at any time has a deterrent effect on claims. The New Jersey State Bar Random Audit Program also reported the importance of this deterrence and acknowledged it to be a factor in all random type programs.

Since the inception of the Program in early 1998, claims paid have steadily declined from a high of $6.9 million (1999) to $3.3 million (est.) in 2005. The Spot Audit program, plus other Law Society initiatives and economic factors, all had an influence in the reduction of claims.

While it is difficult to quantify the reduction in claims due specifically to the Program's efforts, logic dictates that deterrence is an important element.

Trends of Claims Paid

(see graph in Convocation Report)

Financial type of complaints

A review of the nature of complaints from 2001 to 2004 shows a decline in the percentage of financial type complaints. As in the reduction of CompFund claims, anecdotal evidence suggests that a variety of Law Society programs and efforts have had a cumulative positive impact in the reduction in these types of complaints.

Trends of Selected Complaint Types

(see graph in Convocation Report)

Longevity of newly formed sole practices

One of the selection criteria used by the Program to select audit candidates is newly formed sole practices. The goal of the Program is to conduct an audit 9 to 12 months after a member becomes a sole practitioner. The objective is to provide the member with sufficient time to implement their financial and record keeping practices, but conduct an audit early enough for deficiencies to be identified and rectified before they become systemic and result in serious problems. This is an important approach implemented by the Program, as over 74% of the firms in Ontario are sole practitioners.

A comparison of sole practices created during the five years leading to the implementation of this selection approach in 2000 and the five years from 2000-2004 where spot audits were conducted on new sole practices, found a significant difference in the life expectancy of these firms. The graph below shows that 42% of sole practices created in 1995 would become inactive within 5 years. While only 25% of sole practices that were spot audited in 2000 would become inactive within 5 years.

The graph demonstrates the benefits of a spot audit, and the impact it has had in significantly increasing the life expectancy of sole practice firms.

Longevity of Sole Practices (SP)

(see graph in Convocation Report)

Audit Dispositions

After reviewing the audit working papers and report completed by the auditor, the Society will do one of the following:

1. close the audit file, if there are no deficiencies noted or if the deficiencies are minor and have been addressed in the Audit Report to Members;

2. send a follow-up letter (monitoring) requiring the member to submit documentation, or proof that the deficiencies identified in the Audit Report to Members - such as trust reconciliations - have been completed to the Society's satisfaction.

3. schedule a re-audit, if the deficiencies are serious enough to warrant further review to ensure they are remedied;

4. require the member to provide an undertaking setting out the obligations the member must honour to remedy deficiencies identified during the audit and avoid more formal proceedings;

5. refer the member to the Practice Review Program of the Society for remedial assistance with their practice;

6. refer the member to Professional Regulation for a formal investigation, if the audit discovers possible professional misconduct (i.e., a serious breach of the Rules of Professional Conduct/By-Laws.)

From 2001 to the present, the percentage of “closed” audits increased from 39% in 2001 to over 50% in 2005. This shift towards findings of less significant deficiencies uncovered during a spot audit is a reflection of the remedial and advisory emphasis of the Program and the proactive approach of auditing newly formed sole practices. In addition, the number of audits with significant deficiencies decreased, requiring fewer files to have follow-up and monitoring to ensure that a firm’s books and record keeping deficiencies were satisfactorily addressed. The Random Audit Program of the New Jersey State Bar has also noted similar trends in their 20-year report.

Trends of Audit Dispositions

(see graph in Convocation Report)

Program Efficiencies

Audit Costs

The direct costs of audits were controlled through enhancements in the efficient use of external and internal audit resources through:

- Negotiation of audit contracts and closer monitoring of external audit resource usage
- Reduction in use of more expensive external audit resources
- Establishment of audit cycle time targets
- Re-allocation of audit review tasks to a wider pool of resources
- Increase in the number of audits
- Development of in-house expertise in delivery of audits

As a result, the Program has effectively controlled its audit costs. The cost per audit from 2002 to 2004 only increased 1%, and then declined to approximately the same level as in 2002. This is lower than the market increase during this period for Law Society’s operating costs and also the rate of inflation (2002-2005: 6.4%)

Cost per Audit & Inflation

(see graph in Convocation Report)

Audit Cycle Times

Since 2002, Spot Audit commenced several initiatives to streamline the audit approach and processes. This included the incorporation of performance metrics for reporting purposes and target setting, migration to electronic forms of audit tools and reporting, enhanced scheduling procedures, and others.

As a result of these operational initiatives, the number of days from the initial audit date to the submission date of the file declined 42%, from 31 days in 2001 to 18 days in 2005. These operational efficiencies permitted the Program to increase the total number of audits by 9%, from 1,037 (2001) to 1,127 (2005), and allowed existing resource levels to apply their efforts to doubling the number of focused audits conducted from 400 audits in 2001 to 910 audits in 2005.

Audit Cycle Times

(see graph in Convocation Report)

APPENDIX A

APPENDIX 1

Member Survey Results & Comments

Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y	I found it very useful and was glad to have been selected, shortly, after opening my office	Y		Friendly and courteous.
Y	Y		Y	It's nice to have confirmation that I have complied with all of the Rules and Regulations.	Clear, concise, professional
Y	Y		Y	The auditors were very helpful in giving us useable ideas for improving our procedures.	The auditors were very nice, very helpful and approachable. We discussed areas where we could make improvements in our system to avoid

					common mistakes in procedures.
Y	Y		Y		Very professional.
Y	Y	Discussion of solutions, not just problems proves the benefit of the program.	Y	My one problem area was a case of not seeing the forest for the trees. The auditor gave simple solution to the estate accounting case that has been vexing me for some time.	Extremely helpful, very constructive and very professional.
Y	Y		Y	It reminds us of how important the paper trail is.	He was polite and unobtrusive.
Y	Y		Y		Professional, courteous, helpful.
Y	Y		Y		Exemplary conduct-very helpful-not intimidating. A very pleasant person.
Y	Y	It is always useful to be advised of any new requirements.	Y	Overall, a positive experience.	Very courteous, competent, and helpful comments were done in a positive manner.
Y	Y		Y		Very professional and helpful.
Y	Y		Y		Helpful.
Y	Y		Y	The last Spot Audit was 1984 and that is too long if problems exist--guidance received was constructive and kindly given.	The auditor was most helpful to both me and my staff--polite, direct and constructive.
Y	Y		Y		The auditor explained things very well which made the process very constructive.
Y	Y		Y		Excellent,very professional and helpful.
Y	Y		Y	Audit required due to retirement of former partners. The auditor did a Spot Audit a few years ago.	The auditor appeared to be professional and thorough and the first review was helpful.
Y	Y		Y		Very professional.
Y	Y		Y		Very helpful.

Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y		Y	Specifically, the receipts requirements for cash, and recording the form in which funds are reviewed (i.e.cheques, bank draft, money order)	The auditor was courteous, knowledgeable , thorough and helpful. I was pleased with the constructive time of the spot audit process and found it very useful.
Y	Y		Y		Pleasant and helpful
Y	Y		Y	Very helpful.	Very professional and cordial.
Y	Y	The audit was very educational and provided many useful suggestions.	Y	It provided ways to assist us in becoming more efficient and effective.	Very professional, considerate, and knowledgeable.
Y	Y		Y		Helpful.
Y	Y		Y	Feedback is always useful.	Very professional. Considerate of our time.
Y	Y	See letter.	Y		Courteous, knowledgeable, pleasant manner.
Y			Y		Polite and helpful.
Y		The discussion of the deficiencies with the accounting personnel and partners was instructive to ensure an understanding and steps required to avoid future mistakes.	Y	It identified procedures that we were not aware of and which have now been adopted.	We were impressed with the thoroughness of the auditor. She was very knowledgeable, clear in the explaining the errors and polite.
Y			Y		Very pleasant and professional.
Y	Y		Y		Polite.
Y	Y		Y		
Y		Very useful to explain changes in the requirements.	Y	I think its a good process to ensure your financial records are being kept correctly.	Excellent. She was very efficient, courteous and informative as to the recent exchanges in requirements.

Y	N	I do not think I received a list of internal control considerations. The audit report to member was useful.	Y	My record keeping is in compliance with the requirements.	The auditor as courteous and professional throughout the audit.
Y	Y		Y		Excellent.
Y	Y	The suggestions were very useful.	Y		I was impressed the level of professionalism she displayed.
Y	Y		Y		The auditor was well informed.
Y	N		Y		Very professional, courteous and pleasant.
Y	Y		Y		A very professional and thoughtful manner. Was very considerate of my practices and clients.
Y	Y		Y		Auditor was very professional.
Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y		Y		The auditor was very professional, very courteous, a pleasure to work with.
Y	Y		Y	The auditor was just great.	The auditor conducted a most professional audit, while she probed she was always most helpful and constructive.
Y	Y		Y		The auditor was very pleasant and made me feel very comfortable. She also provided me with useful tips.
Y	Y		Y		Courteous and helpful suggestions.
Y	Y		Y		Courteous and professional.
Y	N		Y		
Y	Y		Y		Very professional and understanding.
Y	Y		Y		Informative.
Y			Y		Friendly.

Y	Y	We found the tips we received to be invaluable and hopefully will assist us in not making errors in the future.	Y	Definitely.	Very professional.
Y	Y	The audit report is summary document of requirements as well as a benchmark.	Y	It brought us up to date terms of the requirements and some changes in policy which we were not aware off.	Very polite, congenial, made a good effort not to interfere with daily practice routines, helpful with explanations, reasonable with requests. Good post-audit communication.
Y	Y		Y		Courteous,punctual, and professional.
Y	Y		Y		Very pleasant.
Y	Y		Y		Excellent.
Y	Y		N		Very punctual, efficient and cordial. Professional conduct and knowledgeable.
Y	Y		Y		The auditor was quite polite and made me feel at ease.The experience was quite pleasant.
Y	N		Y	Good advice regarding alternatives to a trust account.	Excellent. Personable, non-threatening and helpful. Well versed in small practice issues.
Y		The act of preparing for the audit was probably the most educational part of this process.	Y		No complaints--he was professional and approachable.
Y		I have no staff, so internal controls are pretty simple for me.	Y		The auditor was polite, friendly, and helpful.
Y	Y		Y		Excellent.
Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y		Y	Good to have confirmation of	The auditor was polite, considerate and helpful.

				procedures.	
Y	Y	As a new sole practitioner, it was very helpful to learn what I was doing right and how I could improve.	Y	The auditor was very helpful.	He was super!
Y	Y		N		Quite pleasant and professional.
Y	Y		Y		She was completely professional and friendly.
Y	Y		Y		
Y	Y		Y		Polite and efficient.
Y	Y		Y	But most of my questions were regarding aspects that did not apply to my practice.	Courteous, objective, informative, helpful
Y	Y		Y		Very professional and co-operative. Helpful and friendly during the entire process.
Y	Y		Y		Pleasant; professional.
Y	Y		Y		Courteous, knowledgeable and professional.
Y	Y		Y		She was very courteous and helpful. It was a pleasure to have met the auditor.
Y	Y		Y		See notes.
		Our limited use of the trust account is not conducive to the auditor generating many suggestions so the question is really not relevant.			Just fine.
Y	Y		Y		
Y	Y		Y		The auditor was a treasure to deal with. Knowledgeable, courteous and very professional in her approach. She taught and suggested

					methods of improving bookkeeping and records.
Y	Y		Y		See notes.
Y			Y		Very professional and thorough.
Y	Y		Y		Professional and helpful.
Y			Y		The auditor was professional, courteous and made some good suggestions. The auditor worked quickly and efficiently to complete the audit.
Audit Report Useful?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y	It is very helpful to be prompted to tidy up small areas of non-compliance and to have an independent assessment of internal controls.	Y	Updates on recent changes were very good--e.g. how to document cash receipts.	He was excellent-clear, concise, and positive. You had the sense he was out to assist and not just find faults.
Y	Y		Y		The auditor was very professional and extremely knowledgeable.
Y	Y		Y	We were unaware of some recent changes to Cash Handling and found the guidance in other areas helpful.	Auditor was very helpful with practice management advice and advice concerning computerized bookkeeping.
Y	Y		Y	Very helpful.	Very courteous and helpful.
N	N		N		She was courteous and a good listener.
Y	N		Y		Very professional, courteous, and accommodating and helpful.

Y	Y	Very constructive process.The review was thorough and the suggestions made were practical.	Y	Yes--office process has changed with electronic records, and the audit process helped to identify issues that had been overlooked by me.	Very professional. She was thorough in her review, knowledgeable about the process--made practical and specific suggestions.
Y	N	I hope to retire later this year.	Y		Excellent.
Y	Y		Y	It is always useful to review the proper methods. I found the auditor very helpful and knowledgeable and overall it was a useful exercise.	Very non-intrusive and non-disruptive. Overall, I found her pleasant and the offered good guidance.
Y	Y		Y		I found the auditor very professional and helpful in her comments regarding recordkeeping, and as a result I will be making changes to remain in strict compliance of the by-laws.
Y	Y		Y		Painless.
Y	Y		N		The auditor was extremely polite and helpful.
Y	Y		Y		Excellent
N	Y	The auditor was unfamiliar with legal clinic reporting but offered useful suggestions for internal.	N		Very pleasant.
Y	Y		Y		Efficient. Polite. Did not cause any disruptions. Helpful.
Audit Report Useful?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y		Y		Very professional, focused and helpful regarding alterations to recordkeeping details.

Y	Y		Y		Pleasant and competent. Practical suggestions and answers to my questions.
Y	Y		Y		Very professional, polite, and courteous.
Y	Y		Y		It was difficult to imagine how the auditor could improve on the way he went about the process. Polite, courteous, respectful and most helpful.
Y	Y		Y		Excellent.
Y	Y	The auditor was very helpful and very knowledgeable.	Y	Especially new regulations.	Very pleasant and knowledgeable.
N	N		N		
Y			Y		He was very helpful in suggestions.
Y			N	Was well aware	Fine and fair.
Y	Y	Somethings have changed--eg.receipts for cash to be signed by client and a summary of other fine points	Y	I wasn't sure what to do with old trust moneys that was unclaimed.	She was helpful, constructive including on items she felt needed some "tweaking". I didn't feel I was "put on the spot"--I felt the criticism were well intended and helpful.
Y	Y	I found both of the above quite useful.	Y	I found the auditor's comments very useful in terms of improving existing procedures in our office.	The auditor's overall conduct was quite exemplary. She was both professional and thorough, but also quite sensitive to the impact of the audit to our office.
Y	Y		Y		
Y	Y		Y		
Y	Y		Y		Exemplary.
Y	Y	As thorough outline and easy to follow.	Y	Absolutely, it forced me to devise time and attention to both remedying deficiencies and achieving clarity on my responsibilities.	Efficient, considerate, very pleasant, helpful--a very constructive approach.

Y	Y		Y		The auditor was a model of diplomacy, clarity, and courtesy. She has an exceptional talent for making accounting requirements seem simple, and doing it in a tactful, friendly manner.
Y	Y		Y	A good update on some recent changes.	Extremely polite, very professional and informative, organized and concise. Very pleasant to deal with. Top Marks!
Y	Y		Y		Professional and courteous.
Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y			Y		Firm--but polite. Was able to assist me with respect to areas in which I was uncertain of my obligations.
Y	Y		Y		Particularly patient, helpful and clear in all comments and requests.
Y	Y		Y		Very pleasant.
Y	Y	As By-laws change it is very helpful to attention drawn to what is current.	Y	The auditor was very helpful and up-to-date on recent changes and the rationale for these changes.	Professional, approachable, collegial. friendly, knowledgeable efficient and effective.
Y	Y	Very informative and helpful.	Y		Wonderfully professional, helpful, and informative.
Y	Y			I was pretty well aware before. There were a few new areas that were brought to my attention.	Excellent.
Y	Y		Y		She was very professional, helpful and knowledgeable.
Y	Y		Y		Likeable, sensitive, sensible.
Y	Y		Y		Very polite and courteous.

Y	Y		Y	Interesting point regarding money laundering legislation and need to record source of frauds (e.g. cheques vs. bond drafts, etc.)	Professional, pleasant, respectful, efficient.
Y	Y	Very helpful.	Y	It was an excellent update.	First class--professional, courteous, and knowledgeable.
Y		A helpful tool in the one or two areas of non-compliance.	Y	Directions of the auditor in 'grey' areas of potential compliances or non-compliances would be helpful. (more comments)	Very pleasant and constructive in her criticisms.Co-operation in fixing audit date to accommodate court calendar--very much appreciated.
Y	Y		Y	It made me look at my files more carefully and make decisions that needed to be made on some of them.	She was really friendly and helpful.
Y	Y		Y		Very professional and personable.
Y			Y		She was pleasant and conducted herself in a very professional manner.
Y			N		Pleasant, industrious, knowledgeable and smart. A pleasure to have in the office. She explained her findings clearly and concisely.
Y	Y		Y		Very professional and candid--offered very constructive suggestions with pleasant demeanor. Very impressed.
Audit Report Useful?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y		Y		I thought the auditor was quite professional and friendly.

Y	Y	We discussed a lot of billings which we had overlooked. Helped us tighten up our real estate practice.	Y		
Y	Y		Y		Courteous, knowledgeable, helpful input.
Y	Y	It is always a useful exercise to review methods and procedures.	Y		Very pleasant. Provided some useful suggestions.
Y	Y	An objective look always is helpful.	Y		Courteous but business-like. Our shortcomings were pointed out professionally, but in a helpful way.
Y	Y		Y		Very professional, efficient, helpful comments given. It was a positive experience.
Y	Y		Y		He was very helpful, polite and professional.
Y	Y	The audit made us aware of things we didn't know and helped us develop more effective procedures.	Y	Very helpful.	Very professional and helpful. The auditor provided us with some very helpful advice. He was exceptionally pleasant.
Y	Y		N		Professional
Y	Y	I really welcomed this audit. It provides the needed level of practice protection and 'check', that instills public confidence in the profession.	Y		Courteous, efficient, and thorough.
Y	Y		Y		Courteous, pleasant, instructive, business-like.
Y	N		Y		

Y	Y	Both very useful and helpful to keep us alert as to LSUC's expectations and our internal practices. A second set of 'eyes' is usually of value.	Y	As above.	She was very professional.
Y	Y		Y		She was professional and very helpful.
Y	Y		Y		The auditor was very professional and courteous.
Y	Y		Y		
Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y		Y		We found the auditor to be very polite, knowledgeable, and professional. She treated our staff with great respect and was very informative and helpful in her recommendations. Excellent.
Y			Y		Pleasant and professional
Y	N	As the bookkeeper of this firm I was already aware of areas of non-compliance and have suggested areas of improvements on many occasions.	N	As the bookkeeper of this firm I was already knowledgeable on the record keeping requirements and handling of money and other property.	The auditor was very efficient and conducted herself in a professional manner. She was very thorough.
Y	Y		Y	Auditor was very helpful in explaining reasons for requirements.	Auditor was very pleasant and helpful and professional.
Y	Y		Y		She was very pleasant and careful.
Y			Y	Auditor was very helpful and co-operative--very professional.	Very professional.

Y	Y		Y		
Y	Y	Along with requirements, I also appreciated the "best practices" suggestions.	Y	It confirmed that we were basically correct while identifying some areas of improvement.	He was very professional, thorough and helpful.
Y	Y		Y		Efficient and very professional.
Y	Y	I appreciated the input and helpful suggestions from the auditor.	Y	I was nice to know that I am on the right track.	The auditor was a very pleasant representative--appreciated the friendly manner and helpful advice.
Y	Y	The audit report was useful and will be helpful as a guide.	Y	The process was informative and the auditor was able to answer all of my specific questions.	The auditor was excellent, specifically, he made the process as professional and helpful as possible. His patience was appreciated.
Y	Y		Y		Auditor was very positive and helpful.
Y	Y		Y		Very professional but congenial
Y			Y		
Y	Y		Y	It ensures that my records are up-to-date.	Professional.
Y	Y	Auditor was great--seemed interactive in helping to implement proper controls.	Y		Auditor was knowledgeable, professional, constructive, and made appropriate and useful comments.
Y	Y		N		The auditor was professional and helpful throughout the audit.
Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y	The auditor was extremely thorough and provided comprehensive suggestions and recommendations regarding suggestions for	Y	I became aware of a new regulatory requirement that a sole practitioner must not take cash transactions above $7500.00 and must keep a duplicate receipt book signed by client and member.	Again, the auditor was professional, courteous and thorough when conducting the audit. She was open to questions and feedback regarding the audit.

		improvement.			
Y		The auditor was very helpful.	Y		Sara was extremely polite, pleasant, efficient and organized. She explained things very well.
Y	Y		N	I found the Spot Audit process informative, however, it did not enhance my knowledge of record keeping requirements. I however think that it is a very worthwhile process.	The auditor was very pleasant to deal with. She was respectful and made the process informative and useful.
Y	Y	Especially like the recommendation because we can refer the lawyers to the specified sections of the Law Society Act.	Y		The auditor is excellent. She's very pleasant and makes everyone feel comfortable.
Y	Y		Y		The auditor was professional and provided useful recommendations.
Y	Y		Y		Auditor was excellent. She was non-intrusive, respectful, knowledgeable, friendly and provided valuable information regarding procedures.
Y	Y		Y		
Y	Y		Y	The auditor was very helpful and clear. I now have a better understanding of how to keep my books clear.	Auditor was very professional and helpful.
Y	Y		Y		Professional and courteous.
Y	Y		Y		Very thorough, helpful, and knowledgeable.

Y	Y	Please see attached letter. In the future, I would appreciate receiving communications in the French language.	Y		
Y		The answers provided by the Auditors should be more detailed.	N	The auditor didn't know the answers to my questions. I informed her that I don't receive cash in trust, yet she still put that I was in compliance & then amended it when I pointed out.	Very laissez-faire especially frustrating considering the importance of the audit to me and the LSUC.
Audit Report Useful?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y		Y		Professional in approach, patient, non-disruptive, positive attitude.
Y	Y	The entire process from the time of auditor's visit to the completion was excellent.	Y	There is no doubt it was very constructive. We are replacing our current software, bringing a new bookkeeper, and changing the standard of our reconciliations.	Brilliant, courteous, and patient. I was very impressed with the auditor and his managers at the LSUC.
Y	Y	Suggestions to rectify non-compliant matters were helpful.	Y		The auditor was professional. Respectful and reassuring in his approach. He created minimal disruption to our firm.
Y	Y		Y	The auditor was friendly, frank and very clear.	The auditor was very open and helpful in explaining what he was doing, and what good practices were.
Y	Y		Y		The auditor was very thorough and professional.
Y	Y		Y		Very professional, courteous and reasonable.
Y	Y		Y		Excellent.

Y	Y		Y	There was an aspect of trust transfers related to real estate transactions that I was previously unaware of--very helpful in this regard.	Very courteous and professional.
Y	Y		Y		Very professional
Y	Y		Y		Very professional.
N	N		N	My practice is primary mediation. Record keeping is done for me by my former firm.	Professional and polite.
Y	Y		Y	The explanation offered during the Audit Report Review was very helpful.	Extremely professional and courteous.
Y	Y		Y	As a new firm, it would have been very useful to have someone come in at the start up phase to assist with implementing the procedures. Would have saved us a lot of time and grief.	Very helpful and patient. A pleasure to work with. Answered all my questions and gave us helpful tips.
Y		There is no method required under 2(1) although you found non-compliance with the method.	Y		Cordial, friendly, helpful regarding my duplication of books.
Y	Y	Wasn't as painful as I thought it would be.	Y		Professional and friendly. She was helpful and patient.
Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y			Y		The auditor was courteous and professional. She helped keep things relatively stress-free.
Y	Y		Y		Thorough and meticulous and very polite.
Y			Y		Professional, courteous, and helpful.

Y	Y	Brought focus to me on which areas I must demand tighter controls on secretary and bookkeeper.	Y	Allowed me to review areas of the rules.	Professional, friendly, very helpful attitude.
Y	Y		Y		Extremely thorough and meticulous but very polite.
Y	Y		Y		Professional, efficient, non-disruptive.
Y	Y		Y		Excellent.
Y	Y	The report is very helpful and informative. It also provide us with a clear guide of internal control.	Y	It provides us with better understanding of how to keep our books properly.	The spot auditor is very helpful and informative.
Y	Y		Y		Extremely helpful.
Y	N		Y	Department should advise how other firms are complying e.g. GIC's or on mortgages over $50,000.00.	My understanding of a spot audit is for the auditor to look at individual files. Auditor requested contents of file before audit. Staff spent 3 days assembling all files. (more comments)
Y	Y	This provides a guideline. However, the auditor useful advice are very helpful some we looked at examples.	Y		Very helpful and excellent.
Y	Y		Y		She was polite, informative and co-operative.
Y	N		Y		Professional and polite.
Y	Y		Y		The auditor was professional and thorough.
Y	Y		Y	The auditor was very helpful in improving my knowledge, streamlining my practice. I like the audit process.	Very good, with a professional manner, trying to help me and not accuse me.

Y	Y		Y		The auditor was a pleasure to work with.
Y	Y		Y	The auditor spent time and went through how we should manage the bank accounts better within the context of electronic registration and the theory behind the tools.	I'm very pleased with the audit. The auditor did manage to help me understand how my system could evolve better.
Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y	The auditor was very helpful in all aspects of the program. She was an effective communicator, was able to point out our defective sides and answer my questions.	Y	The auditor advised us that the LSUC has websites assisting members. She also assisted us to set up a new system. This audit was much more constructive than the one I had in 2003.	Very professional and experience.
Y	Y		Y		The auditor was professional, polite and a pleasure to talk and work with.
Y	Y		Y		I was not present due to prior commitments. However, my clerk/assistant has nothing but positive comments about the auditor.
Y	Y	The audit report is very useful as it points out areas that one might be overlooking.	Y	The auditor was knowledgeable about the rules and was able to provide a constructive advice and suggestions regarding record keeping, etc.	The auditor was very professional and a friendly through the process of the audit.
Y	Y		N		Satisfactory.
Y	Y		Y		Very professional, co-operative and informative; helpful; courteous.
Y	Y		Y		Very courteous, very helpful.

Y	Y	It identifies areas of improvement	Y	It greatly enhances my knowledge.	She is very thorough, knowledgeable and detailed.
Y	Y	Very informative	Y		She was very professional and provided constructive criticism.
Y	Y		Y		Auditor was professional and constructive in comments.
Y	Y		Y		Knowledgeable, informative, and polite--very helpful
Y	Y		Y		Professional, courteous, and pleasant.
Y	Y		Y		Fair and reasonable.
Y	Y		Y		I found the auditor to be helpful, professional, constructive in her comments, patient, pleasant taking all the stillness and unpleasantness out of being audited.
Audit Report Useful ?	Internal Control List Useful?	Comments on Spot Audit Program	Audit Process Constructive?	Comments on Audit Process	Comments on Spot Auditor's Conduct
Y	Y	Having the auditor go through the problem areas and give suggestions was extremely helpful to me as a sole practitioner- his experience with PCLAW and guidance appreciated.	Y	It highlighted the weakness in my accounting systems that I did not know existed.	Very professional and very helpful with suggestions.
Y	Y		Y		He was courteous and professional.

Y	Y	Both are good resources for improving process.	Y	Helpful to see and review areas for improvement	Pleasant and helpful.
Y		In addition to providing a reminder regarding areas of non-compliance to be remedied, it also acts as a quick reference guide to other important reporting requirements.	Y		The auditor was very pleasant and professional, assuring that the Audit experience, which could have been very stressful, instead remained comfortable.
Y	Y		Y	However, I have a small and simple practice.	Very pleasant
Y		Would like improve areas of deficiencies	Y	We have followed through with the issues	He was good and helpful. Send him back in 3-6 months.
Y	Y		Y		Very respectful.
Y	Y	I like you system of presenting a report and reviewing it with--I know what to correct as a result of it.	Y	Especially since I wasn't aware of the January 27/05 requirements regarding deposits--i.e. identifying as either Cash or Cheque.	He was very professional and polite.
Y	Y		Y		Professional and courteous.
Y	Y		Y		Very professional

APPENDIX B

LAWYERS' PROFESSIONAL INDEMNITY COMPANY
MEMORANDUM

TO: LAW SOCIETY OF UPPER CANADA

FROM: CRAIG ALLEN

CC: MICHELLE STROM

DATE: JANUARY 19, 2006

RE: UNPAID CLAIMS LIABILITY, DECEMBER 31, 2005, LAWYERS' FUND FOR CLIENT COMPENSATION

The unpaid claims liability, as at December 31, 2005 for the Lawyers' Fund for Client Compensation, is estimated to be $10,678,000. This amount is

- discounted for the time value of money (in the amount of $514,000),
- includes a provision for internal claims handling expenses (in the amount of $2,985,000), and
- includes a margin to provide for unfavourable developments as claims proceed toward resolution (in the amount of $1,144,000).

The December 2005 unpaid claims liability is roughly equal to that at September 30, 2005, which was set at $10,557,000.

On a nominal basis (i.e. without discounting and without a margin for unfavourable developments), the liability at December 31, 2005 is $10,049,000, which compares to a nominal liability of $9,900,000 at September 30, 2005 and $8,481,000 at December 31, 2004.

The following table summarizes the individual items that account for the carrying forward of the December 31, 2004 nominal claims liability through to December 31, 2005:

	Claims	Internal Costs	Total
Claims Liability at December 31, 2004	$5,738,000	$2,743,000	$8,481,000
Add: Adverse (Favourable) Development on Claims Reported before December 31, 2004	1,416,000	949,000	2,365,000
Claims Liability at December 31, 2004 with Benefit of Hindsight	7,154,000	3,692,000	10,846,000
Add: Claims Incurred in Jan.- Dec. 2005	3,039,000	1,019,000	4,058,000
Less: Payments Made in Jan.- Dec. 2005	3,290,000	1,565,000	4,855,000
Claims Liability at Dec. 31, 2005	6,903,000	3,146,000	10,049,000

The relatively high value of adverse development on this table is primarily due to a single matter arising from multiple claims against one member. This matter came to light in late 2004, but most of the potential claims were placed on the books very early in 2005. Thus, while the matter is technically a deterioration of 2004's results, it more closely resembles a matter reported in early 2005. The combined value of this adverse development and of newly reported matters (totalling roughly $4.5 million) is substantially above the claims budget for the year of $2.7 million.

Of the $4.5 million, roughly $3.5 million was incurred in the first half of 2005. Thus, the claims experience of roughly $1 million for the second half of the year was substantially better than that of the first half. In fact, it was below the budgeted level for the second half of $1.35 million.

Significant Matter

The matter described above, involving multiple claims against one member, is still in the process of being resolved. The amount claimed (limited by the per-claimant limit) on those claims that are currently unresolved is $1.9 million. The statistical estimation process applied

throughout this analysis has allocated $1.1 million to the matter, taking into account the various reductions prescribed by the Fund guidelines. I have been advised by the Fund management that the amount allocated by this analysis to this matter is consistent with the facts currently known about the matter.

Fund Balance

The Fund Balance (before miscellaneous adjustments) as at December 31, 2005 is $18.2 million, down from $19.5 million at December 2004, but up from $17.1 million at June 2005.

REPORTS FOR INFORMATION

Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report
- Report on the Activities of the Discrimination and Harassment Counsel – 2005
- Aboriginal Initiatives Operational Review 2005
- Public Education Series - 2006

Report to Convocation
February 23, 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 February 9, 2006. Committee members participating were Joanne St. Lewis (Chair), Paul Copeland (Vice-Chair and Chair of meeting), Dr. Richard Filion, Thomas Heintzman and Tracey O'Donnell. Nathalie Boutet (representative of the Association des juristes d'expression française de l'Ontario

(AJEFO)), Milé Komlen (Chair of the Equity Advisory Group (EAG)) and Cynthia Petersen (Discrimination and Harassment Counsel) also participated. Staff members in attendance were Josée Bouchard, Anne-Katherine Dionne, Sudabeh Mashkuri, Marisha Roman and Rudy Ticzon.

FOR INFORMATION

REPORT OF THE ACTIVITIES OF THE
DISCRIMINATION AND HARASSMENT COUNSEL
JULY 1, 2005 TO DECEMBER 31, 2005

BACKGROUND

2. Subsection 5(1) of By-law 36 – *Discrimination and Harassment Counsel* (DHC) provides that, unless the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) directs otherwise, the DHC shall make a report to the Committee:

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

3. Subsection 5(2) of By-law 36 provides that:

    a. The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting.

4. On February 9, 2006, the DHC presented her *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada – July 1, 2005 to December 31, 2005* (Appendix 1) to the Committee, pursuant to Subsection 5(1)(a) of By-law 36. The report is summarized below.

SUMMARY OF REPORT

Findings for period July 1, 2005 to December 31, 2005

5. During the report period, 81 individuals contacted the DHC with new matters. One individual communicated with the DHC in French.

6. Twenty-nine individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department or legal clinic in Ontario. Of the 29 new complaints, 22 were from the public and 7 were from members of the legal profession.

7. Articling students made two of the seven complaints made by the legal profession. Women made five of the seven complaints. The complaints were based on the following prohibited grounds of discrimination: sex (5 complaints), disability (1 complaint) and sexual orientation (1 complaint).

8. Of the 22 lay individuals who contacted the DHC, 14 (64%) were women. Thirty-six percent of the complaints arose in the context of the complainant's employment and 32% involved clients. The number of public complaints can be summarized under the following grounds: sex (11 complaints), race (5 complaints), disability (3 complaints), sexual orientation (2 complaints) and religion (2 complaints).

9. The DHC conducted a formal mediation during the reporting period.

10. In June 2005, Convocation appointed two Alternate DHC: David Bennett and Lynn Bevan. Both are experienced mediators with considerable human rights experience. Both Alternates had an opportunity to assume the DHC duties during the reporting period. The transition to and from the Alternates was smooth and allowed for continuity of service.

11. Cynthia Petersen was appointed as DHC three years ago and has now produced six semi-annual reports. The DHC report for the period of July 1, 2005 to December 31, 2005 includes a summary of data gathered since January 1, 2003 and provides an overview of trends. A summary of the findings is presented below.

Summary of data from January 1, 2003 to December 31, 2005

12. There have been a total of 594 new contacts with the DHC Program since January 1, 2003. There were 180 contacts in each of 2003 and 2005, and 234 contacts in 2004. On average, the Program has received 16.5 new contacts per month over the past 3 years.

13. During the first two years, 80% of contacts were by telephone. During the last year, email communications have increased from 20% to 30%.

14. Since 2003, 22 individuals have communicated with the DHC in French. This represents 4% of callers and reflects the percentage of Francophone members of the profession and of the public in Ontario (5% respectively).

15. In three years, the DHC dealt with 204 complaints against lawyers, which represents 34% of new contacts. Over the three-year period, complaints from the public have constituted on average 57% of all discrimination and harassment complaints raised with the DHC.

16. Articling and summer students made ten percent of the complaints against lawyers.

17. Most discrimination and harassment complaints made by lawyers and law students arise in the context of the complainant's employment or in the context of job interviews. In 2003, 85% of complaints made by members the profession, in 2004, 76% of complaints made by members of the profession, and in 2005, 91% of complaints made by members of the profession arose in the employment context.

18. In three years, 77% of lawyers and law students who reported discrimination and harassment to the DHC were women.

19. There has been an increase over time in the number of public complaints that are employment-related. In 2003, 15% of public complaints, in 2004, 32% of public complaints, and in 2005, 44% of public complaints arose in the context of employment.

There has been a decrease over time in the number of complaints from clients. In 2003, clients made 64% of public complaints, in 2004, clients made 49% of public complaints, and in 2005, clients made 35% of public complaints.

20. In three years, 67% of complaints made by members of the public were made by women.

21. Of the 204 discrimination and harassment complaints against lawyers, the following grounds were raised:

    a. Sex (54%);
    b. Race (19%);
    c. Disability (19%);
    d. Sexual orientation (6%);
    e. Religion (3%);
    f. Age (3%);
    g. Family status (2%);
    h. National/ethnic origin (2%);
    i. Ancestry (1%); and
    j. Record of offences (1 complaint).

ABORIGINAL INITIATIVES OPERATIONAL REVIEW 2005 AND WORK PLAN SUMMARY 2006

22. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report*). The *Bicentennial Report* reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays and lesbians and persons with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The Report made sixteen recommendations that have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.

23. In 1999, the Law Society created the position of Equity Advisor to implement the recommendations of the *Bicentennial Report*. Four other positions were created following the appointment of an Equity Advisor and the Department became a unit of five permanent full-time positions. The position of Aboriginal Issues Coordinator was created as a full-time position in 2000 to develop policies, programs, resources and initiatives for Aboriginal members of the bar, law students, the public and the Law Society.

24. On February 9, 2006, the Aboriginal Issues Coordinator presented the *Aboriginal Initiatives Operational Review 2005 and Work Plan Summary 2006* report to the Committee (Appendix 2). The purpose of the report is to outline Aboriginal initiatives undertaken by the Aboriginal Issues Coordinator and the Equity Initiatives Department in 2005 and to provide an overview of the Aboriginal initiatives work plan for 2006.

EQUITY PUBLIC EDUCATION SERIES 2006

25. The Schedule of the Equity Public Education Series 2006 is presented at Appendix 3.

APPENDIX 1

REPORT OF THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL FOR THE LAW SOCIETY OF UPPER CANADA

For the period from July 1, 2005 to December 31, 2005

and

Summary of Data since January 1, 2003

Prepared By Cynthia Petersen
Discrimination and Harassment Counsel

PART I

SUMMARY OF ACTIVITIES JULY 1 TO DECEMBER 31, 2005

Overview of New Contacts with the DHC Program

Number of New Contacts

1. During this reporting period (July 1 to December 31, 2005), 81 individuals contacted the DHC Program with a new matter[1] . The volume of new contacts was distributed as follows:

(see graph in Convocation Report)

Method of Communication

2. The DHC toll-free telephone line remains the most common way in which individuals initiate contact with the Program, but the use of email has increased over time. In this reporting period, 28 individuals (35%) used email to make their initial contact with the program, 52 people (64%) used the telephone, and 1 used regular mail.

Language of Communication

3. During this reporting period, the DHC only communicated with one caller in French. All of the remaining contacts with the Program were in English.

Summary of Discrimination and Harassment Complaints

[1] Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to a previous matter are not counted in this number.

Number of Complaints

4. Of the 81 new contacts with the DHC Program, 29 individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department or legal clinic in Ontario.[2]

Public / Profession Ratio

5. Of the 29 new discrimination and harassment complaints, 22 were from the public and 7 were from members of the legal profession.[3]

Complaints from within the Legal Profession

Student Complaints

6. Articling students made 2 of the 7 complaints from within the legal profession during this reporting period.

Male / Female Ratio

7. Of the 7 complaints from within the legal profession, 5 were made by women (4 lawyers and 1 articling student).

Context of Complaints

8. All of the complaints from within the legal profession arose in the context of the complainants' employment.[4]

Nature of Complaints

9. The 7 complaints from within the legal profession were based on one or more of the following prohibited grounds of discrimination: sex (including gender identity), disability, and sexual orientation.

10. Five (5) complaints were based on sex as a ground of discrimination. Of these:

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[2] This number includes only those complaints that are based on prohibited grounds of discrimination enumerated in the *Ontario Human Rights Code* and LSUC's *Rules of Professional Conduct*. Complaints of discrimination or harassment by lawyers that are not based on any human rights grounds are outside the mandate of the DHC Program and are referred to as such later in this report.

[3] One lawyer initiated contact with the DHC on behalf of a secretary in his office who had experienced sexual harassment by another lawyer in the same firm. Although the DHC spoke with both the male lawyer and the female secretary, these calls have only been counted as one new contact with the Program and have been classified as a public complaint by a woman in the data of this Report.

[4] One Tribunal member complained about another Tribunal member. This matter is classified as an "employment" complaint in the data of this report since it is workplace related.

- 1 female associate complained that she suffered employment-related reprisals by male partners in her law firm after she complained about sexual harassment by a male client;
- 1 female associate in a law firm complained about sexual harassment by a male associate in her office;
- 2 government lawyers complained about discrimination in their employment (promotion/advancement) arising from their pregnancy and/or maternity leave; and
- 1 trans-identified male articling student[5] in a government office complained about sex discrimination at work.

11. One complaint was based on sexual orientation: a lesbian articling student in a law firm complained about discrimination by her female principal at work.

12. One complaint was based on disability: a male government lawyer with multiple physical disabilities complained that his manager (another lawyer) was refusing to provide him with appropriate accommodation.

13. In summary, the number of complaints in which each of the following prohibited grounds of discrimination was raised are as follows:

- sex 5
- sexual orientation 1
- disability 1

Public Complaints

Male / Female Ratio

14. Of the 22 members of the public who contacted the DHC Program with a complaint of discrimination or harassment during this reporting period, 14 were women (64%) and 8 were men (36%).

Context of Public Complaints

15. Of the 22 complaints from members of the public:

- 8 were individuals complaining about a lawyer with whom they work;
- 7 were clients complaining about their own lawyer[6] or about a lawyer they had attempted to retain;
- 2 were litigants complaining about counsel for the opposing party in their case;
- 2 were witnesses for the prosecution in criminal proceedings who complained about Crown Attorneys;
- 1 was a paralegal student who complained about an instructor;

[5] I have deliberately used "trans-identified male" (as opposed to "transsexual") because this was the complainant's preferred self-description.
[6] Complaints by grievors about union counsel are classified as "client" complaints in DHC data.

- 1 man complained about corporate counsel with whom he had had business dealings; and
- 1 woman complained about a lawyer with whom she was acquainted.[7]

16. Thus during this reporting period, 36% of public complaints arose in the context of the complainant's employment, and 32% of complaints involved clients.

Nature of Public Complaints

17. The 22 public complaints were based on one or more of the following prohibited grounds of discrimination: sex, race, ancestry, ethnic origin, disability, religion, sexual orientation and record of offences.[8]

18. Eleven (11) of the public complaints involved discrimination based on sex.

19. Of the 11 sex discrimination complaints, 4 involved male complainants:

- 1 paralegal student complained about sexual harassment by a female lawyer who was his instructor;
- 1 physician called on behalf of a male patient who was sexually assaulted by a court appointed (male) counsel as a youth;
- 1 law clerk complained about sex discrimination by a male lawyer at his workplace; and
- 1 process server complained about sexual harassment (and harassment based on perceived sexual orientation) by a male lawyer in his office.

20. Of the remaining 7 sex discrimination complaints by women:

- 2 legal secretaries complained about sexual harassment by male lawyers in their workplace;
- 1 law clerk complained about gender-based abusive behaviour and harassment by a male lawyer in her workplace;
- 1 woman complained about sexual/racial harassment by a male lawyer with whom she was acquainted;
- 1 woman complained about an employment reprisal committed by in-house counsel in her workplace after she made a sexual harassment complaint about a male supervisor;
- 1 client complained that her male lawyer sexually harassed her; and
- 1 sexual assault survivor, who was a witness in a criminal proceeding, complained about sexist treatment by a male Crown Attorney.

21. Five (5) public complaints involved discrimination based on race and/or ancestry. Of these,

- 1 Chinese woman complained about sexual/racial harassment by a white male lawyer with whom she was acquainted;

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[7] The nature of her relationship with the lawyer ahs not been disclosed in order to protect her anonymity.

[8] "Record of offences" as narrowly defined in the Ontario Human Rights Code.

- 1 south Asian man complained about another south Asian corporate lawyer who made racist remarks to him (the men were of different ethnicities)[9] ;
- 1 client of middle-Eastern descent complained about racist remarks made by a white female lawyer that she had retained;
- 1 First Nations woman involved in litigation complained that opposing counsel in her case (a white male) was discriminating against her based on her aboriginal ancestry; and
- 1 white man involved in litigation complained that opposing counsel in his case (a white male) made a racial slur.

22. Three (3) public complaints were based on disability as the ground of discrimination. Of these,

- 1 woman complained that lawyers at a legal clinic were failing to accommodate her psychological and cognitive disabilities;
- 1 man complained, on behalf of his deaf brother, that a lawyer who was representing them discriminated against his brother based on his hearing impairment; and
- 1 legal secretary complained that a supervising lawyer at her workplace harassed her based on her physical disability.

23. Two (2) public complaints involved sexual orientation as a ground of discrimination:

- 1 gay male police officer complained about homophobic harassment by a Crown Attorney; and
- 1 heterosexual male process server complained that a male lawyer in his office harassed him based on the (mis)perception that he is gay.

24. Two (2) public complaints involved religion as a ground of discrimination:

- an Irish grievor complained that the union's lawyer discriminated against him based on his Catholic faith; and
- an Evangelical Christian woman complained that a lawyer refused to represent her because of her faith.

25. One complaint was based in part on ethnicity: the aforementioned Irish Catholic grievor complained about discrimination by the union's lawyer based on both his religion and his ethnicity.

26. One individual complained about employment discrimination by a government lawyer based on his record of conviction (for a provincial offence).

27. In summary, the number of public complaints in which each of the following grounds of discrimination were raised are as follows:[10]

- sex 11
- race 5

[9] Their ethnicities are not revealed in order to protect the anonymity of the complainant.
[10] The sum of the numbers in this paragraph exceeds 22 because some complaints involved multiple grounds of discrimination.

- disability 3
- sexual orientation 2
- religion 2
- ethnicity 1
- ancestry 1
- record of offences 1

Examples of Recent Discrimination and Harassment Complaints

28. The following are examples of some of the elements of the discrimination and harassment complaints received by the DHC during this reporting period:

- a physically disabled legal secretary with modified employment duties and modified hours of work reported that she was called a “princess” by a woman lawyer in her office because of her accommodations;
- a Chinese woman complained that a male lawyer with whom she was acquainted licked his lips suggestively and told her that he could “have” any Chinese woman and has “had” many Chinese women because he is white;
- a lesbian articling student complained that she was outed at work by her female principal, to whom she had confidentially confided her sexual orientation.
- a woman of middle-Eastern descent complained that a female lawyer she had retained questioned her about her inter-racial relationship, implying disapproval;
- a woman involved in family law litigation complained that her male lawyer asked her to have sex with him and said that he could not continue representing her if she rejected him;
- a male paralegal student complained that his female instructor (who is a lawyer) touched him affectionately and asked him if he was married and whether he was happily married;
- a heterosexual male process server employed by law firm complained that a male lawyer in his office called him “pussy” and “faggot” and made lewd jokes ending with the lawyer touching his (the complainant’s) penis through his pants;
- a pregnant lawyer working in a government office reported that, when she expressed interest in a promotion, she was asked how many children she planned to have, and when she requested pay for duties that she had assumed on an acting basis, she was denied the higher rate of pay on the basis that she was going on maternity leave and therefore would not be doing the acting job for long;
- a female associate in a law firm complained that she was pulled off files and was denied advancement opportunities after she reported to the partnership that a male client had been sexually harassing her;
- a disabled government lawyer complained that his male manager (also a lawyer) was refusing to modify his job duties and to purchase adaptive devices to accommodate his medical restrictions;
- a trans-identified male articling student in a government office complained about gender-based employee appearance expectations in his workplace that required him to conform to conventional masculine appearance at work;
- a South Asian man complained that a corporate lawyer called him a “petty ethnic” and criticized him for operating his business “like a Third World idiot” (the respondent was also South Asian but from a different ethnic background); and
- a gay male police officer reported that a male Crown Attorney called him “faggot” and “homo” in front of other lawyers at a social gathering in a public place.

Demographic Survey of Complainants

29. Individuals who communicated with the DHC by telephone about complaints of discrimination or harassment were asked whether they would be willing to participate in a short demographic survey to enable the DHC to record anonymous statistical data about them.

30. During this reporting period, 20 surveys were conducted. Fourteen (14) public complainants and 6 members of the Law Society (including 2 students members) were surveyed and they identified as follows:

Gender/Sex	11	female
	8	male
	1	trans-identified
Age	6	were 25-34 years old
	9	were 35-49 years old
	3	were 50-64 years old
	2	undisclosed
Race / Ethnicity	1	Arab (Lebanese)
	1	Black
	2	Chinese
	1	Latin American
	12	White / Caucasian
	1	Other (Hungarian Gypsy)
	1	Other (Moroccan & Israeli)
	1	undisclosed
Sexual Orientation	3	lesbian / gay
	14	heterosexual
	3	undisclosed
First Language	17	English
	1	Cantonese
	1	Magyar (Hungarian)
	1	Spanish
Disability	4	identified as disabled
Region of Residence	9	Greater Toronto Area
	3	Southwestern Ontario
	2	Central Ontario
	3	National Capital Region
	1	Northern Ontario
	1	Winnipeg
	1	undisclosed

Services Provided to Complainants

31. Complainants who contacted the DHC were advised of the various avenues of redress open to them, including:

- reporting to the police (where criminal conduct is involved);
- filing an internal complaint or a grievance within their workplace (including, where appropriate, contacting their union or employee association for assistance);
- filing a complaint with a human rights commission (usually the Ontario Human Rights Commission, but sometimes the Canadian Human Rights Commission);
- making a complaint to the Law Society; and
- contacting a lawyer for advice regarding other possible legal actions (eg. wrongful dismissal, defamation).

32. Complainants were also provided with information regarding each of these options, including:

- what (if any) costs might be involved in pursuing an option;
- whether legal representation is required to pursue an option;
- how to file a complaint or make a report (eg. whether it can be done electronically, by telephone, or in writing; whether particular forms are required, etc.);
- the process involved in each option (eg. investigation, conciliation, hearing, etc.);
- what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.); and
- the existence of time limits for each avenue of redress (complainants were typically advised to immediately seek legal advice regarding the applicable statutory time limits in their circumstances).

33. Complainants were not only advised of the options available to them, but also that the options were not mutually exclusive.

34. Complainants were given information about who to contact in the event that they decided to pursue any of their options.

35. In some cases, upon request, strategic tips were provided on how to handle a situation without resort to a formal complaints process (eg. confronting the offender, speaking to a mentor, writing a letter of complaint to the managing partner of the law firm in question).

36. In some cases, complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other sources.

37. In some cases, complainants were referred to support services, such as OBAP (the Ontario Bar Assistance Program) or LINK (short term professional counselling for lawyers).

Mediation Services

38. In addition to being advised of the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program.

39. Where mediation was offered, the nature and purpose of mediation were explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties to reach a mutually satisfactory resolution of the complaint.

40. One formal mediation was conducted during this reporting period. Most complainants who rejected the offer of mediation expressed a desire to have their complaint investigated and/or a preference for an adjudicative approach to the resolution of their complaint. Some also expressed a belief that the respondent would not be willing to participate in mediation, though they did not authorize the DHC to contact the respondent to inquire about their willingness.

41. In a number of cases, at the request of the complainant, the DHC intervened informally and communicated with the respondent in an effort to resolve the complaint, without invoking a formal mediation process.

Summary of General Inquiries

42. Of the 81 new contacts with the DHC during this reporting period, 19 (23%) involved general inquiries relating to equity issues within the Program's mandate.

43. These inquiries included:

- inquiries by the media regarding the DHC program, its mandate and services;
- questions from the public and from lawyers and law students about the scope of the DHC Program's mandate;
- inquiries from lawyers about the confidentiality of the DHC program and whether communications with the DHC are privileged;
- calls from lawyers who had suffered discrimination or harassment and were seeking a referral to support services (eg. addiction counselling, depression counselling, suicide prevention, stress management counselling, etc.);
- questions from lawyers about the mediation service offered by the DHC;
- inquiries from the public and from law firms about educational workshops provided by the LSUC and/or the DHC;
- requests from the public for promotional materials regarding the DHC Program;
- law students and other researchers seeking access to data collected by the DHC; and
- inquiries about the LSUC *Rules of Professional Conduct* and equity issues.

Promotional Activities

44. No new promotional activities for the Program were undertaken during this reporting period.

45. Regular bi-weekly English and French advertisements for the DHC Program continue to appear in the Ontario Reports.

46. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, law firms, government legal departments, and faculties of law.

47. We continue to maintain a website for the DHC Program.

Alternate Discrimination and Harassment Counsel

48. In June 2005, two new Alternate Discrimination Counsel were appointed by convocation: David Bennett and Lynn Bevin. Both are experienced mediators with considerable human rights experience.

49. Both Alternates had an opportunity to assume the DHC duties during this reporting period, in order to provide coverage for Ms. Petersen during her vacation periods and during an unexpected medical leave of absence.

50. The transition to/from the Alternates was smooth and allowed for continuity of service. The DHC and the Alternates regularly consult each other and coordinate their efforts in order to ensure consistency in their approaches to inquiries and complaints.

Matters Outside the DHC Mandate

51. Of the 81 new contacts with the DHC during this reporting period, 33 related to matters outside the scope of the Program's mandate.

52. The majority of contacts that related to matters outside the Program's mandate involved either complaints of discrimination or harassment against non-lawyers (eg. employers, doctors, the police) or complaints against lawyers that did not involve any equity or human rights issues (eg. client billing disputes, complaints of poor representation, allegations of fraud, complaints by litigants of aggressive lawyering by opposing counsel).

53. In addition, several individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.

54. Two individuals wished to complain about discrimination by a lawyer outside Ontario (one in Saskatchewan and one in the Northwest Territories).

55. One person was complaining about race discrimination by a paralegal.

56. Two individuals contacted the DHC regarding discrimination complaints against judges: one involved a race discrimination complaint and the other involved a complaint of homophobia.

57. Individuals who contacted the DHC with matters outside the scope of the Program's mandate were, whenever possible, referred to another organization for information or assistance, such as the Law Society, a human rights commission, a judicial council, or the Lawyer Referral Service.

58. An explanation of the scope of the DHC Program's mandate was provided to these individuals.

59. Although there is a relatively high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

PART II

SUMMARY OF DATA
JANUARY 1, 2003 TO DECEMBER 31, 2005

Overview of Contacts with the DHC Program

Number of Contacts

60. There has been a total of 594 new contacts with the DHC Program since January 1, 2003. There were 180 contacts in each of 2003 and 2005, and 234 contacts in 2004.

61. Thus the Program has received an average of 16.5 new contacts per month over the past 3 years.

Method of First Contact

62. Throughout 2003 and the first half of 2004, approximately 80% of new contacts were made by telephone, with the remainder by email.

63. In the 12 months that followed, email communications increased from 20% to 30%, with only 68% of new contacts being made by phone (and 2% by fax).

64. In the last six months of 2005, the use of email as a method of communication increased again: 28 individuals (35%) used email to make their initial contact with the program, 52 people (64%) used the telephone, and 1 used regular mail.

Language of Communication

65. The DHC services are offered in French and English.

66. Since January 1, 2003, 22 individuals have communicated with the DHC in French: 10 in 2003, 6 in 2004, and 6 in 2005.

Overview of Discrimination and Harassment Complaints

Number of Complaints

67. There were a total of 66 discrimination and harassment complaints in 2003, 78 complaints in 2004, and 60 in 2005.

68. Thus the DHC dealt with a total of 204 complaints against lawyers between January 1, 2003 and December 31, 2005:

(see graph in Convocation Report)

Public / Profession Ratio

69. Since January 1, 2003, there have been 117 discrimination and harassment complaints from the public and 87 complaints from members (or student members) of the Law Society.

70. Thus over the past 3 years, complaints from the public have constituted on average 57% of all discrimination and harassment complaints raised with the DHC.

71. In all but one of the reporting periods since January 1, 2003, the proportion of complaints from the public has been higher than the proportion of complaints from within the legal profession, though the difference has not been quite as marked as it was during the last 6 months, in which 76% of complaints came from the public.

72. The ratio of public / professional complaints has been as follows over the past 3 years:

(see graph in Convocation Report)

Law Student Complaints

73. A total of 20 students[11] have made discrimination and harassment complaints to the DHC Program since January 1, 2003:

- 8 complaints were made by students in 2003, out of a total of 27 complaints from within the legal profession;
- 6 complaints were made by students in 2004, out of 37 complaints from within the legal profession; and
- 6 complaints were made by students in 2005, out of 23 complaints from within the legal profession.

74. Student complaints therefore constitute 23% of the discrimination and harassment complaints received from members of the profession over the past 3 years.

Context of Complaints from Members of the Legal Profession

75. Most discrimination and harassment complaints made by lawyers and law students arise in the context of the complainant's employment or in the context of a job interview:

- in 2003, 85% of complaints from within the profession were employment related;
- in 2004, 76% of complaints from within the profession were employment related; and
- in 2005, 91% of the complaints from within the profession were employment related.

76. There have been complaints from lawyers in non-employment contexts, such as complaints about the conduct of opposing counsel, and one complaint about a lawyer who was the vendor of a home purchased by the complainant.

[11] Either articling students or law students employed during the summer.

Male / Female Ratio of Complainants within the Legal Profession

77. There has consistently been a higher proportion of complaints from women than men within the legal profession:

- in 2003, 18 out of 27 complaints from within the profession were made by women;
- in 2004, 30 out of 37 complaints from within the profession were made by women; and'
- in 2005, 19 out of 23 complaints from within the profession were made by women.

78. Thus of the 87 lawyers and law students who reported discrimination and harassment to the DHC since January 1, 2003, 67 (77%) were women.

79. The gender distribution of public complaints has been as follows:

(see graph in Convocation Report)

80. Discrimination and harassment complaints from law students are also predominantly made by women:

- in 2005, 4 of the 6 student complainants were women;
- in 2004, 5 of the 6 student complainants were women; and
- in 2003, 5 of the 8 student complainants were women.

81. Thus over the past 3 years, 70% of the discrimination and harassment complaints from law students have been made by women. There have been a total of 20 students complaints, 14 from women.

Context of Complaints from Members of the Public

82. There has been an increase over time in the number of public complaints that are employment-related:

- in 2003, only 15% of public complaints related to the complainant's employment;
- in 2004, 32% of public complaints were employment related; and
- in 2005, 44% of public complaints were employment related.

83. Conversely, there has been a decrease over time in the number of complaints from clients:

- in 2003, 64% of public complaints involved clients;
- in 2004, 49% of public complaints involved clients; and
- in 2005, only 35% of public complaints involved clients.

84. There has consistently been a small number of complaints by litigants against opposing counsel:[12]

[12] These include complaints by criminal defendants against Crown Attorneys.

- in 2003, 15% of public complaints involved litigants complaining about opposing counsel;
- in 2004, 17% of public complaints involved litigants complaining about opposing counsel; and
- in 2005, 2 complaints (out of 37 public complaints) involved litigants complaining about opposing counsel.

85. There have also been a few public complaints in other contexts, such as litigants complaining about discriminatory conduct by a Tribunal member, an individual complaining about a government lawyer who was providing a public service, and witnesses in criminal proceedings (including police officers) complaining about Crown Attorneys.

86. In summary, the contexts in which public complaints have arisen over the past three years are as follows:

(see graph in Convocation Report)

Male / Female Ratio of Complaints from the Public

87. Since January 1, 2003, there has consistently been a higher proportion of public complaints from women than men:

- in 2003, there were 25 complaints from women out of a total of 39 public complaints;
- in 2004, 26 of the 41 public complaints were made by women; and
- in 2005, 27 of the 37 public complaints were made by women.

88. Thus of the 117 members of the public who have made discrimination and harassment complaints to the DHC over the past 3 years, 78 (67%) were women.

89. The gender distribution of public complaints has been as follows:

(see graph in Convocation Report)

Grounds of Discrimination Raised
in Discrimination and Harassment Complaints
from January 1, 2003 to December 31, 2005

90. There was a total of 204 discrimination and harassment complaints against lawyers between January 1, 2003 and December 31, 2005.

91. Of these,

- sex was raised as a ground of discrimination in 111 complaints (54%);
- race was raised as a ground of discrimination in 39 complaints (19%);
- disability was raised as a ground of discrimination in 38 complaints (19%);
- sexual orientation was raised as a ground of discrimination in 12 complaints (6%);
- religion was raised as a ground of discrimination in 7 complaints (3%);
- age was raised as a ground of discrimination in 6 complaints (3%);

- family status was raised as a ground of discrimination in 5 complaints (2%);
- national / ethnic origin was raised as a ground of discrimination in 5 complaints (2%);
- ancestry was raised as a ground of discrimination in 2 complaints (1%); and
- record of offences was raised as a ground of discrimination in 1 complaint.[13]

Breakdown of Sex Discrimination Complaints 2003-2005

92. Of the 111 complaints that were based (in whole or in part) on sex as a ground of discrimination:

- pregnancy was specifically raised in 18 complaints;
- gender identity was raised in 2 complaints; and
- sexual harassment was reported in 60 complaints.

93. Ninety seven (97) of the 111 sex discrimination complaints were made by women (including one transsexual woman). Of these:

- 43 were made by lawyers and 6 were made by law students; and
- 48 were made by members of the public.

94. In each instance, the women who contacted the DHC were reporting that they themselves had been the victim of sex discrimination or sexual harassment by a male lawyer,[14] or that they had suffered employment reprisals after making a complaint of sexual harassment against either a colleague, supervisor or client, or that they had suffered discrimination in their employment due to the fact that they were pregnant and/or had taken a maternity leave.

95. In contrast, a number of the men who complained about sex discrimination raised concerns about the inappropriate conduct of other lawyers toward women that they knew. Some of the male complainants raised concerns about sex discrimination that they themselves had experienced.

96. Of the 14 sex discrimination complaints made by men (including one trans-identified man):

- 6 were made by lawyers and 1 was made by an articling student; and
- 7 were made by members of the public.

97. Of the 7 sex discrimination complaints from men within the legal profession:

- an associate complained about a male partner in his law firm who was sexually harassing a female associate;

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[13] The sum of the numbers in this paragraph exceeds 204 and the percentages in this paragraph do not add up to 100% because many of the complaints involved multiple grounds of discrimination.

[14] Usually the respondent was either a lawyer that they had retained to represent them (in the case of public complaints) or a lawyer with whom they worked (in the case of both public complaints and complaints from members of the legal profession).

- a lawyer complained about another male lawyer in his firm who was sexually harassing a female secretary in their office;
- a lawyer complained about sexist remarks made by another male lawyer during discovery proceedings involving a female witness;
- a trans-identified articling student in a government office complained about sex discrimination to which he was subjected at his workplace;
- a gay male lawyer complained about sexual harassment by a supervising female lawyer in a government office (he made two separate complaints regarding independent incidents that occurred months apart); and
- a gay male lawyer complained about sexual harassment by a male partner in his law firm.

98. Of the 7 public complaints of sex discrimination made by men:

- a police officer complained about sexist remarks made by a male Crown Attorney regarding a female police officer and female defence counsel;
- a man called on behalf of a female friend who was sexually assaulted by her male lawyer;
- a litigant in a family law matter complained about anti-male sexist remarks made by his ex-wife's female lawyer;
- a heterosexual process server complained about sexual harassment by a male lawyer at his workplace;
- a law clerk complained about sex discrimination by a male lawyer at his workplace;
- a physician reported that one of his gay male patients had been sexually abused by a court-appointed male lawyer as a youth; and
- a heterosexual paralegal student complained about sexual harassment by a female lawyer who was his instructor.

APPENDIX 2

Aboriginal Initiatives Operational Review (2005) and Work Plan Summary (2006)

Equity Initiatives Department

Presented to the Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
February 9, 2006

Prepared by: Marisha Roman
Aboriginal Issues Coordinator

Aboriginal Initiatives Operational Review (2005) and Work Plan Summary (2006)

Operational Review

Background

1. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report*). The *Bicentennial Report* reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays and lesbians and persons with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The Report made sixteen recommendations that have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.

2. In 1999, the Law Society created the position of Equity Advisor to implement the recommendations of the *Bicentennial Report.* Four other positions were created following the appointment of an Equity Advisor and the Department became a unit of five permanent full-time positions. The position of Aboriginal Issues Coordinator was created as a full-time position in 2000 to develop policies, programs, resources and initiatives for Aboriginal members of the bar, law students, the public and the Law Society.

3. The purpose of this report is to outline Aboriginal initiatives undertaken by the Aboriginal Issues Coordinator and the Equity Initiatives Department in 2005 and to provide an overview of the Aboriginal initiatives work plan for 2006.

Commitment of Law Society and Equity Initiatives Department

4. The goals, objectives and service standards of the Equity Initiatives Department (the Department) have been developed to implement Convocation policy on equality and diversity within the legal profession, the Law Society's departments and within the legal profession's relationship to the public.

5. The Department's goals aim at ensuring that equality principles inform all Law Society policies; equality and diversity principles are integrated within the operations of the Law Society so as to ensure that Aboriginal, Francophone and equality-seeking communities have equal rights within the Law Society; policies and programs that promote diversity and equality are offered to the legal profession; there is public awareness of Law Society equality and diversity policies, programs and services; and the dialogue between the public, the Law Society and the legal profession is inclusive and promotes equality and diversity.

6. The Aboriginal Issues Coordinator works to enhance those goals and objectives by providing services and developing programs, policies and resources for the Aboriginal bar and the community and builds the Law Society's relationships with the Aboriginal bar and communities.

Objectives of the Aboriginal Issues Coordinator

7. With the Equity Initiatives Department and taking into consideration the needs of stakeholders, the Aboriginal Issues Coordinator (AIC) identified the following three main objectives for the development of Aboriginal initiatives for 2005

    a. To coordinate and support equity and Aboriginal policy research and programs;
    b. To develop the profile of the Law Society in the Aboriginal community and in equality-seeking communities;
    c. To conduct outreach and relationship building with the Aboriginal legal community and legal institutions.

8. The following outlines the work undertaken to fulfill these objectives.

Coordinate and Support Policy Research and Programs

9. The core objective of the AIC is to coordinate and support equity and Aboriginal policy research and programs and, in 2005, the AIC undertook the following activities.

Aboriginal Bar Consultation Project

10. The Aboriginal Bar Consultation Project combines a mail-out survey and a face-to-face consultation with Aboriginal members of the bar. The survey instrument was developed in consultation with members of the Aboriginal Working Group (AWG) of the Equity and Aboriginal Issues Committee (the Committee). The consultation will gather information about the experiences of Aboriginal members in law school, the Bar Admission Course (BAC) and post-call. This information will be used by the Law Society to develop policies and programs to support its current and future Aboriginal members.

11. The goals of the survey and consultation are to:

    a. Collect information about Aboriginal members of the bar by identifying their experiences in law school, the Bar Admission Course and since their calls, where they live, in general terms, where they are working, what type of work they are doing and who their clientele is to create a demographic profile of the Aboriginal bar;
    b. Identify the most common stressors among Aboriginal members in law school, the BAC and post-call and how these stressors have influenced Aboriginal members' career choices and views regarding the profession for the purpose of developing relevant Aboriginal programs and supports;
    c. Identify what Law Society services Aboriginal members have used during the BAC, post-call and currently for the purpose of assessing those services;
    d. Identify what other sources of support Aboriginal members have accessed in law school, the BAC and post-call and how these support sources have helped them for the purpose of developing relevant Aboriginal programs and supports;
    e. Identify how Aboriginal members view the Law Society overall for the purpose of assessing current programs and initiatives for Aboriginal members and the Aboriginal community.

12. In 2005, the AIC undertook the following steps toward the development of the project:

    a. Completed database of Aboriginal members of the Law Society;
    b. Promoted the Consultation project to Aboriginal legal organizations, including Rotiio>taties Aboriginal Advisory Group (Rotiio>taties), the Indigenous Bar Association, the Aboriginal Advisory Group for Legal Aid Ontario, the Aboriginal Law Section of the Ontario Bar Association and the Aboriginal Employees Group of the Department of Justice;
    c. Completed draft of survey and coordinated review of survey draft by members of the AWG;
    d. Incorporated feedback from the AWG on the draft survey, completed the final draft and submitted it to the external consultant for formatting and distribution; and
    e. Promoted and continues to promote project at all speaking engagements and outreach events.

13. The following components of the Consultation Project are being implemented in 2006:

    a. Compilation of survey results;
    b. Creation of consultation questions;
    c. Compilation of survey and consultation results;
    d. Compilation of final report for presentation to the Committee.

14. These components are set out below in further detail in the 2006 Work Plan Summary section.

Coordinate and Support the AWG

15. The AWG was created in December 2004 as an advisory body to the Committee on issues of importance to the Aboriginal legal profession and the community in general. The chair of the AWG is bencher Tracey O'Donnell. The AWG is comprised of 29 Aboriginal members of the bar. The AWG meets in person and by teleconference 4 times per year or as required.

16. In 2005, the AIC undertook the following steps with regard to the AWG:

    a. Prepared list of candidates for AWG and coordinated initial contact with candidates;
    b. Coordinated plenary and small-group meetings (January, March, May and September) for AWG;
    c. Prepared draft report of AWG to the Committee outlining policy development recommendations and work plan;
    d. Conducted further research into the AWG recommendations for the purpose of creating a work plan for the AWG for 2006.

Support the Committee and Equity and Diversity Initiatives

17. The AIC supports the Committee as well as the diversity initiatives of the Equity Initiatives Department. Throughout 2005, the AIC provided support to the department in the following ways:

a. Acted as resource to the Committee and the Equity Initiatives Department for all public legal education events and outreach efforts.
b. Attended meetings of the Equity Advisory Group (EAG) and the Committee.
c. Participated in external events to represent the Law Society and the Equity Initiatives Departments. Specifically, the AIC participated in speaking engagements and career fairs for Aboriginal youth throughout 2005.

Develop the Profile of the Law Society in the Aboriginal Community

18. The AIC's role in this regard focuses on creating partnerships between the Law Society and external organizations, in particular Aboriginal legal and community-based organizations. The purpose of these partnerships is to develop opportunities for positive relationships between Aboriginal members, individuals, organizations and communities and the Law Society. The positive relationships will, in turn, enable the Law Society to determine where needs exist with its Aboriginal members and the Aboriginal community in general to provide relevant supports and services. Concurrently, the Law Society has the opportunity to educate the Aboriginal community about its existing services and supports.

Participation in Aboriginal Community Events and Initiatives

19. Throughout 2005, the AIC participated in the following activities for the purpose of developing the Law Society's profile in the Aboriginal community:

a. Maintained membership on the Board of Aboriginal Legal Services Toronto;
b. Maintained membership in Rotiio>taties and host of 6 meetings;
c. Regularly attended Native Law Students Association of the University of Toronto (U of T) meetings and social gatherings;
d. Made presentations at U of T Law School, Osgoode Hall Law School, UWO Law School;
e. Made presentations at Aboriginal Law Section meeting of OBA and Aboriginal Advisory Group for Legal Aid Ontario (LAO);
f. Participated in Blueprint For The Future (BFF) in Ottawa in February 2005. The BFF is Canada's largest national Aboriginal youth career fair program and is managed by the National Aboriginal Achievement Foundation. Approximately 900 Aboriginal youth from Ontario, Quebec and the Northwest Territories attended the Ottawa event;
g. Participated in Moravian of the Thames Career Fair in collaboration with Legal Aid Ontario. Approximately 400 Aboriginal youth from throughout southwestern Ontario attended this event;
h. Collaborated with City of Toronto, ALST, Rotiio>taties, Ontario Justice Education Network (OJEN), the Aboriginal Law Section of OBA for National Aboriginal Day on June 8, 2005. The event, hosted by the Law Society, featured a panel discussion on the topic of "Twenty Years of the Bill C-31 Amendments to the Indian Act" and a reception and art show in collaboration with the Association of Native Development and Promotion of Visual Arts. The reception also featured presentations and remarks

from Chief Justice Roy McMurtry and the Attorney General for Ontario, the Honourable Michael Bryant. Approximately 160 people attended this event.

i. Collaborated with the City of Toronto, the Métis Nation of Ontario, the Métis National Council, the Native Law Students Association of the University of Toronto and Rotiio>taties for the Law Society's Louis Riel Day public legal education event. The event, hosted by the Law Society, featured a panel discussion on the topic of continuing legal developments in Métis rights in the Supreme Court of Canada and a reception. Approximately 130 people attended this event.

j. Invited to attend the Student Day and regular conference for the IBA 2005 Conference (October 2005) at Mnjikaning First Nation, Rama, Ontario

k. Coordinated with Aboriginal Legal Services Toronto for a legal services table at the Canadian Aboriginal Festival in November 2005

l. Invited to attend Ryerson Aboriginal Student Service events at Ryerson University

m. Represented the Equity Initiatives Department at the Kawartha Pines School District Senior Administrator Retreat and prepared 12-minute presentation on the Safe Schools legislation and Aboriginal education issues. Approximately 250 Senior Board Administrators and Trustees attended the Conference.

n. Coordinated with Assembly of First Nations Senior Policy Advisor to distribute 1000 copies of the Law Society's "Making a Complaint" brochure to AFN members

o. Coordinated the attendance of Aboriginal Elders in Ottawa, London and Toronto for the five summer Calls to the Bar.

p. Developed a network of Aboriginal elders in Ottawa, Toronto and London.

q. Developed a network of Aboriginal lawyers throughout Ontario.

Conduct Outreach and Relationship Building with the Aboriginal Legal Community

20. In addition to relationship building with the Aboriginal community, the AIC's role is to develop relationships with Aboriginal law students and Bar Admission Course students, current Aboriginal members and Aboriginal legal organizations and institutions. The outcome of positive relationships with these parties will enable the Law Society to promote its Aboriginal services and supports for students and members. Similarly, opportunities exist for Aboriginal students and members to inform the Law Society where gaps and opportunities exist for developing relevant services and supports.

Aboriginal Law and BAC Student Outreach

21. The AIC undertook the following activities in 2005:

a. Completed law school visit to six schools with the Professional Development and Competence Department. The AIC presented on Equity Initiatives and Aboriginal Initiatives at all visits as well as distributed information on the Equity and Diversity Mentorship Program and the Discrimination and Harassment Counsel;

b. Coordinated the Aboriginal Law Student Symposium on March 18, 2005 in Toronto and March 23, 2005 in Ottawa. For the Toronto event, the AIC coordinated with the Native Law Students Association of the University of

Toronto as well as the Career Service Officers from U of T and Osgoode Hall law schools. Twenty-one of possible twenty-six law students attended. Approximately fifteen Toronto-area Aboriginal lawyers attended and presented on career options in the profession. Mr. Justice Harry LaForme presented a keynote address. For the Ottawa event, the AIC coordinated with the Equity Advisor at the University of Ottawa. A total of five students and nine Aboriginal lawyers from Ottawa attended. The law student events enable the AIC to create a database of Aboriginal law students and to facilitate an informal communication network. Through this network the AIC distributes information about community events and meetings, for example, Rotiio>taties meetings

c. Coordinated three luncheon events for Aboriginal articling students, members of Rotiio>taties and Law Society staff. These events were part of the regular Empire Club lunch program, which featured Roberta Jamieson of the National Aboriginal Achievement Foundation, Lieutenant Governor James Bartleman and Premier Paul Okalik of Nunavut Territory.
d. Coordinated Aboriginal BAC student services (Elders program, tutoring service, resume review and mentorship) with Ryerson Aboriginal Student Services and the Law Society's Education Support Services Unit for the 2005 BAC program. The AIC maintained regular electronic and telephone communications with BAC students throughout the summer and balance of 2005
e. As part of the preparation for the Louis Riel Day public legal education event, the AIC worked with two Métis students from the Faculty of Law at U of T

Aboriginal Bar Outreach

22. In addition to promoting the Equity and Diversity Mentorship program, throughout 2005, the AIC:

a. Coordinated informal introductions for approximately 8 Aboriginal BAC students and new calls with Aboriginal practitioners.
b. Coordinated 3 referrals to Aboriginal lawyers at request of community members.
c. Created an informal electronic communications network with Aboriginal members of the bar and community members to distribute information about events and developments of interest to the community.

Outreach to Legal Institutions and Organizations

23. For the purpose of creating a network of contact with legal organizations, the AIC developed relationships with and maintained regular contact with the following organizations:

a. Ontario Justice Education Network;
b. Aboriginal Law Section of the OBA;
c. Aboriginal Advisory Group of LAO;
d. Aboriginal Employee Group of Department of Justice;
e. Native Women's Association of Canada;
f. Assembly of First Nations;

g. Indigenous Bar Association;
h. Rotiio>taties Aboriginal Advisory Group;
i. Pro Bono Law Ontario;
j. Métis Nation of Ontario;
k. Community Legal Education Ontario; and
l. Ontario Federation of Indian Friendship Centres.

Work Plan Summary for 2006

24. The AIC will continue to coordinate existing programs as well as work with internal and external stakeholders to develop new policies and programs consistent with the goals of the Law Society, the Equity Initiatives Department and the position. Two specific areas of focus for the Equity Initiatives Department and the AIC are the completion of the Aboriginal Bar Consultation project and the development of student supports for the inaugural Licensing Process, beginning in May 2006. The following summary will provide details on the elements of the AIC's work plan with regard to these two issues.

Completion of the Aboriginal Bar Consultation Project

25. Completion of the Aboriginal Bar Consultation Project is the main goal for the AIC for 2006. The project has been under development since late 2004. As stated in the Operational Review for 2005, the Consultation Project involves a mail-out survey to Aboriginal members, face-to-face and telephone consultations with members and the production of a final report for submission to the Committee.

26. The Aboriginal Bar Survey instrument will be distributed by mail to Aboriginal members of the Law Society in the first quarter of 2006. Respondents will be asked to return the completed survey within three weeks of receipt of the form. Following the completion of the survey, the next steps for the consultation are outlined below:

    a. Travel to meet with key groups (individuals/legal practices/legal clinics) in key centres for consultation – Time-frame: 3 months

        1. Create consultation form and questions for face-to-face and telephone interviews
        2. Schedule travel to communities where Aboriginal members reside and work. Options for travel include Kenora, Rainy River, Thunder Bay, Timmins, Sault Ste. Marie, Sudbury, Manitoulin Island, North Bay, Parry Sound/Muskoka area, Orillia, Ottawa, Akwesasne, Kingston, Tyendinaga, Peterborough, the GTA, Hamilton, Six Nations (Ohsweken), London, Walpole Island/Wallaceburg, and Windsor
        3. Schedule consultations by teleconference for out of province or those unable to meet in person

27. Distribute a student version of the survey at the Aboriginal Law Student Career Symposia on March 15 in Ottawa and on March 31 in Toronto.

28. Collate responses to surveys and consultations and produce a final report for submission to the Committee – Time-frame: 2 months

Delivery of Aboriginal Student Services for Licensing Process

29. A primary responsibility of the AIC is to coordinate and promote the academic and student support program for Aboriginal BAC students. With the introduction of the new Licensing Process in May 2006, changes to the academic and student supports services are also required. The AIC has consulted with the AWG as well as other external groups and individuals and has also met with staff of PD&C to develop a support program that will accommodate the changes coming with the Licensing Process.

Goal of the 2006 Aboriginal Students Services Program Plan

30. The 2006 Aboriginal Students Services Program will focus on offering a range of services to Aboriginal Licensing candidates, maintaining regular communication with those students during the three phases of the Licensing Process (Skills and Professional Responsibility Program, Articling and Examinations), and inviting them to utilize the services available to them through the Law Society and the networking opportunities through external organizations such as Rotiio>taties and the Indigenous Bar Association. Encouraging the involvement of external organizations will also serve to strengthen the relationship between the Law Society and Rotiio>taties and the IBA.

Components of the Aboriginal Student Services Program under the Bar Admission Course

31. As a result of longstanding consultation with Aboriginal groups and organizations such as Rotiio>taties (and its precursor, Rotiio>takier) and the IBA since 1998, a comprehensive program of services was developed to address the needs of Aboriginal students in the BAC program. The services and supports currently provided to Aboriginal Bar Admission Course applicants and students include the following:

    a. Annual Aboriginal law student career symposia in Toronto and Ottawa in March, hosted by the Law Society. All Aboriginal law students from throughout Ontario are invited and receive subsidization to attend information and discussion sessions featuring the PD&C Department staff as well as Aboriginal articling students and lawyers.
    b. Visits by the PD&C Department and the Aboriginal Issues Coordinator to all Ontario law schools occur in March of each year. At each visit, the supporting services and programs available to all BAC students as well as to equality-seeking and Aboriginal BAC students are outlined by Law Society staff.
    c. The option of self-identification is available to Aboriginal and other equality-seeking students through the BAC application form.
    d. Direct contact by mail, telephone and/or email of self-identifying Aboriginal BAC students by the Aboriginal Issues Coordinator prior to the start of the BAC program.
    e. The Elders Program is a culturally based program available to all BAC students, and specifically to Aboriginal students. The program features regular sessions scheduled throughout the academic portion of the BAC. Elders present teachings or offer counseling in groups or on a one-on-one basis to students. Students are invited through posted and verbal announcements during the BAC program.

f. Access to no-charge tutoring services during the academic phase of the BAC.
g. The attendance of Aboriginal Elders at Call to the Bar Ceremonies at the request of Aboriginal calls.
h. Ongoing contact with the Aboriginal Issues Coordinator and inclusion on the Community Contact list-serve for announcements regarding Aboriginal events at the Law Society and in the community.

32. Because of the success of the program, as reported by both the student participants and Law Society staff, the above components will be maintained through the Licensing Process beginning in March 2006. Certain elements will be affected by the program schedule of the 2006 Licensing Process. Specifically, the new schedule lends itself to focusing the Elders program during the Skills and Professional Responsibility Program that will run in Toronto, Ottawa, London and Windsor from May 8 to June 9, 2006. The Elders program will be promoted and conducted in the following manner:

a. In March 2006, the AIC will promote the Elder program during the PD&C Law School Tour and during the Aboriginal Law Student Symposia, scheduled for March 2006 in Toronto and in Ottawa.
b. In April 2006, the AIC will write a letter of welcome to all Aboriginal Licensing program candidates who self-identify in their applications and will notify them of the planned Orientation/Launch events in the various centres.
c. Within the first week of the Skills and Professional Responsibility Program, the AIC will schedule a midday Orientation/Launch event in Toronto at the Ryerson Aboriginal Students Services offices and invite members of Rotiio>taties and other GTA-area Aboriginal lawyers. The event will promote the Ryerson Aboriginal Student Services facilities as well as Rotiio>taties. An Elder and Aboriginal lawyer(s) will also attend this event. Licensing candidates will be informed that, if they wish to meet with an Elder, they should contact the AIC, who will arrange for the Elder to conduct a session during the Skills and Professional Responsibility Program. The Aboriginal lawyer(s) in attendance will be an individual(s) who is/are interested in mentoring students.
d. A similar event will be scheduled within the first week of the Skills and Professional Responsibility Program in Windsor, London and Ottawa. For those events, a local Aboriginal lawyer(s), who is/are interested in developing a mentoring relationship with Aboriginal Licensing candidates, and an Elder will greet the students to the program. Depending on the scheduling of these programs, either the AIC or a local Law Society staff or faculty member will attend the event. The launch event will inform students that if they wish to meet with an Elder, they should contact the Aboriginal Issues Coordinator, who will arrange for the Elder to conduct a session during the Skills and Professional Responsibility Program.
e. In conjunction with the orientation events, each student will receive an orientation handbook, prepared by the AIC, outlining briefly what to expect from the Licensing Process and how to make connections with the Aboriginal bar and the community in the four centres where the Skills and Professional Responsibility program will take place. Perspectives on articling and advice for students on how to succeed in articling and the licensing exams and establish community contacts will be featured. The

guide could also be sent out prior to the start of the program along with the letter of welcome in April.

f. Elders will be invited again to the main calls to the bar in London, Toronto and Ottawa through July 2006.

APPENDIX 3

EQUITY PUBLIC EDUCATION SERIES SCHEDULE - 2006

1. Black History Month: Assisting At-risk Youth - Lawyers and Communities Working Together
Event date: February, 22, 2006
Time:

3:00 p.m. – 4:20 p.m. Workshops

Interactive workshops involving lawyers, community service providers and youth will be presented. The workshops will explore community-based programs that work to empower and support at-risk youth in schools, at home and in the community. Participants will hear the perspectives of youth and community workers and will gain a better understanding of the issues and challenges faced by at-risk youth.

4:30 p.m. – 6:00 p.m. Panel Discussion – Engaging the Legal Profession to Assist At-risk Youth

Chair: Sandy Thomas, Barrister and Solicitor, Department of Justice, Ontario Regional Office

Speakers: The Hon. R. Roy McMurtry, Chief Justice of Ontario
Denise R. Dwyer, Barrister and Solicitor
Roger Rowe, Barrister and Solicitor

6:00 p.m. – 8:00 p.m. Reception

Location: Workshops and panel discussion, Donald Lamont Learning Centre
Reception, Law Society Convocation Hall

2. International Women's Day topic: Trafficking of Women and Children
Event date: March 8, 2006
Time:

4:00 p.m. – 6:00 p.m. Panel discussion - Elimination of Trafficking in Women and Children

Trafficking in persons is a critical international and domestic human rights issue, and thousands of women and children face abuses due to this practice. The roots of trafficking in persons and the specific problems associated with trafficking in women and children will be discussed.

Chair: Sudabeh Mashkuri, The Law Society of Upper Canada

Speakers: Clara Ho, Barrister and Solicitor, Metro Toronto Chinese and Southeast Asian Legal Clinic

Loly Rico, Co-Director, FCJ Refugee Centre, Toronto
Yukimi Henry, Director of Social Services, Elizabeth Fry Society of Toronto

6:00 p.m. – 8:00 p.m. Reception to Celebrate International Women's Day

Location: Panel discussion, Donald Lamont Learning Centre
Reception, Law Society Convocation Hall

3. International Day for the Elimination of Racial Discrimination: Canadian Legal Response to Torture – Promoting Human Rights
Event date: March 24, 2006
Time:

3:00 p.m. – 6 p.m. Canadian Legal Response to Torture panel discussion

The Law Society of Upper Canada in partnership with the University of Ottawa, Faculty of Law and the Human Rights Research and Education Centre are pleased to present a public panel discussion that will examine legal, political and social implications for the torture and the role and responsibility of governments in eliminating torture.

Chair: Joanne St. Lewis, Bencher, Law Society of Upper Canada

Speakers: Dr. Amir Attaran, Faculty of Law, University of Ottawa and Institute of Population Health

Paul Copeland, Bencher, Law Society of Upper Canada

Marlys Edwardh, Ruby & Edwardh Barristers

Alex Neve, Secretary General, Amnesty International Canada

Kerry Pither, Campaign & media Strategist

6:00 p.m. – 8:00 p.m. Reception to Celebrate International Day for the Elimination of Racial Discrimination

Location: Panel discussion: University of Ottawa, Alumni Auditorium of the Jock Turcot University Centre building, 85 University, Ottawa.

Reception: Tsampalieros Atrium, 3rd Floor, Fauteux Hall, 57 Louis Pasteur, University of Ottawa.

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: May 17, 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

7. National Aboriginal Day topic: TBD
Event date: June 7, 2006
Location:

1:00 p.m. – 5:00 p.m.: Panel discussion, Donald Lamont Learning Centre
5:00 p.m. – 7:00 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. 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

Government Relations Committee Report

- Legal Aid Ontario Board Appointments

Government Relations & Public Affairs Committee
February 23, 2006

Report to Convocation

Purpose of Report: Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

COMMITTEE PROCESS

1. The Committee met on February 8, 2006. Committee members in attendance were: James Caskey and Julian Porter (Co-Chairs), Laurie Pawlitza (Vice-chair), Andrea Alexander, Marion Boyd, Abdul Chahbar, Andrew Coffey, Allan Lawrence, Alan Silverstein, William Simpson and Michelle Strom. Staff in attendance were Malcolm Heins, Katherine Corrick, Sheena Weir and Julia Bass.

FOR INFORMATION

APPOINTMENTS TO THE BOARD OF LEGAL AID ONTARIO

2. The *Legal Aid Services Act, 1998,* sets out the composition of the board of *Legal Aid Ontario* as follows:

   a. Five members are to be selected by the Attorney General from a list submitted by the Law Society;
   b. Five persons are to be selected by the Attorney General;
   c. The majority of the members of the board shall be non-lawyers;
   d. No more than three members shall be benchers of the Law Society; and
   e. Members may hold office for a term of two or three years. This staggering of expiry dates is designed to help provide continuity to the board.

3. The relevant provisions of the Act are attached at Appendix 1.

4. One of the Law Society appointees, Joyce Pelletier, was appointed to the Bench in December 2005. The terms of three other Law Society appointees (Patricia DeGuire, W. A. Derry Millar and Beverly Wexler) will expire in May 2006. There are thus four positions to be filled. A list of the composition of the board as of December 1st 2005 is attached at Appendix 2.

5. Subsection 6 (2) of the Act provides that, in the absence of new appointments, the existing appointees continue to sit.

6. Advertisements have been placed in the *Ontario Reports* soliciting applications. The text of the advertisements is attached at Appendix 3.

7. The Government Relations Committee has established a working group to review the applications, with the following members: Andrea Alexander, Marion Boyd, Laurie Pawlitza, William Simpson and Michelle Strom.

8. As required by the *Legal Aid Services Act*, the working group will review the applicants on the basis of their knowledge, skills and experience, including demonstrated ability to work in a supervisory or board environment, together with considerations of regional diversity and the Law Society's equity policies.

9. The list of recommended nominees will be placed before Convocation for approval, in March.

APPENDIX 1

Legal Aid Services Act, 1998

Board of directors

Composition

5. (2) The board of directors of the Corporation shall be composed of persons appointed by the Lieutenant Governor in Council as follows:

1. One person, who shall be the chair of the board, selected by the Attorney General from a list of persons recommended by a committee comprised of the Attorney General or a person designated by him or her, the Treasurer of the Law Society or a person designated by him or her and a third party agreed upon by the Attorney General and the Treasurer of the Law Society or persons designated by them.
2. Five persons selected by the Attorney General from a list of persons recommended by the Law Society.
3. Five persons recommended by the Attorney General.

Non-voting member

(3) The president of the Corporation shall be a non-voting member of the board.

Criteria for selection

(4) In selecting and recommending persons under paragraphs 2 and 3 of subsection (2), the Attorney General shall ensure that the board as a whole has knowledge, skills and experience in the areas that the Attorney General considers appropriate, including the following areas:

1. Business, management and financial matters of public or private sector organizations.
2. Law and the operation of courts and tribunals.
3. The special legal needs of and the provision of legal services to low-income individuals and disadvantaged communities.
4. The operation of clinics.
5. The social and economic circumstances associated with the special legal needs of low-income individuals and of disadvantaged communities.

Same

(5) The Attorney General shall ensure that the persons selected and recommended under paragraphs 2 and 3 of subsection (2) reflect the geographic diversity of the province.

Majority non-lawyers

(6) The majority of the appointed members of the board shall be persons who are not lawyers.

No more than three benchers

(7) No more than three of the appointed members of the board shall be benchers of the Law Society.

Chair

(8) The chair of the board shall designate another appointed member of the board to act as chair in his or her absence and, if the chair fails to designate a person, or if the designated person is also absent, the other appointed members of the board shall designate a person to act as chair in the absence of the chair.

Quorum

(9) A majority of the appointed members of the board constitutes a quorum.

Vacancies

(10) If a position on the board becomes vacant, a person shall be appointed to fill the vacancy under the same provision that the person whose position is being filled was appointed and, until the replacement appointment is made, the board may continue to act.

Same

(11) An appointment to fill a vacancy may be for the remainder of the term of the member being replaced or for a full term, as may be considered appropriate by the Lieutenant Governor in Council.

Remuneration

(12) The Corporation shall pay the appointed members of the board remuneration and expenses as determined by the Lieutenant Governor in Council. 1998, c. 26, s. 5.

Term of office

6. (1) The appointed members of the board shall hold office for a term of two or three years.

Same

(2) Upon the expiry of a member's term of office, the member may continue in office until his or her reappointment or until his or her successor is appointed, as the case may be.

Termination for cause
(3) The appointment of an appointed member of the board shall not be terminated before the end of its term except for cause or under subsection 73 (5).

APPENDIX 2

LAO Board of Directors (as of December 1st 2005)

Chair

Janet Leiper	June 2004 – June 2007
Aly Alibhai, Ottawa	May 2004 – May 2007
Patricia E. DeGuire, Thornhill	May 2004 – May 2006
Jennifer Gullen, Ottawa	May 2004 – May 2007
Sylvia Maracle, Toronto	December 1999 – May 2006
W.A. Derry Millar, Toronto	December 1999 – May 2006
William J. Prosperi	June 2004 – June 2007
Beverly Wexler	December 1999 – May 2006
Gordon Wolfe	December 1999 – May 2006
Joyce Pelletier, Thunder Bay	May 2004 – May 2007
Shelley Laskin, Toronto	May 2004 – May 2007
Angela Longo, President/CEO	Ex Officio Board Member

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

Copies of the advertisements (English and French) placed in the Ontario Reports "Notice Re: Legal Aid Ontario Board of Directors.

(Appendix 3, pages 9 – 10)

CONVOCATION ROSE AT 11:50 A.M.

Confirmed in Convocation this 23rd day of March, 2006.

Treasurer