

MINUTES OF CONVOCATION

Thursday, 27th May, 2010
9:00 a.m.

PRESENT:

The Treasurer (W.A. Derry Millar), Aaron, Anand, Backhouse, Banack, Boyd (by telephone), Braithwaite, Bredt, Caskey, Chilcott, Conway, Crowe, Daud (by telephone), Dickson, Dray, Elliott, Epstein, Eustace, Fleck, Furlong, Go, Gold, Gottlieb, Haigh, Hainey, Halajian, Hare, Hartman, Heintzman, Henderson, Krishna, Legge, Lewis, MacKenzie, McGrath, Marmur, Minor, Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch, Robins, Rothstein, Ruby, Sandler, Schabas, Simpson, C. Strosberg, H. Strosberg, Swaye, Symes, Tough, Wardlaw, Wright (by telephone) and Yachetti, (by telephone).

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer informed Convocation that Bill 16 implementing the Governance Task Force recommendations received Royal Assent on Tuesday, May 18, 2010. The Treasurer thanked the Governance Task Force, Government Relations Committee, Katherine Corrick, Malcolm Heins, Jim Varro and Sheena Weir for all of their hard work, as well as the Attorney General, his staff and the government for their support.

The Treasurer extended condolences to the family of former bencher and Chief Justice of the High Court of Ontario, the Honourable Gregory T. Evans who passed away on May 23, 2010.

Birthday wishes were extended on behalf of the benchers, lawyers and paralegal members of the Law Society of Upper Canada to Mary Constance McLean on her 100th birthday on May 30, 2010. Mrs. McLean has been a dedicated member of the Law Society of Upper Canada for 76 years.

DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of April 22, 2010 were confirmed.

MOTION – APPEAL PANEL

It was moved by Mr. Banack, seconded by Mr. Conway, –

THAT Sydney Robins be removed from the Appeal Panel at his own request.

Carried

ANNOUNCEMENT

The Secretary announced the following nominees for the office of the Treasurer.

Laurie Pawlitza – nominated by James Caskey and Carol Hartman

William Simpson – nominated by Marion Boyd and Susan McGrath

Beth Symes – nominated by Susan Hare and Paul Schabas.

TREASURER'S REPORT

The Treasurer presented his report on the Civility Forum for information.

Report to Convocation
May 27, 2010

Treasurer's Report on the Civility Forum

Purpose of Report: Information

THE LAW SOCIETY CIVILITY FORUM 2009-2010

Introduction

1. The Civility Forum was a series of eleven meetings I hosted for lawyers and paralegals throughout Ontario between November 2009 and February 2010. In this report, I provide Convocation with the results of those meetings. I also offer my views on future initiatives to address civility issues.

2. Civility is an important issue for lawyers and paralegals and for the Law Society. Lawyer and paralegal civility and professionalism toward the courts, their clients and one another are essential to the effective administration of justice. The Law Society is committed to ensuring that lawyers and paralegals conduct themselves to the highest standards, in accordance with the *Rules of Professional Conduct* and *Paralegal Rules of Conduct*.
3. One of the Law Society's roles as the regulator of lawyers and paralegals is to address issues related to civility, including complaints. In doing so its goal is to encourage civil conduct and respond in an appropriate and effective manner when the ethical standard is breached.
4. In 2007 and 2008 there were several events that heightened the Law Society's focus on this issue:
 - a. In 2007, the Law Society noted that civility issues constituted a significant portion of all complaints to the Society and that the number of issues was growing. The Professional Regulation Committee was alerted to this trend and the Law Society began to develop strategies to address it.
 - b. In 2007, the Honourable Coulter Osborne released his report on the Civil Justice Reform Project. This report noted the adverse effect of unprofessional conduct on the administration of civil justice.
 - c. In February 2008, Attorney General Chris Bentley appointed the Honourable Patrick J. LeSage, and His Honour Justice Michael Code (then a law professor at the University of Toronto) to conduct a review of large and complex criminal case procedures, and to identify issues and recommend solutions to move these cases through the justice system faster and more effectively. In November 2008, the Attorney General released the Code/LeSage report entitled "Report of the Review of Large and Complex Criminal Case Procedures." One of the issues identified as contributing to the length of some complex criminal cases was incivility and the litigation culture. Concerns about lapses in civility were cited as affecting the length of criminal cases and their orderly administration, with adverse effect on access to justice.
5. The Law Society responded to its experience with civility-related complaints, the comments respecting civility in the Osborne Report and the anticipated comments in the Code/LeSage Report with a number of initiatives. It had discussions with key stakeholders such as members of the judiciary, the Criminal Lawyers Association and the Advocates' Society that led to a protocol for addressing judicial complaints about lawyers and paralegals and a mentorship protocol to address certain types of civility concerns. To highlight the issue, an article entitled "Civility in the Profession" was published in the Winter 2008 edition of the *Ontario Lawyers Gazette*. In addition, I launched the Civility Forum.

About the Civility Forum

6. The main objective of the Civility Forum was to discuss civility issues with lawyers and paralegals; sharing the Law Society's experience with the issue and learning about the day-to-day experiences of practising lawyers and paralegals. The second objective was to brainstorm possible solutions to civility difficulties and consider their relative merits.

7. Between November 2009 and February 2010 I visited the 11 locations across the province listed below. The forum was well received by lawyers and paralegals. More than 900 individuals attended. They included lawyers, paralegals, students and members of the judiciary. The attendees worked in a variety of practice areas and law-related jobs and included those just beginning their careers to those with many years of seniority.

Date	Location	Number of Registrants
November 3, 2009	Sudbury	42
November 19, 2009	Ottawa	118
December 8, 2009	Windsor	40
January 11, 2010	Barrie	76
January 12, 2010	Mississauga	104
January 14, 2010	Hamilton	101
January 18, 2010	Oshawa	57
January 26, 2010	Kitchener/ Waterloo	70
February 3, 2010	London	83
February 8, 2010	Thunder Bay	30
February 16, 2010	Toronto	234

8. Each session had a panel of speakers. The panels consisted of the Regional Senior Justices or their designate for each of the Superior Court of Justice, the Ontario Court of Justice, the Justices of the Peace, a local practitioner, and a representative of the Law Society's Professional Regulation Division. As well, I sat on each of the 11 panels. Allan Stitt of ADR Chambers facilitated all the sessions.
9. The guest panelists were asked to speak to their personal views and experiences with incivility, to identify trends and their possible causes and to recommend strategies that lawyers and paralegals could adopt to address civility issues. The representatives of the Law Society's Professional Regulation Division spoke to the complaints and discipline process and also provided some examples of the types of regulatory complaints the Law Society receives.
10. The sessions were scheduled for two hours and most of that time was dedicated to the open forum discussion with the audience. Participants in all locations were interested, engaged and thoughtful, resulting in animated discussions and a variety of views, as highlighted below.

The Civility Forum Discussions

11. The opening topic for discussion at each session was participants' observations of trends respecting civility issues. There were a variety of views on the subject.

12. Many participants thought that issues of uncivil conduct emerge more often in centres with larger populations than in smaller communities. The smaller number of practising lawyers and paralegals in an environment with ongoing personal contact reduces the potential for this type of conduct. They noted that such continuous personal contact makes it more feasible for these issues to be addressed one-on-one and informally and resolved without recourse to the Law Society. However, even those in centres with fewer practitioners agreed that civility issues exist, and that they cannot always be addressed informally through collegial comment and support.
13. Overall, there was agreement that incivility is a concern throughout the province, albeit with some local variation in experience.

Participants' Experience with Uncivil Conduct

14. Forum participants, including members of the judiciary and senior counsel, described their encounters with uncivil conduct. Both lawyers and paralegals related experiences that ranged from a lack of respect to harassment. Some younger practitioners described a sense of powerlessness at their treatment by more senior members of the bar.
15. Conversely, there were observations that younger members are not respectful enough of more senior members. Lawyers and paralegals described experiences with difficult, demanding clients, and encounters with lawyers and paralegals who were clearly over-stressed, rude or bullying. Lawyers and paralegals also described experiences with judges who they felt had failed to respond appropriately to uncivil conduct in the courtroom, or failed to show the appropriate respect for lawyers, paralegals and others in the courtroom. Those in sole practices described the difficulty of dealing with uncivil and harassing behaviour without colleagues to support them and to help them formulate a response.
16. Most participants indicated that they try to address the uncivil conduct themselves. They offered a range of best practices on how to respond to uncivil and bullying conduct:
 - a. Remain calm, do not escalate the situation.
 - b. Ask the speaker who made the offending comment to rephrase.
 - c. Ignore the conduct and do not pursue the issue unless it interferes with the client's matter.
 - d. Tell the person the behaviour is inappropriate and ask that it stop.
 - e. Find a way to defuse the situation, and use humour if appropriate.
 - f. Ask for an apology.
 - g. Allow a "cooling off" period before responding.
 - h. If the behaviour is serious or persistent, complain to the other practitioner's firm or the Law Society.

17. The guest speakers described their observations about civility largely in the courtroom setting. Many of their observations were captured in the following list prepared by one of the Regional Senior Justices of the Superior Court who attended:
- a. Lateness.
 - b. Failure to stand when the judge enters the room.
 - c. Failure to stand when making submissions or objections.
 - d. Failure to attend court gowned and then grumbling when gowns are required.
 - e. Failure to be properly attired.
 - f. Slipshod preparation or outright lack of preparation.
 - g. Failure to accept rulings when they are made and continuing to argue.
 - h. Demonstrating an attitude of truculence when rulings are made.
 - i. Criticizing the judge or other judges.
 - j. Ignoring orders or directions of the court.
 - k. Stating or implying that an immediate appeal of a decision will follow.
 - l. Making faces or rolling the eyes.
 - m. Behaving rudely to witnesses.
 - n. Dismissive body language.
 - o. Disrespectful tone of voice, including a raised voice.
 - p. Baiting the judge, in hopes of gaining grounds for appeal.
 - q. Slamming down books.
 - r. Leaving the court room before the judge.
 - s. Slamming the door upon exiting.
 - t. Referring to judges in an overly familiar or disrespectful way, such as calling them by their first names.
 - u. Putting feet on the counsel table.
18. Invited speakers observed that since the licensing of paralegals, the level of civility in the Ontario Court of Justice has improved, with greater attention to ethical conduct requirements. The guest speakers also noted that the judiciary is in a position to show leadership by maintaining civility within the courtroom. They agreed that it is important to nurture a culture of civility through leadership, particularly on the part of judges and senior counsel.

Causes of Uncivil Conduct

19. Many of the reasons offered as causes of incivility were repeated across meetings, revealing broad consensus throughout the province.
20. The participants identified some causes as societal:
- a. A general decline in civility in society, including changes in the tolerance for the use of foul language, dress standards and standards to denote respect.
 - b. Behaviours and expectations adopted from American television as to how a successful lawyer should behave, which have influenced the expectations of clients and the conduct of some lawyers who emulate these roles. The consensus was that the public needs to be better informed about what it can expect from a lawyer or paralegal and what the standards of service, values and professionalism should be.

- c. The economic and business stresses caused by the recession, adding to the stress experienced by many lawyers and paralegals.
 - d. Personal stressors on lawyers and paralegals, such as family pressures, psychiatric or physical illness, addiction and alcoholism; such societal issues often affect the lawyer or paralegal's behavior in their practices.
 - e. Generational differences that result in younger lawyers and paralegals and more senior lawyers and paralegals having legitimate, but different expectations of what is acceptable conduct.
21. The participants linked some causes to the nature of practice and legal services:
- a. Increasing competition and competitiveness in practice which may cause some lawyers and paralegals to accept retainers that may be beyond their capacity or competence to handle.
 - b. Lack of training and competency resulting in stress and frustration for the practitioner who must deal with processes they do not understand well enough.
 - c. The impact of personal stress on practice, including stress arising from psychiatric or physical illness or addiction issues.
 - d. Court processes that are not conducive to efficient and effective practice, with multiple matters scheduled for the same time of the morning or afternoon. Those attending court are not told what is to happen and the process can appear mysterious and stressful.
 - e. Having to litigate against un-represented parties, particularly in family law matters, where the personal stress of the situation on the parties adds a layer of added complexity to the lawyer's practice.
 - f. Failure to communicate effectively with the client to ensure that expectations are realistic. This includes appropriate discussions with the client about possible and likely outcomes in a matter, and explanations of the process, including the time it is expected to take.
 - g. Failure to prepare and manage time properly.
 - h. Reduced face-to-face communication among lawyers and paralegals in favour of telephone and email, resulting in, fewer personal relationships and less ability to address stresses that may emerge.
 - i. Isolation, particularly for some sole practitioners.
 - j. A lack of role models and mentoring.
 - k. A need for greater emphasis in education on civil conduct for lawyers and paralegals.

22. Representatives of the Ontario Lawyers Assistance Program (OLAP) attended many of the meetings and spoke about their experiences with lawyers under stress and disability. They said that where lawyers are experiencing personal life stresses, there is often a clearly adverse effect on the practice. They urged lawyers to keep OLAP in mind when they observe colleagues in need of support for personal crises.

Complaints to the Law Society

23. Participants offered a range of views about when a complaint should be made to the Law Society about incivility. Some participants noted that complaints to the Law Society take considerable time to resolve and that civility issues need a faster, more immediate response. They also noted that working with the Law Society on a complaint is time consuming. Others worried about retaliatory complaints against them if they spoke up to the Law Society about a colleague.
24. There was general consensus that a single egregious instance of incivility, or a course of conduct that could not be remedied with more personal responses, should be reported to the Law Society.

Maintaining Standards of Civility

25. During discussions on how the Law Society can assist in maintaining high standards of civility, both lawyers and paralegals identified a need to focus on this issue, pointing out that one public incident of incivility by a lawyer or paralegal “can tar us all.” They were conscious of the need to maintain public trust and to demonstrate professionalism through high personal standards of conduct.
26. Forum participants provided their thoughts on how lawyers and paralegals can maintain high standards of civility, which are summarized here.

Mentorship

27. A recurring theme at the 11 meetings was that more junior lawyers and paralegals need mentors and guidance from more senior practitioners to support them in the early years of practice. Mentorship was also seen as a way to respond to uncivil behaviour through advice and support for someone who needs to change his or her conduct. Most participants did not view mentorship as strictly a Law Society responsibility. Many commented on the need for local associations to provide support from more senior lawyers and paralegals on a remedial basis so that to the extent possible, problems could be addressed more informally and personally.

A Culture of Civility and Leadership by the Judiciary and Senior Lawyers

28. Members of the judiciary said that judges have a special role to play in encouraging civil conduct and controlling the courtroom to ensure a fair and balanced process. They agreed that they can lead by example and promote civil courtroom conduct. Similarly, senior lawyers should be role models and conduct themselves accordingly.
29. The Law Society, senior lawyers and the judiciary were urged to create and maintain a culture of civility that more clearly illustrates this aspect of professionalism.

Education for the Public

30. The Law Society and professional associations were urged to communicate with the public to raise awareness about and help the public understand the justice system, since

currently the public's views are often shaped by the media and television programs produced in the United States.

31. The public needs more information about the benefits to be achieved through the justice system and way in which it operates, including the time and resources involved. In this way, clients and the public will have more realistic expectations of their lawyers or paralegals. This should also help lawyers and paralegals communicate effectively with their clients about expectations in individual cases.

Education for Lawyers and Paralegals

32. A recurring theme in all 11 meetings was that more education on ethics is needed and that civility and professionalism should be a focus early in the education of both law and paralegal students. This initial exposure should be supplemented by including civility in other educational requirements, such as continuing professional development (CPD).
33. Participants suggested that Law Society programs, such as the Certified Specialist program, should include segments on civility and professionalism. Training could also be offered on how to address civility issues when they arise and how to deal with difficult people.

More Opportunities to Focus on the Issue of Civility

34. Many participants commented that more meetings like the Forum were needed to encourage dialogue about civility and ethical issues. While not everyone agreed on the extent of incivility in their legal communities or the ways to address these issues, there was consensus that these types of discussions are useful.
35. To keep the focus on civility, some participants suggested the development of tools to monitor civil conduct. An example was a requirement that each licensee certify annually through the Law Society report that he or she recognizes the need for civil conduct and adheres to the principles of civility.

Involvement of the Law Society in Solving the Problem

36. At several meetings it was suggested that having Law Society staff available to observe or assist in resolving civility issues as they occur would be helpful. The view was that a more immediate response by the Society to civility issues would be effective.
37. Participants asked if Society staff could attend at court randomly in order to observe proceedings, particularly in locations that had reported problems with incivility. They also asked whether Law Society staff could provide a "help line" service to mediate or resolve incivility incidents as they developed.

Complaints to the Law Society

38. As mentioned above, there was discussion about when uncivil conduct should be reported to the Law Society. The concern was expressed that a report in the middle of a proceeding could result in a further deterioration in the interaction between those involved and could affect the outcome for the client.
39. The threshold for reports to the Law Society about uncivil misconduct was also discussed. Participants generally agreed that where the uncivil behaviour of a lawyer or paralegal interferes with the ability to represent a client, or a pattern of uncivil conduct exists, a report should be made. Participants acknowledged the rules in the *Rules of*

Professional Conduct and the *Paralegal Rules of Conduct* that require that serious misconduct be reported.

40. Participants differed in their views about the effectiveness of discipline. Some participants noted that the Law Society process takes significant time and effort and does not provide an immediate solution to the problem faced by the lawyer or paralegal for civility issues. Some were strongly of the view that there needs to be a 'zero tolerance' approach in such cases, with serious consequences in discipline. Others were of the view that a more moderated approach in discipline, such as fines, is appropriate given the nature of the infraction. One idea was that there should be a points system so that a lawyer or paralegal repeatedly found to be uncivil could be fined a specified amount, much like a driving offence.
41. In discussing the Invitation to Attend and the Regulatory Meeting as alternatives to discipline hearings, some participants were not convinced that the public would consider an Invitation to Attend as a sufficiently serious consequence for inappropriate behaviour.

Solutions for Members Who Require Medical Support

42. Members of OLAP provided information about support services for licensees in distress. The general consensus at all 11 meetings was that there is often a relationship between uncivil conduct and stress arising from mental health issues, addiction issues or other personal stressors. The view was that while this does not mean the conduct should be tolerated, the response and solution may differ due to the cause.
43. Participants recognized the need to continue to provide information about services such as OLAP to ensure that those who need help receive it.

Conclusion and the Way Forward to the Culture of Civility

44. The Civility Forum gave the Law Society the opportunity to provide information to lawyers and paralegals about civility and to obtain their views and ideas on this important issue. The information obtained through these meetings will help the Law Society formulate strategies to address the issues. All participants in the justice system have an interest in and should participate in encouraging and promoting civility.
45. The Law Society, as the regulator, plays a unique role in this respect. It has a duty to ensure that lawyers and paralegals are competent and ethical in the provision of legal services to the public. That means that it must address, proactively and reactively, conduct that will affect the integrity of the services offered and successful handling of the client's legal issues. Serious cases of misconduct will require a definitive regulatory response from the Society, but there are other responses and initiatives that may assist in preventing what otherwise might become a disciplinable offence.
46. As noted earlier, forum participants offered some suggestions on how lawyers and paralegals might maintain high standards of civility. The Law Society welcomes these suggestions, some of which come within its mandate. Some suggestions necessarily involve others bodies, but the Law Society can provide a co-ordinating function to assist in these initiatives.
47. In order to further our objectives to support civil conduct I believe that as an organization, the Law Society, in concert with others, should explore the following:

- a. Where mentoring is offered as a collegial, volunteer activity, it is very effective as a support for new licensees and those needing help with specific issues. The Law Society should consider how it can work with professional associations to provide this support on an ongoing basis. The new Continuing Professional Development (CPD) requirement includes mentoring as an eligible activity.
 - b. Education on civility is effective when it is included in CPD offerings on substantive and procedural issues. The Law Society should include relevant, useful and practical segments on civility in as many offerings as possible when developing CPD programs.
 - c. Lawyers and paralegals sometimes need an urgent response to an immediate civility issue. A “hot line” may be an effective tool to help in these situations. The Law Society should consider supporting the creation of a volunteer “hot line” to facilitate responses to urgent requests for information and support.
 - d. The Law Society may wish to propose that the Chief Justice’s Advisory Committee on Professionalism devotes one of its sessions for lawyers, paralegals, law faculty and students to current issues of civility on an annual basis.
 - e. In order to improve the public’s understanding of the administration of justice and the work of lawyers and paralegals, the Law Society should continue to focus on communications that provide information on the justice system and the role of lawyers and paralegals in it.
48. It is essential for the administration of justice and the public’s respect for our system of justice that lawyers and paralegals act with civility and professionalism in their dealing with the clients, other lawyers and paralegals and the courts. As part of the Law Society’s mandate to govern lawyers and paralegals in the public interest it must ensure that they act in a civil and professional manner in carrying out their duties and responsibilities.
49. In closing, I would like to thank all those who participated in the Civility Forum for their time, their thoughtful comments and their willingness to contribute to the ongoing commitment to lawyer and paralegal best practices.

ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Boyd presented the Report.

Report to Convocation
May 27, 2010

Access to Justice Committee
Marion Boyd, Co-Chair
Paul Schabas, Co-Chair
Avvy Go, Vice-Chair
Paul Dray
Carl Fleck
Glenn Hainey
Susan McGrath
Julian Porter
Jack Rabinovitch
William Simpson
Catherine Strosberg
Bonnie Tough

Purpose of Report: Decision

Prepared by the Equity Initiatives Department
(Marisha Roman, Aboriginal Initiatives Counsel - 416-947-3989)

COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on May 5, 2010. Committee members Marion Boyd (Co-Chair), Paul Schabas (Co-Chair), Avvy Go (Vice-Chair), Paul Dray, Carl Fleck, Glenn Hainey, Susan McGrath and William Simpson participated. Staff members Malcolm Heins, Marisha Roman, Julia Bass, Denise McCourtie and Sheena Weir attended.

FOR DECISION

GUIDELINES FOR ASSESSING REQUESTS FOR SPONSORSHIP OF EXTERNAL ACCESS TO JUSTICE INITIATIVES AND EVENTS

MOTION

2. That Convocation adopt the following guidelines to be applied in assessing requests for sponsorship of external access to justice initiatives and events.

Background

3. On a regular basis, legal organizations and institutions request sponsorship from the Law Society of Upper Canada for legal initiatives and events. If the sponsorship proposal is for an initiative or event that relates to diversity or equality issues, that request is assessed by the Equity Initiatives Department in accordance with the Department's *Guidelines for Sponsorship of External Equality Related Events*. These guidelines were presented for information by the Equity and Aboriginal Issues Committee to Convocation at its meeting on October 28, 2004. They are provided at Appendix 1.

4. The Law Society also receives sponsorship requests that do not relate specifically to equality or diversity but more broadly to access to justice issues. However, there are no guidelines to assist the Law Society as it assesses these requests.
5. The Access to Justice Committee was recently asked to consider proposals related to external access to justice initiatives. The members of the committee agreed that, in light of the Law Society's statutory duty to facilitate access to justice for the people of Ontario and its mandate to regulate lawyers and paralegals in the public interest as well as the foreseeable recurrence of requests for sponsorship for external access to justice initiatives, the committee should develop guidelines for assessing such requests. These guidelines would be similar to the existing *Guidelines for Sponsorship of External Equality Related Events*.
6. Decisions on the sponsorship of external access to justice initiatives and events will be guided by the criteria outlined below and will be subject to budget implications. To ensure that such events sponsored by the Law Society are consistent with its mandate and duty the following criteria will be applied:
 - a. The event is hosted by a non-profit or charitable association or organization;
 - b. The goal of the event is consistent with the mandate of the Law Society, to regulate lawyers and paralegals in the public interest, and its duty to facilitate access to justice for the people of Ontario;
 - c. The implementation of the event has a positive impact on the Law Society's ability to carry out its mandate as a regulator with a strong commitment to the promotion of access to justice as well as equality and diversity in the legal and paralegal professions and within the Law Society.

APPENDIX 1

GUIDELINES FOR SPONSORING EXTERNAL EQUALITY RELATED EVENTS

The following assessment criteria guidelines for the sponsorship of external equality-related events have been in effect since October 28, 2004:

The Law Society recognizes the importance of public education programs and events that promote access to justice and equality and diversity. The Equity Initiatives Department has adopted the following criteria to guide the Equity Advisor in her or his decisions to sponsor equality related events and to ensure that external equality related events sponsored by the Equity Initiatives Department are consistent with its mandate:

- a. The event is hosted by a non-profit or charitable association/organization;
- b. The goal of the event is consistent with the mandate of the Law Society of Upper Canada, to govern the legal profession in the public interest, and of the Equity Initiatives Department, to promote access to justice and equality and diversity in the legal profession and within the Law Society;
- c. The implementation of the event does not negatively impact on the Law Society of Upper Canada's credibility in carrying out its mandate as a regulator with a strong commitment to the promotion of access to justice and quality and diversity in the legal profession and within the Law Society.

When making a decision on sponsorship of external equality related events, the Equity Advisor will be guided by the criteria outlined above and by budget implications.

Re: Guidelines for Sponsorship of External Access to Justice Initiatives and Events

It was moved by Ms. Boyd, seconded by Mr. Schabas, that Convocation adopt the guidelines at paragraph 6 of the Report to be applied in assessing requests for sponsorship of external access to justice initiatives and events.

An amendment to the motion was accepted that the following words be added to the end of the first sentence in paragraph 6.

“.....and the recognition of the limited role of the Law Society in funding outside organizations”.

The motion as amended was adopted.

COMPENSATION FUND COMMITTEE REPORT

Mr. Heintzman presented the Report.

Report to Convocation
May 27, 2010

Compensation Fund Committee

Committee Members
Thomas Heintzman (Chair)
Marshall Crowe
Dr. S.M. Aslam Daud
Michelle Haigh
Susan McGrath
Nicholas Pustina
Baljit Sikand
Gerald Swaye

Purpose of Report: Decision and Information

Prepared by the Professional Regulation Division
(Dan Abrahams 416.947.7626 / Zeynep Onen 416.947.3949)

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For Decision

AMENDMENT TO BY-LAW 12 (COMPENSATION FUND).....TAB A

For Information

GRANTS PAID FROM THE FUNDTAB B

COMMITTEE PROCESS

1. The Committee met on May 5, 2010. Committee members in attendance were Thomas Heintzman (Chair), Michelle Haigh, Susan McGrath, Nicholas Pustina, Baljit Sikand and Gerald Swaye. Staff members Zeynep Onen, Maria Loukidelis, Dan Abrahams and Arwen Tillman also attended.

DECISION

AMENDMENT TO BY-LAW 12 (COMPENSATION FUND)

MOTION

2. That Convocation:
 - a. make amendments to By-Law 12 to implement its decision on January 28, 2010 to change the structure of the Compensation Fund Committee; and
 - b. change the threshold for grants for paralegal dishonesty to require the Committee's review from over \$5000 to over \$1500;

The formal motion to amend the By-Law appears at Appendix 1.

Background

3. On January 28, 2010, Convocation approved in principle, subject to formal by-law amendment, a change to the structure of the Compensation Fund Committee (the Committee). Convocation agreed to abolish the Review Subcommittee and reduce the Committee's size to enable it to effectively fulfill both the grant approval functions and the policy-making role assigned to it by the statute and by Convocation.
4. The changes recommended by the Committee and adopted by Convocation were the result of a review begun in early 2009 and discussion of restructuring proposals based on the review at September 2009 Convocation. The review was prompted by a need to bring greater efficiency to the Committee's functions and ensure more effective oversight of the Compensation Fund policy. Following September Convocation, the Committee finalized its proposals and reported them to January 28, 2010 Convocation.

5. The Committee felt, and Convocation agreed, that a reduction in the size of the Committee from nine members to five members was appropriate. The smaller size is most able to assume both the policy and oversight responsibilities of the current Committee and the grant review function currently exercised by the Review Subcommittee.
6. Further, it is in the interests of the Compensation Fund that those performing the grant-making role can apply that experience to influence policy review and development. It also makes sense to ensure that those asked to consider grant recommendations are also fully accountable for, and conversant with, the policies under which recommendations were made.
7. Convocation also agreed with the Committee's views with respect to composition, quorum and stipulations applicable to grant-related decisions, which go to the integrity of the Committee's oversight function. Convocation agreed that no grant in excess of \$5000 in relation to a lawyer's dishonesty could be approved without the support of at least three members of the Committee, one of whom must be one of the two lawyer Benchers, and that no grant in excess of \$5000 in relation to a paralegal's dishonesty could be approved without the support of at least three members of the Committee, one of whom must be the paralegal Bencher.

The New Structure of the Committee

8. The structure approved by Convocation is a Committee of five (5) members with the following composition and features:
 - a. A Chair who is able to vote on all matters, including grant approvals;
 - b. Membership as follows:
 - i. Two (2) Benchers representative of lawyers, one of whom shall serve as Chair.
 - ii. Two (2) lay Benchers.
 - iii. One (1) Bencher representative of licensed paralegals; and
 - c. A quorum requirement of three members for any meeting of the Committee, with the following additional requirements for approval of grants:
 - i. for any grant in excess of \$5,000 in respect of lawyer dishonesty, the approval of at least one (1) of the two lawyer Benchers, plus any two other members of the Committee; or
 - ii. for any grant in excess of \$5,000 in respect of paralegal dishonesty, the approval of the paralegal Bencher, plus any two other members of the Committee.¹

¹ Convocation also agreed that an amendment to the *Law Society Act* be sought that would enable persons licensed to provide legal services who are members of the Paralegal Standing Committee to be appointed by Convocation to serve as members of the Compensation Fund Committee created by the amended By-Law 12. That amendment is pending.

Change to the Threshold for Grants for Paralegal Dishonesty To Require the Committee's Approval

9. The Committee observed that in the structure approved by Convocation, the threshold for paralegal grants to require the Committee's approval is the same as that for lawyers (over \$5000), despite the fact that the maximum grant payable in respect of paralegal dishonesty is \$10,000 whereas the maximum grant for lawyer dishonesty is \$150,000.
10. To put the minimum amount requiring the Committee's approval more in line with the maximum amount payable, the Committee is proposing an amendment to what was approved in principle to make the threshold for grants in respect of paralegal dishonesty to require the Committee's approval over \$1,500.
11. By-Law 12 including the proposed amendments for the new structure and the amendment described above appears at Appendix 2.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 12
[COMPENSATION FUND]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 27, 2010

MOVED BY

SECONDED BY

THAT By-Law 12 [Compensation Fund], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, be further amended as follows:

1. Paragraph 1 of section 3 of the By-Law is revoked and the following substituted:
 1. Section 107, except that in the application of subsection 107 (3) the reference to "under this Part" shall be read as a reference to "under By-Law 12 [Compensation Fund]".
2. The By-Law is amended by adding the following sections after section 3:

Composition

- 3.1 Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Committee shall consist of five persons appointed by Convocation, of whom,

- (a) two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors;
- (b) two shall be lay benchers; and
- (c) one shall be a bencher who is licensed to provide legal services in Ontario.

Quorum

3.2 (1) Despite subsection 114 (1) of By-Law 3 [Benchers, Convocation and Committees], three members of the Compensation Fund Committee shall constitute a quorum for the purposes of the transaction of business.

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

Grants over \$5000 re dishonesty of lawyers

(1.1) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over \$5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

Grants over \$1500 re dishonesty of paralegals

(1.2) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over \$1500 as a result of the dishonesty of person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

4. The By-Law is amended by adding the following sections after section 4:

Grants re dishonesty of lawyers

5. (1) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to practise law in Ontario as a barrister and solicitor.

Grants re dishonesty of paralegals

(2) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a person licensed to provide legal services in Ontario shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to practise law in Ontario as a barrister and solicitor.

Resolution in writing

(3) A resolution to make or not make a grant from the Compensation Fund that is in writing and is signed by all members of the Compensation Fund Committee is as valid as if it had been passed at a meeting of the Committee.

REFEREES

Appointment

6. (1) Every employee of the Society who is a licensee and who holds any of the following offices is a referee for the purposes of subsection 51 (10) of the Act:

1. Manager, Compensation Fund.
2. Compensation Fund Counsel.

Grants up to \$5000 re dishonesty of lawyers

(2) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to \$5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

Grants up to \$1500 re dishonesty of paralegals

(3) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to \$1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

APPENDIX 2

BY-LAW 12

Made: May 1, 2007
Amended: June 28, 2007

COMPENSATION FUND

EXERCISE OF POWERS

Exercise of powers, *etc.*

1. The holders of the following offices may exercise the powers and perform the duties under subsection 51 (11.1) of the Act:

1. The office of Director, Professional Regulation.
2. The office of Senior Counsel, Professional Regulation.

COMPENSATION FUND COMMITTEE

Compensation Fund Committee

2. The standing committee known as the Lawyers Fund for Client Compensation Committee is continued as the Compensation Fund Committee.

Application of By-Law

3. The following provisions of By-Law 3 [Benchers, Convocation and Committees] apply to the Compensation Fund Committee:

1. Section 107, except that in the application of subsection 107 (3), the reference to “under this Part” shall be read as a reference to “under By-Law 12 [Compensation Fund]”.
2. Sections 109 to 116.

Composition

3.1 Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Committee shall consist of five persons appointed by Convocation, of whom,

- (a) two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors;
- (b) two shall be lay benchers; and
- (c) one shall be a bencher who is licensed to provide legal services in Ontario.

Quorum

3.2 Despite subsection 114 (1) of By-Law 3 [Benchers, Convocation and Committees], three members of the Compensation Fund Committee shall constitute a quorum for the purposes of the transaction of business.

Mandate

4. (1) The Compensation Fund Committee is responsible to Convocation for the administration of the Compensation Fund.

Grants over \$5000 re dishonesty of lawyers

(1.1) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over \$5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

Grants over \$1500 re dishonesty of paralegals

(1.2) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over \$1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

Powers

(2) The Compensation Fund Committee may make such arrangements and take steps as it considers advisable to carry out its responsibilities.

Grants re dishonesty of lawyers

5. (1) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to practise law in Ontario as a barrister and solicitor.

Grants re dishonesty of paralegals

(2) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a person licensed to provide legal services in Ontario shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to provide legal services in Ontario.

Resolution in writing

(3) A resolution to make or not make a grant from the Compensation Fund that is in writing and is signed by all members of the Compensation Fund Committee is as valid as if it had been passed at a meeting of the Committee.

REFEREES

Appointment

6. (1) Every employee of the Society who is a licensee and who holds any of the following offices is a referee for the purposes of subsection 51 (10) of the Act:

1. Manager, Compensation Fund.
2. Compensation Fund Counsel.

Grants up to \$5000 re dishonesty of lawyers

(2) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to \$5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

Grants up to \$1500 re dishonesty of paralegals

(3) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to \$1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

FOR INFORMATION GRANTS PAID FROM THE FUND

Since the last report to Convocation in January 2010, grants have been paid from the Fund in the amounts shown. This report covers the period from November 1, 2009 to April 20, 2010. (Licensees whose discipline proceedings are completed, or who are not subject to discipline, are identified by name). Additional information about specific claims is available to Convocation on request.

Lawyers	Number of Claimants	Total Grants Paid
Solicitor #165 (Suspended April 9, 2010)	1	\$37,944.96
Solicitor #169 (Suspended October 2, 2009)	1	\$50,000.00
Solicitor #179 (Suspended June 4, 2008)	17	\$681,999.14
Solicitor #187 (Suspended October 19, 2007)	1	\$4,500.00
Solicitor #189 (Suspended May 12, 2008)	7	\$19,550.00
Solicitor #193 (Suspended April 1, 2009)	8	\$267,506.32
Solicitor #196 (Suspended June 19, 2009)	2	\$18,651.31
Solicitor #197 (Suspended June 2, 2006)	2	\$27,676.00
Solicitor #198 (Suspended June 17, 2005)	1	\$17,000.00
Solicitor #199 (Suspended December 17, 2009)	1	\$800.00
Solicitor #200 (Suspended February 23, 2009)	1	\$354.59
Solicitor #201 (Suspended March 20, 2009)	1	\$11,133.46
Henry Gertner (Licence Revoked December 7, 2009)	2	\$96,000.00
Gordon Rush (Deceased October 11, 2008)	1	\$7,242.00
Alec Dobson (Licence Revoked Nov 24, 2009)	1	\$3,538.37
Jeffrey Barnabe (Licence Revoked July 3, 2008)	1	\$2,500.00
William E. Mathers (Deceased June 17, 2008)	1	\$40,000.00
Ronald Filipovich (Disbarred October 24, 2002)	1	\$85,000.00
Sub-total (Lawyers)	50	\$ 1,371,396.15
Paralegals		
Paralegal #1 (Suspended June 19, 2009)	1	\$ 500.00
Antonio Marrazzo (Deceased March 10, 2009)	12	\$ 16,850.00
Sub-total (Paralegals)	13	\$ 17,350.00
TOTAL GRANTS PAID	63	\$1,388,746.15

Re: Proposed Amendment to By-Law 12 [Compensation Fund]

It was moved by Mr. Heintzman, seconded by Ms. McGrath, that the amendments to By-Law 12 distributed under separate cover be approved.

Carried

**BY-LAW 12
[COMPENSATION FUND]**

THAT By-Law 12 [Compensation Fund], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, be further amended as follows:

1. Paragraph 1 of section 3 of the By-Law is revoked and the following substituted:

- | | |
|---|--|
| <p>1. Section 107, except that in the application of subsection 107 (3) the reference to “under this Part” shall be read as a reference to “under By-Law 12 [Compensation Fund]”.</p> | <p>1. Article 107. Toutefois, pour l'application de l'alinéa 107 (3) la mention de « aux termes de cette partie » vaut mention de « en vertu du règlement administratif n° 12 [Fonds d'indemnisation] ».</p> |
|---|--|

2. The By-Law is amended by adding the following sections after section 3:

Composition

3.1 Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Committee shall consist of five persons appointed by Convocation, of whom,

- (a) two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors;
- (b) two shall be lay benchers; and

Composition

3.1 Malgré les paragraphes 109 (1) et (2) du Règlement administratif n° 3 [Les conseillers, le Conseil et les comités], le Comité du Fonds d'indemnisation est composé d'au moins cinq personnes nommées par le Conseil, dont

- a) deux sont des conseillers autorisés à exercer le droit en Ontario comme avocats;
- b) deux sont des conseillers non juristes;

(c) one shall be a bencher who is licensed to provide legal services in Ontario.

c) un est un conseiller autorisé à fournir des services juridiques en Ontario.

Quorum

3.2 (1) Despite subsection 114 (1) of By-Law 3 [Benchers, Convocation and Committees], three members of the Compensation Fund Committee shall constitute a quorum for the purposes of the transaction of business.

Quorum

3.2 (1) Malgré le paragraphe 114 (1) du Règlement administratif n° 3 [Les conseillers, le Conseil et les comités], le quorum pour les affaires courantes du Comité du Fonds d'indemnisation est de trois membres.

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

Grants over \$5000 re dishonesty of lawyers

(1.1) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over \$5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

Indemnités de plus de 5 000 \$ à l'égard de la malhonnêteté des avocats

(1.1) Le Comité du Fonds d'indemnisation peut accorder des indemnités de plus de 5 000 \$ à partir du Fonds d'indemnisation en raison de la malhonnêteté d'un membre, tel que défini dans le paragraphe 51 (13) de la Loi, ou d'une personne autorisée à exercer le droit en Ontario comme avocat, et ces indemnités ne sont pas assujetties à l'approbation du Conseil.

Grants over \$1500 re dishonesty of paralegals

(1.2) The Compensation Fund Committee may make grants from the Compensation Fund in amounts over \$1500 as a result of the dishonesty of person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

Indemnités de plus de 1 500 \$ à l'égard de la malhonnêteté des parajuristes

(1.2) Le Comité du Fonds d'indemnisation peut accorder des indemnités de plus de 1 500 \$ à partir du Fonds d'indemnisation en raison de la malhonnêteté d'une personne autorisée à fournir des services juridiques en Ontario, et ces indemnités ne sont pas assujetties à l'approbation du Conseil.

4. The By-Law is amended by adding the following sections after section 4:

Grants re dishonesty of lawyers

5. (1) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor shall be passed by at least three members of the Compensation Fund Committee of whom at least one shall be a bencher who is licensed to practise law in Ontario as a barrister and solicitor.

Indemnités à l'égard de la malhonnêteté des avocats

5. (1) Une résolution concernant l'approbation ou le rejet d'une demande auprès du Fonds d'indemnisation en raison de la malhonnêteté d'un membre, tel que défini dans le paragraphe 51 (13) de la Loi, ou d'une personne autorisée à exercer le droit en Ontario comme avocat doit être adoptée par au moins trois membres du Comité du Fonds d'indemnisation dont au moins un est un conseiller autorisé à exercer le droit en Ontario comme avocat.

Grants re dishonesty of paralegals

(2) A resolution to make or not make a grant from the Compensation Fund as a result of the dishonesty of a person licensed to provide legal services in Ontario shall be passed by at least three members of the Compensation Fund Committee of whom at least one

Indemnités à l'égard de la malhonnêteté des parajuristes

(2) Une résolution concernant l'approbation ou le rejet d'une demande auprès du Fonds d'indemnisation en raison de la malhonnêteté d'une personne autorisée à fournir des services juridiques en Ontario doit être adoptée par au moins

shall be a benchner who is licensed to provide legal services in Ontario.

trois membres du Comité du Fonds d'indemnisation dont au moins un est un conseiller autorisé à fournir des services juridiques en Ontario.

Resolution in writing

(3) A resolution to make or not make a grant from the Compensation Fund that is in writing and is signed by all members of the Compensation Fund Committee is as valid as if it had been passed at a meeting of the Committee.

Résolution par écrit

(3) Une résolution concernant l'approbation ou le rejet d'une demande auprès du Fonds d'indemnisation, écrite et signée par tous les membres du Comité du Fonds d'indemnisation, a la même valeur que si elle avait été adoptée à une réunion du Comité.

REFEREES

Appointment

6. (1) Every employee of the Society who is a licensee and who holds any of the following offices is a referee for the purposes of subsection 51 (10) of the Act:

1. Manager, Compensation Fund.
2. Compensation Fund Counsel.

Grants up to \$5000 re dishonesty of lawyers

(2) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to \$5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to

ARBITRES

Nomination

6. (1) Tout employé du Barreau qui est titulaire d'un permis et qui assume une des fonctions suivantes est un arbitre aux fins du paragraphe 51 (10) de la Loi :

1. Chef de service, Fonds d'indemnisation.
2. Avocat au Fonds d'indemnisation.

Indemnités de moins de 5 000 \$ à l'égard de la malhonnêteté des avocats

(2) Une personne qui est arbitre en vertu du paragraphe (1) peut accorder des indemnités de moins de 5 000 \$ à partir du Fonds d'indemnisation en raison de la malhonnêteté d'un membre, tel que

practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

défini dans le paragraphe 51 (13) de la Loi, ou d'une personne autorisée à exercer le droit en Ontario comme avocat, et ces indemnités ne sont pas assujetties à l'approbation du Conseil.

Grants up to \$1500 re dishonesty of paralegals

Indemnités de moins de 1 500 \$ à l'égard de la malhonnêteté des parajuristes

(3) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to \$1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

(3) Une personne qui est arbitre en vertu du paragraphe (1) peut accorder des indemnités de moins de 1 500 \$ à partir du Fonds d'indemnisation en raison de la malhonnêteté d'une personne autorisée à fournir des services juridiques en Ontario, et ces indemnités ne sont pas assujetties à l'approbation du Conseil.

It was moved by Mr. Wright, seconded by Mr. Aaron, that the words "at least" be added to the beginning of each subparagraph of amended s 3.1 [as indicated below], and that the by-law not specify which benchers must determine claims related to lawyers and those related to paralegals.

Composition

3.1 Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Committee shall consist of at least five persons appointed by Convocation, of whom,

- (a) at least two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors;
- (b) at least two shall be lay benchers; and
- (c) at least one shall be a bencher who is licensed to provide legal services in Ontario.

Lost

Item for Information

- Grants Paid from the Fund

PARALEGAL STANDING COMMITTEE REPORT

Ms. Corsetti presented the Report.

Report to Convocation
May 27, 2010

Paralegal Standing Committee

Committee Members
Cathy Corsetti, Chair
Susan McGrath, Vice-Chair
Marion Boyd
Robert Burd
James R. Caskey
Paul Dray
Seymour Epstein
Michelle L. Haigh
Glenn Hainey
Paul Henderson
Douglas Lewis
Ken Mitchell
Cathy Strosberg

Purpose of Report: Decision
 Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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Adjustment to Calculation of CPD	

COMMITTEE PROCESS

1. The Committee met on May 6th, 2010. Committee members present were Cathy Corsetti (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd (by telephone), James Caskey, Paul Dray, Seymour Epstein, Michelle Haigh, Glenn Hainey, Paul Henderson, Doug Lewis, Ken Mitchell and Cathy Strosberg. The Chair of the Governance Task Force, Tom Heintzman, attended for the first item. Staff members in attendance were Diana Miles, Katherine Corrick, Terry Knott, Elliot Spears, Sheena Weir, Jim Varro, Arwen Tillman, Sophie Galipeau and Julia Bass.

FOR DECISION

TERM LIMITS FOR PARALEGAL COMMITTEE MEMBERS

Motion

2. That By-law 3 be amended to provide for a term limit of 12 years for elected paralegal members of the Paralegal Standing Committee.

Background

3. In December 2009, Convocation approved reforms to the Law Society's governance structure, including term limits for elected benchers. To facilitate renewal at Convocation, the maximum length of time that a bencher can now serve is 12 years. This applies to all elected benchers including the paralegal benchers.
4. However, when the governance reforms were adopted, the report was silent on how this policy should apply to the other paralegal members of the Paralegal Standing Committee. The implementation report from the Governance Task Force is to be presented to May Convocation.

The Committee's Deliberations

5. The Chair of the Governance Task Force, Mr Heintzman, presented the rationale for the term limits adopted by Convocation. The Committee considered the arguments for and against term limits as set out in the Task Force Report adopted by Convocation.
6. The Committee was of the view that term limits would foster renewal of the Committee and the introduction of new ideas and perspectives, and that over time, term limits would mean that a larger number of paralegals would serve on the Committee, which is likely to foster a broader understanding and appreciation of the work of the Law Society.
7. The Committee considered that it would be consistent to provide for a term limit of 12 years, the same length as the term limit for benchers.
8. The necessary by-law amendments are included in the Report of the Task Force on Governance at TAB 7.

AMENDMENT TO RULE 4.01 OF THE
PARALEGAL RULES OF CONDUCT

Motion

9. That rule 4.01 of the *Paralegal Rules of Conduct* be amended to add the following subrule:

Duty as Prosecutor

4.01 (5.1) When acting as a prosecutor, a paralegal shall act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Background

10. The Committee has noted that the lawyers' *Rules of Professional Conduct* contain a provision addressing the lawyer's professional responsibilities when acting as a prosecutor, while there is no comparable provision in the *Paralegal Rules*. The Committee favoured amending the *Paralegal Rules of Conduct* to address this.
11. After reviewing the lawyers' *Rules of Professional Conduct* wording was developed, based on the wording of the lawyers' *Rules of Professional Conduct*.

The Committee's Deliberations

12. The Committee noted that paralegal prosecutors are covered by the exemption from licensing in By-law 4, under the heading "In-house legal services provider". At the present time, some prosecutors have chosen to become licensed but many have not. The new provision in the rules will only apply to prosecutors who have chosen to become licensed.
13. However, given the policy of encouraging exempted persons to become licensed, as shown by the Integration Project currently under development, it is appropriate to provide for licensed prosecutors in the *Paralegal Rules* in the same manner as in the lawyers' *Rules*.

FOR INFORMATION

DEMOGRAPHIC REPORT ON PARALEGAL ELECTION

14. The first election of paralegal members of the Paralegal Standing Committee was held during the month of March 2010. A demographic report on the paralegal election provided by Computershare is attached at Appendix 1.

ADJUSTMENT TO CALCULATION OF CPD REQUIREMENT: NEW LICENSEES

15. The Committee approved the adjustment to the calculation of Continuing Professional Development being recommended by the Professional Development & Competence Committee, in the Report at TAB 9.

5/25/2010 3:12 PM

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

A copy of a demographic report on the paralegal election provided by Computershare.
(Appendix 1, pages 7 – 13)

Re: Term Limits for Paralegal Standing Committee Members

It was moved by Ms. Haigh, seconded by Ms. McGrath, that By-Law 3 be amended to provide for a term limit of 12 years for elected paralegal members of the Paralegal Standing Committee.

CarriedRe: Amendment to Rule 4.01 of the *Paralegal Rules of Conduct*

It was moved by Mr. Dray, seconded by Ms. McGrath, that rule 4.01 of the *Paralegal Rules of Conduct* be amended to add the following subrule:

Duty as Prosecutor

4.01 (5.1) When acting as a prosecutor, a paralegal shall act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Carried*Items for Information*

- Demographic Report on First Paralegal Election
- Adjustment to Calculation of Continuing Professional Development (CPD) Requirement

GOVERNANCE TASK FORCE REPORT

Mr. Heintzman presented the Report.

Report to Convocation
May 27, 2010

Governance Task Force – By-Law Amendments

Task Force Members
Thomas Heintzman (Chair)
Vern Krishna (Vice-Chair)
Raj Anand
Larry Banack
Christopher Bredt
Abraham Feinstein
Janet Minor
Linda Rothstein

Purposes of Report: Decision

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

GOVERNANCE TASK FORCE

AMENDMENTS TO BY-LAW 3
(BENCHERS, CONVOCATION AND COMMITTEES)

MOTION

1. That Convocation make the amendments to By-Law 3 (Benchers, Convocation and Committees) as set out at Appendix 4. The formal motion to amend the By-Law in English and French will be distributed at Convocation.

Introduction

2. On December 4, 2009, Convocation made a series of decisions to reform the governance structure of the Law Society, based on the recommendations of the Governance Task Force ("the Task Force").¹

¹ The decisions made by Convocation on December 4, 2009 are described in detail at **Appendix 1**.

3. The decisions were as follows:
 - a. A 12-year term limit for service as an elected bencher, and the ability for an elected bencher who has held that office for 12 years but less than 16 years to run in the 2011 bencher election;
 - b. Creation of the status of emeritus bencher;
 - c. With respect to grandparented former Treasurers, providing for an attendance requirement at Convocation, loss of rights and privileges for failure to attend and reinstatement of rights and privileges;
 - d. With respect to grandparented life benchers and former Attorneys General, providing for an attendance requirement at Convocation, the cessation of rights and privileges for failure to attend and reinstatement of rights and privileges.
4. Some of the decisions require legislative changes. These changes were introduced in the Ontario Legislature on March 25, 2010 as part of Bill 16, *An Act to implement 2010 Budget measures and to enact or amend various Acts, titled Creating the Foundation for Jobs and Growth Act, 2010* (see Appendix 2).
5. To implement other decisions, by-law amendments are required. This report sets out the amendments to By-Law 3 (Benchers, Convocation and Committees) required to implement these decisions.² Appendix 3 provides a summary of the changes to Convocation's structure approved by Convocation.
6. Details of the amendments to By-Law 3 appear on the following pages. Appendix 4 provides a redline version of the amendments.

² Subsection 62(0.1), of the *Law Society Act*, paragraph 3, gives Convocation the by-law-making authority for prescribing the rights and privileges, *inter alia*, of *ex officio* and honorary benchers. Subsection 62(1) of the Act, paragraph 6, gives by-law-making authority for the election of benchers, including terms of office and qualifications for candidates.

AMENDMENT #1: TERM LIMIT

Who may be candidate: election of benchers in 2011

7. (1) Every licensee is qualified to be a candidate in the election of benchers in 2011 if,
- (a) on June 1, 2011, the licensee would not have held the office of elected bencher for 16 or more years; and
 - (b) at the time of signing a nomination form containing his or her nomination as a candidate,
 - (i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the licensee's licence is not suspended.

Who may be candidate: election of benchers after 2011

- (2) Every licensee is qualified to be a candidate in an election of benchers after 2011 if,
- (a) on June 1 of the year of the election of benchers, the licensee would not have held the office of elected bencher for 12 or more years; and
 - (b) at the time of signing a nomination form containing his or her nomination as a candidate,
 - (i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the licensee's licence is not suspended.

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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 may be 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) if the nomination was rejected for reasons other than that the requirement specified in clause 7 (1) (a) or clause 7 (2) (a) has not been complied with, 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.

Explanation:

7. Convocation approved a 12-year term limit for service by an elected bencher.³ The amendment to subsection 7(2) implements this decision by making a lawyer licensee who has served 12 or more years by June 1 in a bencher election year (other than 2011) ineligible as a candidate for elected bencher in a bencher election *after* 2011.
8. The amendments to the Act will permit an elected bencher who has served at least 16 years by June 1, 2015 to become an *ex officio* life bencher. This means that the small number of elected benchers who have served at least 12 years but not more than 16 years as of June 1, 2011 may gain *ex officio* status by 2015 if they run and are elected in the 2011 election, and serve their full term. The amendment to subsection 7(1) of the By-Law provides that benchers who have served 16 years or more by June 1, 2011 are not qualified as a candidate for elected bencher. This means that benchers with less than 16 years service may run in the 2011 election and qualify for life bencher status in 2015.
9. An amendment to s. 9(3) is required because of the amendment to s. 7. Paragraph 9(3)(b) deals with the notice that the Elections Officer must provide to a candidate whose nomination is rejected by the Elections Officer. Currently, the Elections Officer must provide reasons for the rejection and an opportunity to submit a valid nomination. As a result of term limits, if the nomination is rejected because the candidate has been previously elected and reached the term limit described in s. 7, that is not something that can be cured and the candidate is disqualified. Accordingly, subparagraph 9(3)(b)(ii) is amended to provide that the Elections Officer, upon communicating the reasons for rejection of a nomination, must provide the time in which the candidate must submit a valid nomination, *except* when the reason for the rejection is because of the term limit in s. 7.

³ Under By-Law 3, election day for lawyer benchers in an election year is the last day of April that is not a holiday. According to s. 30 of By-Law 3, benchers elected in the bencher election take office on the later of the day on which Convocation has its regular meeting in May and the day on which Convocation has its first regular meeting following the declaration of the election results.

AMENDMENT #2: EMERITUS BENCHERS

Emeritus benchers

48.1 (1) There shall be a class of honorary benchers known as emeritus benchers.

Who are emeritus benchers

(2) The following, if and while they are licensees, are emeritus benchers:

1. Every person who has held the office of Treasurer.
 2. Every person who has held the office of elected bencher for at least 12 years.
- Benchers by virtue of office not emeritus benchers

(3) Despite subsection (2), any person who is a bencher by virtue of office is not an emeritus bencher.

Licence in abeyance

(4) Subsection (2) does not apply to a person whose licence is in abeyance under section 31 of the Act.

If elected bencher is eligible to become emeritus bencher

(5) An elected bencher who becomes qualified as an emeritus bencher under paragraph 2 of subsection (2) continues in office as an elected bencher despite the qualification.

Eligibility for appointment

- (6) An emeritus bencher is eligible to be appointed,
- (a) to the Hearing Panel under clause 49.21 (3) (b) of the Act;
 - (b) to the Appeal Panel under clause 49.29 (3) (b) of the Act; and
 - (c) to a standing or other committee.

Explanation:

10. Convocation's decision to make elected benchers who have served 12 years and Treasurers who have served their terms emeritus benchers is being implemented by making them a class of honorary bencher, described in section 11 of the Act.⁴

11. Under s. 11, the by-laws may prescribe the rights and privileges of honorary benchers. New s. 48.1 of By-Law 3 defines emeritus benchers as a class of honorary bencher and prescribes their rights and privileges, based on Convocation's decision. These include eligibility for appointment to the Hearing and Appeal Panels and to committees.

⁴ 11. Every person,

(a) who is an honorary bencher on the 1st day of October, 1970; or

(b) who after that day is made an honorary bencher,

is an honorary bencher but as such has only the rights and privileges prescribed by the by-laws.

12. Subsection (4) provides that the emeritus benchers status does not apply to benchers whose licenses are in abeyance as a result of appointments to a court or tribunal named in s. 31 of the Act.⁵
13. Subsection (5) provides that elected benchers who reach the 12-year limit mid-term continue as elected benchers until the end of the benchers term, as decided by Convocation.

**AMENDMENT #3: VOTING RIGHTS AND PARTICIPATION RIGHTS OF GRANDPARENTED
EX OFFICIO BENCHERS**

**PART II.1
BENCHERS BY VIRTUE OF OFFICE**

Former Treasurers: voting

48.2 (1) Benchers by virtue of their office under section 14 of the Act may vote in Convocation and in committees.

Removal of voting rights

(2) Despite subsection (1), a bencher by virtue of his or her office under section 14 of the Act who fails to attend Convocation held under section 77⁶ four consecutive times may not vote in Convocation or in committees until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in Convocation and in committees.

Other benchers by virtue of office: right to participate in debate at Convocation

48.3 (1) Benchers by virtue their office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act may take part in a debate at Convocation

Removal of right to participate in debate at Convocation

(2) Despite subsection (1), a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who fails to attend Convocation held under section 77 four consecutive times may not take part in any debate at Convocation

⁵ [31. \(1\)](#) The licence of a person is in abeyance while the person holds office,
 (a) as a full-time judge of any federal, provincial or territorial court, as a full-time master of the Superior Court of Justice, as a full-time case management master, or as a full-time prothonotary of the Federal Court of Canada; or
 (b) as a full-time member of the Ontario Municipal Board or as a full-time member of a tribunal that has a judicial or quasi-judicial function and that is named in the regulations for the purposes of this section.
 R.S.O. 1990, c. L.8, s. 31 (1); 1996, c. 25, s. 7; 1998, c. 21, s. 19 (1); 2002, c. 18, Sched. A, s. 12 (2); 2006, c. 21, Sched. C, s. 27 (1).

⁶ **Convocation: when held**

77. Convocation shall be held on the fourth Thursday of each month, except the months of July, August and December, unless otherwise directed by the Treasurer.

until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to take part in a debate at Convocation.

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PART V CONVOCATION

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Questions of privilege and procedure

90. (1) A bencher who is entitled to vote in Convocation or who may take part in a debate at Convocation may raise a question of privilege or procedure at any time during Convocation and may interrupt another bencher who is speaking to do so.

....

Who may participate in debate

98. The following persons may take part in a debate at Convocation:

1. An elected bencher.
2. A lay bencher.
3. A bencher by virtue of his or her office under paragraph 1 of subsection 12 (2) of the Act.
4. A bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who has not lost the right to take part in a debate at Convocation.
5. A bencher by virtue of his or her office under section 14 of the Act who has not lost the right to vote in Convocation
6. The Chief Executive Officer.
7. Any other person with the prior permission of the Treasurer.

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PART VI COMMITTEES

....

Removal from standing committee by Convocation

112. (1) Convocation may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

Automatic removal from standing committee

(2) A member of a standing committee who is a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act ceases to be a member of the committee immediately after he or she fails to attend Convocation held under section 77 four consecutive times.

Automatic reinstatement to standing committee

(3) A person who ceased to be a member of a standing committee under subsection (2) is reinstated as a member of the committee immediately after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she ceases to be a member of the committee.

....

Right to attend meeting

115. (1) Subject to subsection (2), no person other than a member of a standing committee may attend a meeting of the committee.

Same

(2) The following persons who are not members of a standing committee may attend a meeting of the committee:

1. A bencher who is entitled to vote in Convocation or who may take part in a debate at Convocation.
2. An officer or employee of the Society.
3. Any person not mentioned in paragraph 1 or 2 with the permission of the chair of the committee.

Explanation:

New Section 48.2

14. New section 48.2 sets out the current voting rights of grandparented former Treasurers, who are described in section 14 of the Act.⁷
15. Subsection 48.2(2) requires these benchers to attend Convocation regularly, failing which their voting rights are lost. The subsection also sets out how voting rights may be regained, in accordance with the decision made by Convocation.
16. The loss of voting rights means that the following rights and privileges are also lost until the grandparented former Treasurer regains voting rights:
 - a. A former Treasurer loses the right to vote for a new Treasurer, as described in By-Law 3, s. 62(1), which states “Every bencher *entitled to vote in Convocation* is entitled to vote in an election of Treasurer”;

⁷ Every licensee who held the office of Treasurer at any time before January 1, 2010 is a bencher by virtue of his or her office. 1998, c. 21, s. 8; 2006, c. 21, Sched. C, s. 14 [as amended by Bill 16]

- b. A former Treasurer loses the right to be counted at Convocation for the purposes of establishing quorum during the reinstatement period. Section 24 of the Act provides that “Ten benchers present and *entitled to vote in Convocation* constitute a quorum for the transaction of business.”
- c. A former Treasurer loses the right to nominate a candidate for Treasurer, as this can only be done by benchers who are entitled to vote in Convocation. By-Law 3, s. 55(1) reads: “A candidate for election as Treasurer shall be nominated by not more than two benchers who are *entitled to vote in Convocation*”;
- d. A former Treasurer loses the right to appeal rulings of the Treasurer or make motions and second motions at Convocation during the reinstatement period, as these can only be made by benchers who have a vote. By-Law 3 includes the following sections:
 - s. 87(1) Two or more benchers who are *entitled to vote in Convocation* may together appeal to the benchers present at Convocation from a ruling or decision of the Treasurer made in Convocation.
 - s. 92(1) A motion may be made in Convocation by a benchers who is *entitled to vote in Convocation*
 - s. 94(2)) Only benchers who are *entitled to vote in Convocation* may second a motion.

(emphasis added)

New Section 48.3

- 17. New s. 48.3 sets out the current right of *ex officio* life benchers and former Attorneys General to participate in the debate at Convocation.
- 18. Subsection 48.3(2) implements the decision of Convocation to require these benchers to attend Convocation regularly, failing which their right to participate in the debate at Convocation ceases. The subsection also sets out how participation rights may be regained, in accordance with the decision made by Convocation.
- 19. The By-Law is also amended to address other rights and privileges of grandparented *ex officio* benchers affected by the failure to attend Convocation and the loss of voting or participation rights and privileges. These amendments are described below.

Amended s. 90(1), to be read with new s. 48.2 and s. 48.3

- 20. Subsection 90(1) is amended to provide that only those benchers entitled to vote or participate in a debate at Convocation may raise a question of privilege or procedure at Convocation.

21. This means that during the time that grandparented *ex officio* benchers attend Convocation to reinstate privileges, they cannot raise a question of privilege or procedure.

Amended s. 98, to be read with new s. 48.2 and s. 48.3

22. The amendment to paragraph s. 98 clarifies who has the right to take part in a debate at Convocation, as a result of the new requirements in s. 48.2 and 48.3 above.
23. Paragraph 4 provides that those *ex officio* life benchers and former Attorneys General described in subsections 12(1) and (2) of the Act⁸ who have not lost the right to take part in a debate (under s. 48.3(2)) may participate.
24. Paragraph 5 provides that those *ex officio* former Treasurers who have not lost the right to vote (under s. 48.2(2)) may participate.
25. This means that during attendance at Convocation to reinstate privileges that have been lost because of non-attendance, the *ex officio* bencher cannot take part in the debate.

Amended s. 112

26. Section 112 is amended by adding subsection (2) which implements the decision that grandparented life benchers and former Attorneys General, described in subsections 12(1) and (2) of the Act⁹, attend Convocation regularly, failing which they lose the right and privilege of membership in committees.

⁸ 12. (1) The following, if and while they are licensees, are benchers by virtue of their office:

1. The Minister of Justice and Attorney General for Canada.
2. The Solicitor General for Canada.
3. Every person who, by June 1, 2015, held the office of elected bencher for at least 16 years. 1998, c. 21, s. 6; 2006, c. 21, Sched. C, s. 12 (1).

Same: attorneys general

(2) The following are benchers by virtue of their office:

1. The Attorney General for Ontario.
2. Every person who held the office of Attorney General for Ontario at any time before January 1, 2010. 1998, c. 21, s. 6; 2006, c. 21, Sched. C, s. 12 (2).

[as amended by Bill 16]

⁹ 12. (1) The following, if and while they are licensees, are benchers by virtue of their office:

1. The Minister of Justice and Attorney General for Canada.
2. The Solicitor General for Canada.
3. Every person who, by June 1, 2015, held the office of elected bencher for at least 16 years. 1998, c. 21, s. 6; 2006, c. 21, Sched. C, s. 12 (1).

Same: attorneys general

(2) The following are benchers by virtue of their office:

27. The amendment provides that membership in a committee is lost if the benchers does not attend Convocation regularly, and sets out how the right may be regained, in accordance with the decision made by Convocation.
28. Loss of membership in a committee means that these benchers lose the right to serve as a chair or vice-chair of a committee. Subsection 113(1) of By-Law 3 states:

113(1) For each standing committee, Convocation shall appoint,

- (a) one bencher, *who is a member of the standing committee*, as chair of the standing committee; and
- (b) one or more benchers, *who are members of the standing committee*, as vice-chairs of the standing committee.

(emphasis added)

29. Loss of membership also means that these benchers lose the right to vote in committees, as s. 116 of By-Law 3 states that "Only members of a standing committee may vote at meetings of the committee."

Amended s. 115(2)1, to be read with s. 48.2 and 48.3

30. Currently, any bencher may attend any committee meeting. The amendment to s. 115(2)1, as a result of the new requirements in s. 48.2 and s. 48.3, limits that right to a bencher who is entitled to vote or participate in Convocation.
31. This means that *ex officio* benchers who have lost the right to vote under s. 48.2 or to participate in Convocation under s. 48.3 cannot attend the meetings of committees until their rights are reinstated, in accordance with the By-Law.

1. The Attorney General for Ontario.

2. Every person who held the office of Attorney General for Ontario at any time before January 1, 2010. 1998, c. 21, s. 6; 2006, c. 21, Sched. C, s. 12 (2).

AMENDMENT #4: TERM LIMIT FOR ELECTED PARALEGAL MEMBERS OF THE
PARALEGAL STANDING COMMITTEE

PART VII.1
ELECTION TO THE PARALEGAL STANDING COMMITTEE OF PERSONS LICENSED TO
PROVIDE LEGAL SERVICES

Who may be candidate

136.6. Every person who is licensed to provide legal services in Ontario may be a candidate in an election of paralegal members if,

- (a) on May 1 of the year of the election of paralegal members, the person would not have held office as an elected member of the Committee for 12 or more years;
- (b) the person is nominated as a candidate in accordance with section 136.7; and
- (c) at the time of signing a nomination form containing her or his nomination as a candidate,
 - (i) the person's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the person's licence to provide legal services in Ontario is not suspended.

Explanation:

- 32. Convocation decided that lawyer and paralegal elected benchers are subject to the 12-year term limit.
- 33. The election of the paralegal benchers follows the election of the five paralegal members to the Paralegal Standing Committee ("the Committee"). That election, in accordance with By-Law 3, occurs on the last day of March that is not a holiday in 2010 and every four years thereafter. The election in 2010 occurred on March 31.¹⁰ The election of the two paralegal benchers from among these five members and the election of the chair of the Committee occur at the first Committee meeting following the election of the members to the Committee. This occurred on April 8, 2010.
- 34. At its May 6, 2010 meeting, the Committee agreed that a 12-year term limit should apply to the five paralegal members of the Committee. This is in keeping with the principles that led to Convocation's decision to adopt term limits.
- 35. The amendment to s. 136.6 of By-Law 3 implements the 12-year term limit for these individuals.

¹⁰ According to S. 136.22 of By-Law 3, elected paralegal members of the Committee take office on the day on which the Committee has its first regular meeting following the election day.

APPENDIX 1

DECISIONS MADE BY CONVOCATION
DECEMBER 4, 2009

Convocation agreed to:

- a. end *ex officio* benchner status for elected benchers who have served 16 years as a benchner (life benchner); and
- b. grandparent all current life benchers and benchers who will qualify in the current benchner term ending May 2011 and in the benchner term ending May 2015 as *ex officio* life benchers with the current rights and privileges attaching to the status of life benchner, with the following conditions:
 - i. A life benchner who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* benchner, and
 - ii. Rights and privileges lost under i. will be reinstated after the life benchner attends three of five consecutive regular Convocations.

Convocation agreed to:

- a. limit the length of time a person may serve as an elected benchner; and
- b. provide that once a benchner reaches the limit for service as an elected benchner, that benchner becomes an *emeritus* benchner.

Convocation chose the following as the maximum length of time that a person may serve as an elected benchner: twelve years, which need not be served consecutively.

Convocation agreed to:

- a. end *ex officio* benchner status for former Treasurers;
- b. provide that once a Treasurer completes his or her term of office, the former Treasurer becomes an *emeritus* benchner; and
- c. grandparent all current former Treasurers and the current Treasurer when that Treasurer's term is completed as *ex officio* benchers with the current rights and privileges attaching to the status of a former Treasurer as benchner, with the following conditions:
 - i. A former Treasurer who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* benchner, and
 - ii. Rights and privileges lost under i. will be reinstated after the former Treasurer attends three of five consecutive regular Convocations.

Convocation agreed to:

- a. end *ex officio* benchers status for former Attorneys General; and
- b. grandparent all current former Attorneys General and the current Attorney General when he becomes a former Attorney General as *ex officio* benchers with the current rights and privileges attaching to the status of a former Attorney General as benchers, with the following conditions:
 - i. Former Attorneys General who fail to attend regular Convocation four consecutive times will cease to have the rights and privileges of an *ex officio* benchers; and
 - ii. Rights and privileges lost under i. will be reinstated after the former Attorney General attends three of five consecutive regular Convocations.

APPENDIX 2

APPENDIX 3

SUMMARY OF CHANGES TO CONVOCATION'S STRUCTURE APPROVED BY CONVOCATION ON DECEMBER 4, 2009

1. Elected benchers will serve a maximum term of 12 years, which need not be served consecutively, subject to paragraph 8 below. If the 12 year point is reached between benchers elections, the benchers serves to the end of the benchers term in which the point is reached. Years served by current and former elected benchers will be counted against the 12 years.
2. Elected benchers who serve the maximum term will be called emeritus benchers. Emeritus benchers will not participate in Convocation. They are eligible for appointment to Law Society committees and the Hearing/Appeal Panel. They may also be invited to attend Law Society social functions.
3. *Ex officio* status for former Treasurers is discontinued, subject to grandparenting set out in paragraph 7 below.
4. New former Treasurers will be called emeritus benchers. They will not participate in Convocation. They are eligible for appointment to Law Society committees and the Hearing/Appeal Panel. They may also be invited to attend Law Society social functions.
5. *Ex officio* status for benchers who have served 16 years as an elected benchers (life benchers), is discontinued, subject to grandparenting set out in paragraph 8 below.
6. *Ex officio* status for former Attorneys General of Ontario is discontinued, subject to grandparenting set out in paragraph 9 below

7. All current former Treasurers and the current Treasurer are grandparented with the current rights and privileges they enjoy/will enjoy as former Treasurers, subject to the requirement to attend Convocation. If the grandparented Treasurer is absent from regular Convocation four consecutive times, he or she ceases to have those rights and privileges. The rights and privileges may be reinstated after the Treasurer attends three of five consecutive regular Convocations. The former Treasurer has no rights and privileges during this attendance at Convocation.
8. All elected benchers who will have served 16 or more years by 2015 are grandparented with the current rights and privileges they enjoy/will enjoy as life benchers, subject to the requirement to attend Convocation. If the grandparented bencher is absent from regular Convocation four consecutive times, he or she ceases to have those rights and privileges. The rights and privileges may be reinstated after the bencher attends three of five consecutive regular Convocations. The bencher has no rights and privileges during this attendance at Convocation.
9. All former Attorneys General, including the current Attorney General when his service has ended, are grandparented with the current rights and privileges they enjoy/will enjoy as former Attorneys General, subject to the requirement to attend Convocation. If the grandparented Attorney General is absent from regular Convocation four consecutive times, he or she ceases to have those rights and privileges. The rights and privileges may be reinstated after the Attorney General attends three of five consecutive regular Convocations. The Attorney General has no rights and privileges during this attendance at Convocation.

APPENDIX 4

AMENDMENTS TO BY-LAW 3 (Redline Version)

Who may be candidate: election of benchers in 2011

7. (1) Every licensee is qualified to be a candidate in the election of benchers in 2011 if, ~~at the time of signing a nomination form containing his or her nomination as a candidate,~~
 - (a) by June 1, 2011, the licensee would not have held the office of elected bencher for 16 or more years; and
 - (b) at the time of signing a nomination form containing his or her nomination as a candidate,
 - (a) (i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (b) (ii) the licensee's licence is not suspended.

Who may be candidate: election of benchers after 2011

- (2) Every licensee is qualified to be a candidate in an election of benchers after 2011 if,
- (a) by June 1 of the year of the election of benchers, the licensee would not have held the office of elected bencher for 12 or more years; and
 - (b) at the time of signing a nomination form containing his or her nomination as a candidate,
 - (i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the licensee's licence is not suspended.

....

9.

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 may be 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) if the nomination was rejected for reasons other than that the requirement specified in clause 7 (1) (a) or clause 7 (2) (a) has not been complied with, 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.

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PART II

HONORARY BENCHERS

Convocation may make honorary benchers

47. Convocation may make any person an honorary bencher.

Transition

48. Every person who is an honorary bencher of the Society immediately before May 1, 2007 is an honorary bencher of the Society.

Emeritus benchers

48.1 (1) There shall be a class of honorary benchers known as emeritus benchers.

Who are emeritus benchers

(2) The following, if and while they are licensees, are emeritus benchers:

1. Every person who has held the office of Treasurer.
2. Every person who has held the office of elected bencher for at least 12 years.

Benchers by virtue of office not emeritus benchers

(3) Despite subsection (2), any person who is a bencher by virtue of office is not an emeritus bencher.

Licence in abeyance

(4) Subsection (2) does not apply to a person whose licence is in abeyance under section 31 of the Act.

If elected bencher is eligible to become emeritus bencher

(5) An elected bencher who becomes qualified as an emeritus bencher under paragraph 2 of subsection (2) continues in office as an elected bencher despite the qualification.

Eligibility for appointment

(6) An emeritus bencher is eligible to be appointed,

- (a) to the Hearing Panel under clause 49.21 (3) (b) of the Act;
- (b) to the Appeal Panel under clause 49.29 (3) (b) of the Act; and
- (c) to a standing or other committee.

PART II.1BENCHERS BY VIRTUE OF OFFICEFormer Treasurers: voting

48.2 (1) Benchers by virtue of their office under section 14 of the Act may vote in Convocation and in committees.

Removal of voting rights

(2) Despite subsection (1), a bencher by virtue of his or her office under section 14 of the Act who fails to attend Convocation held under section 77 four consecutive times may not vote in Convocation or in committees until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in Convocation and in committees.

Other benchers by virtue of office: right to participate in debate at Convocation

48.3 (1) Benchers by virtue their office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act may take part in a debate at Convocation

Removal of right to participate in debate at Convocation

(2) Despite subsection (1), a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who fails to attend Convocation held under section 77 four consecutive times may not take part in any debate at Convocation until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to take part in a debate at Convocation.

....

PART V

CONVOCATION

....

Questions of privilege and procedure

90. (1) A bencher who is entitled to vote in Convocation or who may take part in a debate at Convocation may raise a question of privilege or procedure at any time during Convocation and may interrupt another bencher who is speaking to do so.

....

Who may participate in debate

98. ~~Every bencher, the Chief Executive Officer and any other person with the prior permission of the Treasurer~~ The following persons may take part in a debate at Convocation:

1. An elected bencher.
2. A lay bencher.
3. A bencher by virtue of his or her office under paragraph 1 of subsection 12 (2) of the Act.
4. A bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who has not lost the right to take part in a debate at Convocation.
5. A bencher by virtue of his or her office under section 14 of the Act who has not lost the right to vote in Convocation.
6. The Chief Executive Officer.
7. Any other person with the prior permission of the Treasurer.

....

PART VI
COMMITTEES

Removal from office standing committee by Convocation

112. (1) Convocation may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

Automatic removal from standing committee

(2) A member of a standing committee who is a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act ceases to be a member of the committee immediately after he or she fails to attend Convocation held under section 77 four consecutive times.

Automatic reinstatement to standing committee

(3) A person who ceased to be a member of a standing committee under subsection (2) is reinstated as a member of the committee immediately after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she ceases to be a member of the committee.

....

Right to attend meeting

115. (1) Subject to subsection (2), no person other than a member of a standing committee may attend a meeting of the committee.

Same

(2) The following persons who are not members of a standing committee may attend a meeting of the committee:

1. A bencher who is entitled to vote in Convocation or who may take part in a debate at Convocation.
2. An officer or employee of the Society.
3. Any person not mentioned in paragraph 1 or 2 with the permission of the chair of the committee.

....

PART VII.1

ELECTION TO THE PARALEGAL STANDING COMMITTEE OF PERSONS LICENSED TO
PROVIDE LEGAL SERVICES

.....

Who may be candidate

136.6. Every person who is licensed to provide legal services in Ontario may be a candidate in an election of paralegal members if,

- (a) on May 1 of the year of the election of paralegal members, the person would not have held office as an elected member of the Committee for 12 or more years;
- ~~(a)~~ (b) the person is nominated as a candidate in accordance with section 136.7; and
- ~~(b)~~ (c) at the time of signing a nomination form containing her or his nomination as a candidate,
 - (i) the person's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the person's licence to provide legal services in Ontario is not suspended.

Re: By-Law 3 Amendments (Benchers, Convocation and Committees)

It was moved by Mr. Heintzman, seconded by Mr. Banack, that the amendments made to By-Law 3 distributed under separate cover be approved.

BY-LAW 3
[BENCHERS, CONVOCATION AND COMMITTEES]

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

1. Section 7 of the English version of the By-Law is revoked and the following substituted:

Who may be candidate: election of benchers in 2011

- 7. (1) Every licensee is qualified to be a candidate in the election of benchers in 2011 if,
 - (a) on June 1, 2011, the licensee would not have held the office of elected bencher for 16 or more years; and
 - (b) at the time of signing a nomination form containing his or her nomination as a candidate,

- (i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and
- (ii) the licensee's licence is not suspended.

Who may be candidate: election of benchers after 2011

- (2) Every licensee is qualified to be a candidate in an election of benchers after 2011 if,
- (a) on June 1 of the year of the election of benchers, the licensee would not have held the office of elected bencher for 12 or more years; and
 - (b) at the time of signing a nomination form containing his or her nomination as a candidate,
 - (i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the licensee's licence is not suspended.

2. Section 7 of the French version of the By-Law is revoked and the following substituted:

Qualités requises des candidats : élection de 2011

7. (1) Peuvent se porter candidates et candidats à l'élection de 2011 tous les titulaires de permis qui remplissent les conditions suivantes :
- a) le 1^{er} juin 2011, ils ont occupé la charge de conseiller élu pendant moins de 16 ans;
 - b) au moment de signer leur formule de mise en candidature :
 - (i) d'une part, ils possèdent une adresse professionnelle ou, à défaut, une adresse domiciliaire en Ontario, telle qu'elle figure dans les registres du Barreau,
 - (ii) d'autre part, ils ne sont pas visés par une ordonnance de suspension de leur permis.

Qualités requises des candidats : élections postérieures à 2011

- (2) Peuvent se porter candidates et candidats à toute élection postérieure à 2011 tous les titulaires de permis qui remplissent les conditions suivantes :

- a) le 1^{er} juin de l'année de l'élection, ils ont occupé la charge de conseiller élu pendant moins de 12 ans;
- b) au moment de signer leur formule de mise en candidature :
 - (i) d'une part, ils possèdent une adresse professionnelle ou, à défaut, une adresse domiciliaire en Ontario, telle qu'elle figure dans les registres du Barreau,
 - (ii) d'autre part, ils ne sont pas visés par une ordonnance de suspension de leur permis.

3. Subclause 9 (3) (b) (ii) of the English version of the By-Law is amended by adding "if the nomination was rejected for reasons other than that the requirement specified in clause 7 (1) (a) or clause 7 (2) (a) has not been complied with," at the beginning.

4. Subclause 9 (3) (b) (ii) of the French version of the By-Law is amended by adding " , s'il s'appuie sur tout autre motif que l'exigence précisée à l'alinéa 7 (1) a) ou 7 (2) a)" at the end.

5. The English version of the By-Law is amended by adding the following immediately after section 48:

Emeritus benchers

48.1 (1) There shall be a class of honorary benchers known as emeritus benchers.

Who are emeritus benchers

- (2) The following, if and while they are licensees, are emeritus benchers:
 - 1. Every person who has held the office of Treasurer.
 - 2. Every person who has held the office of elected bencher for at least 12 years.

Benchers by virtue of office not emeritus benchers

(3) Despite subsection (2), any person who is a bencher by virtue of office is not an emeritus bencher.

Licence in abeyance

(4) Subsection (2) does not apply to a person whose licence is in abeyance under section 31 of the Act.

If elected bencher is eligible to become emeritus bencher

(5) An elected bencher who becomes qualified as an emeritus bencher under paragraph 2 of subsection (2) continues in office as an elected bencher despite the qualification.

Eligibility for appointment

- (6) An emeritus bencher is eligible to be appointed,
 - (a) to the Hearing Panel under clause 49.21 (3) (b) of the Act;
 - (b) to the Appeal Panel under clause 49.29 (3) (b) of the Act; and
 - (c) to a standing or other committee.

PART II.1

BENCHERS BY VIRTUE OF OFFICE

Former Treasurers: voting

48.2 (1) Benchers by virtue of their office under section 14 of the Act may vote in Convocation and in committees.

Removal of voting rights

(2) Despite subsection (1), a bencher by virtue of his or her office under section 14 of the Act who fails to attend Convocation held under section 77 four consecutive times may not vote in Convocation or in committees until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in Convocation and in committees.

Other benchers by virtue of office: right to participate in debate at Convocation

48.3 (1) Benchers by virtue their office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act may take part in a debate at Convocation

Removal of right to participate in debate at Convocation

(2) Despite subsection (1), a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who fails to attend Convocation held under section 77 four consecutive times may not take part in any debate at Convocation until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to take part in a debate at Convocation.

6. The French version of the By-Law is amended by adding the following immediately after section 48:

Conseillers émérites

48.1 (1) Est créée la catégorie des conseillers et conseillères honoraires appelés conseillers et conseillères émérites.

Qualités requises des conseillers émérites

(2) Les personnes suivantes sont conseillers ou conseillères émérites pendant qu'elles sont titulaires d'un permis :

1. Les anciens trésoriers et les anciennes trésorières.
2. Les personnes qui ont occupé la charge de conseiller élu pendant au moins 12 ans.

Les conseillers d'office ne sont pas des conseillers émérites

(3) Malgré le paragraphe (2), les conseillers et les conseillères d'office ne sont pas des conseillers ou des conseillères émérites.

Permis en suspens

(4) Le paragraphe (2) ne s'applique pas aux personnes dont le permis est en suspens en application de l'article 31 de la Loi.

Cas où les conseillers élus peuvent devenir des conseillers émérites

(5) Les conseillers élus et les conseillères élues qui peuvent devenir conseillers ou conseillères émérites en application de la disposition 2 du paragraphe (2) continuent malgré tout d'occuper leur charge de conseiller élu.

Habilitation

- (6) Les conseillers et les conseillères émérites peuvent être nommés :
- a) au Comité d'audition, en vertu de l'alinéa 49.21 (3) b) de la Loi;
 - b) au Comité d'appel, en vertu de l'alinéa 49.29 (3) b) de la Loi;
 - c) à tout comité permanent ou autre.

PARTIE II.1

CONSEILLERS D'OFFICE

Anciens trésoriers : droit de vote

48.2 (1) Les conseillers et les conseillères d'office visés à l'article 14 de la Loi peuvent voter au Conseil et à ses comités.

Retrait du droit de vote

(2) Malgré le paragraphe (1), le conseiller ou la conseillère d'office visé à l'article 14 de la Loi qui n'assiste pas à quatre réunions consécutives du Conseil tenues en application de l'article 77 ne peut voter au Conseil ou à ses comités tant qu'il ou elle n'a pas assisté à trois réunions sur cinq réunions consécutives du Conseil tenues en application de l'article 77 après qu'il ou elle a perdu le droit de vote.

Autres conseillers d'office : droit de participer aux débats du Conseil

48.3 (1) Les conseillers et les conseillères d'office visés à la disposition 3 du paragraphe 12 (1) ou à la disposition 2 du paragraphe 12 (2) de la Loi peuvent participer aux débats lors des réunions du Conseil.

Retrait du droit de participer aux débats du Conseil

(2) Malgré le paragraphe (1), le conseiller ou la conseillère d'office visé à la disposition 3 du paragraphe 12 (1) ou à la disposition 2 du paragraphe 12 (2) de la Loi qui n'assiste pas à quatre réunions consécutives du Conseil tenues en application de l'article 77 ne peut participer aux débats lors des réunions du Conseil tant qu'il ou elle n'a pas assisté à trois réunions sur cinq réunions consécutives du Conseil tenues en application de l'article 77 après qu'il ou elle a perdu le droit de participation.

7. Subsection 90 (1) of the English version of the By-Law is amended by adding “who is entitled to vote in Convocation or who may take part in a debate at Convocation” after “bencher” and before “may raise”.

8. Subsection 90 (1) of the French version of the By-Law is amended by adding “qui ont le droit de voter au Conseil ou de participer aux débats lors de ses réunions” after “conseillères” and before “peuvent soulever”.

9. Section 98 of the English version of the By-Law is revoked and the following substituted:

Who may participate in debate

98. The following persons may take part in a debate at Convocation:

1. An elected bencher.
2. A lay bencher.
3. A bencher by virtue of his or her office under paragraph 1 of subsection 12 (2) of the Act.
4. A bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who has not lost the right to take part in a debate at Convocation.
5. A bencher by virtue of his or her office under section 14 of the Act who has not lost the right to vote in Convocation.
6. The Chief Executive Officer.
7. Any other person with the prior permission of the Treasurer.

10. Section 98 of the French version of the By-Law is revoked and the following substituted:

Participants aux débats

98. Les personnes suivantes peuvent participer aux débats lors des réunions du Conseil :

1. Les conseillers et les conseillères élus.
2. Les conseillers et les conseillères non juristes.
3. Les conseillers et les conseillères d'office visés à la disposition 1 du paragraphe 12 (2) de la Loi.
4. Les conseillers et les conseillères d'office visés à la disposition 3 du paragraphe 12 (1) ou à la disposition 2 du paragraphe 12 (2) de la Loi qui n'ont pas perdu le droit de participer aux débats lors des réunions du Conseil.
5. Les conseillers et les conseillères d'office visés à l'article 14 de la Loi qui n'ont pas perdu le droit de voter au Conseil.
6. Le directeur général ou la directrice générale.
7. Quiconque a reçu au préalable la permission du trésorier ou de la trésorière.

11. Section 112 of the English version of the By-Law is revoked and the following substituted:

Removal from standing committee by Convocation

112. (1) Convocation may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

Automatic removal from standing committee

(2) A member of a standing committee who is a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act ceases to be a member of the committee immediately after he or she fails to attend Convocation held under section 77 four consecutive times.

Automatic reinstatement to standing committee

(3) A person who ceased to be a member of a standing committee under subsection (2) is reinstated as a member of the committee immediately after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she ceases to be a member of the committee.

12. Section 112 of the French version of the By-Law is revoked and the following substituted:

Expulsion des comités permanents par le Conseil

112. (1) Le Conseil peut expulser des comités permanents les membres qui n'assistent pas à trois réunions consécutives d'un même comité.

Expulsion automatique des comités permanents

(2) Le membre d'un comité permanent qui est un conseiller ou une conseillère d'office visé à la disposition 3 du paragraphe 12 (1) ou à la disposition 2 du paragraphe 12 (2) de la Loi cesse d'en être membre immédiatement après ne pas avoir assisté à quatre réunions consécutives du Conseil tenues en application de l'article 77.

Réintégration automatique aux comités permanents

(3) Quiconque cesse d'être membre d'un comité permanent en application du paragraphe (2) y est réintégré immédiatement après avoir assisté à trois réunions sur cinq réunions consécutives du Conseil tenues en application de l'article 77 après son expulsion du même comité.

13. Paragraph 1 of subsection 115 (2) of the English version of the By-Law is amended by adding “who is entitled to vote in Convocation or who may take part in a debate at Convocation” at the end.

14. Paragraph 1 of subsection 115 (2) of the French version of the By-Law is amended by adding “qui ont le droit de voter au Conseil ou de participer aux débats lors de ses réunions.” at the end.

15. Section 136.6 of the English version of the By-Law is revoked and the following substituted:

Who may be candidate

136.6. Every person who is licensed to provide legal services in Ontario may be a candidate in an election of paralegal members if,

- (a) on May 1 of the year of the election of paralegal members, the person would not have held office as an elected member of the Committee for 12 or more years;
- (b) the person is nominated as a candidate in accordance with section 136.7; and
- (c) at the time of signing a nomination form containing her or his nomination as a candidate,
 - (i) the person’s business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the person’s licence to provide legal services in Ontario is not suspended.

16. Section 136.6 of the French version of the By-Law is revoked and the following substituted:

Qualités requises des candidats

136.6. Peuvent se porter candidates et candidats à l’élection des membres parajuristes toutes les personnes pourvues d’un permis les autorisant à fournir des services juridiques en Ontario qui remplissent les conditions suivantes :

- a) le 1^{er} mai de l’année de l’élection des membres parajuristes, elles ont occupé la charge de membre élu au comité pendant moins de 12 ans;
- b) leur candidature est proposée conformément à l’article 136.7;
- c) au moment de signer leur formule de mise en candidature,

- (i) d'une part, elles possèdent une adresse professionnelle ou, à défaut, une adresse domiciliaire en Ontario, telle qu'elle figure dans les registres du Barreau,
- (ii) d'autre part, elles ne sont pas visées par une ordonnance de suspension de leur permis de fournir des services juridiques en Ontario.

It was moved by Mr. Aaron, seconded by Mr. Gottlieb to table the Governance Task Force Report.

Lost

ROLL-CALL VOTE

Aaron	For	Hartman	Against
Anand	Against	Heintzman	Against
Backhouse	For	Henderson	Against
Banack	Against	Legge	For
Boyd	Against	Lewis	Against
Braithwaite	Against	MacKenzie	Against
Bredt	Against	McGrath	Against
Caskey	Against	Marmur	Against
Chilcott	For	Minor	Against
Conway	Against	Pawlitza	Against
Crowe	For	Porter	Against
Daud	Against	Potter	Against
Dickson	For	Pustina	Against
Dray	Against	Rabinovitch	Against
Elliott	Against	Robins	For
Epstein	For	Rothstein	Against
Eustace	Against	Sandler	Against
Fleck	Against	Schabas	Against
Go	Against	Simpson	Against
Gold	Against	C. Strosberg	Against
Gottlieb	For	H. Strosberg	For
Haigh	Against	Swaye	For
Hainey	Against	Symes	Against
Halajian	Against	Tough	Against
Hare	Against	Wright	For

Vote: 12 For; 38 Against

It was moved by Mr. Strosberg, seconded by Mr. Aaron, that there be an amendment to the By-Law that emeritus benchers be permitted to ask that their rights and privileges be put in abeyance.

Not Put

The chair undertook to examine the issue.

The main motion was approved.

ROLL-CALL VOTE

Aaron	Against	Hartman	For
Anand	For	Heintzman	For
Backhouse	Against	Henderson	For
Banack	For	Krishna	Against
Boyd	For	Legge	Against
Braithwaite	For	Lewis	For
Bredt	For	MacKenzie	For
Caskey	For	McGrath	For
Chilcott	For	Marmur	For
Conway	For	Minor	For
Crowe	Against	Pawlitza	For
Dickson	For	Porter	For
Dray	For	Potter	Against
Elliott	For	Pustina	For
Epstein	Against	Rabinovitch	For
Eustace	For	Robins	Abstain
Fleck	For	Rothstein	For
Go	For	Sandler	For
Gold	For	Schabas	For
Gottlieb	Against	Simpson	For
Haigh	For	C. Strosberg	For
Hainey	For	H. Strosberg	Against
Halajian	For	Swaye	Against
Hare	For	Symes	Abstain
		Tough	For
		Wright	Against

Vote: 37 For; 11 Against; 2 Abstentions

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Ms. Pawlitza presented the Report.

Report to Convocation
May 27, 2010

Professional Development & Competence Committee

Committee Members
Laurie Pawlitza (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)

Larry Banack
Jack Braithwaite
Thomas Conway
Marshall Crowe
Aslam Daud
Larry Eustace
Jennifer Halajian
Susan Hare
Paul Henderson
Laura Legge
Dow Marmur
Daniel Murphy
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Heather Ross
Catherine Strosberg
Gerald Swaye

Purpose of Report: Decision

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

COMMITTEE PROCESS

1. The Committee met on May 6, 2010. Committee members Laurie Pawlitza (Chair), Larry Banack, Thomas Conway, Marshall Crowe, Jennifer Halajian, Paul Henderson, Dow Marmur, Daniel Murphy, Judith Potter, Nicholas Pustina, Catherine Strosberg and Gerald Swaye attended. Staff members Diana Miles, Elliot Spears and Sophia Sperdakos also attended.

POLICY

ADJUSTMENT TO CPD CALCULATION OF HOURS FOR NEW LAWYERS AND PARALEGALS

MOTION

2. That, in fulfilling their CPD hours for the first two calendar years of practice following their call to the bar or licensing, new lawyers and paralegals may begin acquiring and calculating the 12 hours for their first calendar year immediately upon call to the bar or licensing.

BACKGROUND

3. As part of the CPD requirement that Convocation approved in February 2010 Convocation reconfirmed a focused approach to CPD for lawyers and paralegals in the early years of entering a practice category. The focused approach would apply to satisfy these lawyers' and paralegals' total CPD requirement for their first two years of practice.

During this period new lawyers and paralegals will be required to take 12 hours per year (for the first two years of practice or providing legal services, respectively) of programming that the Law Society accredits, 3 hours of which per year must be taken in topics related to ethics, professionalism and practice management and be integrated within the 12 hours of accredited programming.

4. As approved by Convocation in February 2010 the requirement was to begin on January 1, 2011, with new lawyers and paralegals to begin calculating their required hours at that time on a going forward basis.
5. The choice of this approach was done to (a) dovetail the reporting with the general CPD reporting requirement and (b) to give new lawyers and paralegals a grace period after their call to the bar or licensing during which they would not need to acquire CPD hours. This was a change from the original proposal that the calculation would begin from the date of call or licensing.
6. In retrospect, it seems fairer to allow (not require) new lawyers and paralegals to begin calculating their credit hours for their first “year’s” 12 hours at any point following call to the bar or licensing, rather than refusing to allow the accredited CPD they take in the period following their call or licensing but before January 1 to count toward their first 12 hours of the requirement.
7. While this change will not *require* new lawyers and paralegals to begin taking programming immediately after call to the bar or licensing it will allow them a longer period in which to accumulate the required accredited programming hours in their first “year” of practice should they choose to do so.
8. To maintain consistency of reporting, the reporting years will remain January to December, but for the first year’s reporting period newly called lawyers and paralegals will also be able to count accredited CPD hours taken in the months following call to the bar or licensing prior to January 1.
9. The Paralegal Standing Committee considered this issue at their meeting in May 2010 and also recommends the change.

Re: Adjustment to Continuing Professional Development (CPD) Calculation of Hours for Newly Called Lawyers and Paralegals

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that in fulfilling their CPD hours for the first two calendar years of practice following their call to the bar or licensing, new lawyers and paralegals may begin acquiring and calculating the 12 hours for their first calendar year immediately upon call to the bar or licensing.

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Rothstein presented the Report.

Re: Amendment to By-Law 8 (Reporting and Filing Requirements) Respecting the Electronic Filing of the Lawyer and Paralegal Annual Reports

Report to Convocation
May 27, 2010

Professional Regulation Committee

Committee Members
Linda Rothstein (Chair)
Julian Porter (Vice-Chair)
Bonnie Tough (Vice-Chair)
Christopher Bredt
John Campion
Carl Fleck
Patrick Furlong
Gary Lloyd Gottlieb
Glenn Hainey
Ross Murray
Sydney Robins
Baljit Sikand
Roger Yachetti

Purpose of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on May 10, 2010. In attendance were Linda Rothstein (Chair), Christopher Bredt, Carl Fleck, Patrick Furlong, Glenn Hainey, Ross Murray and Sydney Robins. Staff attending were Cathy Braid, Michael Elliot, Janice LaForme, Terry Knott, Zeynep Onen, Jim Varro and Jane Withey.

AMENDMENT TO BY-LAW 8 (REPORTING AND FILING REQUIREMENTS) RESPECTING ELECTRONIC FILING OF THE LAWYER AND PARALEGAL ANNUAL REPORTS

Motion

2. That Convocation approve in principle an amendment to By-Law 8 (Reporting and Filing Requirements) to require that the Lawyer and Paralegal Annual Reports be submitted electronically.

Introduction and Background

3. Lawyers and paralegals are required to submit to the Law Society an annual report under By-Law 8. The By-Law refers to the obligation to “submit a report...in a form provided by the Society.”¹
4. Currently, lawyers are given the option of filing the Lawyer Annual Report electronically (“e-filing”) or in paper form. For paralegal licensees, e-filing was introduced from the outset as the primary method for filing the Paralegal Annual Report. Paper copies were made available only upon request, and a 91% paralegal e-filing rate was achieved for the first filing year in 2009.²
5. Since 2003, when active promotion of e-filing began, the number of lawyers choosing this option has increased dramatically. E-filing now represents approximately 75% of all lawyer filings. In 2009, over 25,000 lawyers used this method.

¹ **Requirement to submit annual report**

5. (1) Every licensee shall submit a report to the Society, by March 31 of each year, in respect of,
 - (a) the licensee’s professional business during the preceding year; and
 - (b) the licensee’s other activities during the preceding year related to the licensee’s practice of law or provision of legal services.

Annual Report

- (2) The report required under subsection (1) shall be in a form provided by the Society.

² The CEO’s Report to June 2009 Convocation stated:

The recommended method for submission of the PAR is e- filing, with paper reports being made available only upon request. We are pleased to report that as of April 30th, only 162 paper filings had been received from paralegals compared to 1,663 e-filed PARs.

6. The number of lawyers who continue to file the paper form of the Report has substantially declined, but the actual annual costs associated with the production of the paper form have risen. The 25% of lawyers who file by paper now represent approximately 90% of the production costs of the Lawyer Annual Report.
7. The Committee, with the endorsement of the Paralegal Standing Committee, is recommending that the Law Society adopt e-filing as the single method of filing the Lawyer and Paralegal Annual Reports ("the Reports"), with paper filing available only in exceptional circumstances. An amendment to By-Law 8 is required to provide that e-filing be used as the method for submitting the Reports.

Evolution of the Annual Report Filing Process

8. Approximately 10 years ago, the Law Society contracted with a third-party service provider ("the provider") to develop e-filing for the Lawyer Annual Report and provide image scanning, data conversion/upload and a number of other services related to electronic and paper filings. The current contract, expiring in 2011, includes an agreement for annual production of a minimum of 26,440 paper forms of the Lawyer Annual Report.
9. The production costs for the Lawyer Annual Report remain high. The number of lawyers who continue to file using paper has declined from 17,564 five years ago to 9,765 this year, but the annual costs for production of the paper form have increased.³
10. The contractual arrangement means that the Law Society is committed to the 26,440 units even though the actual print run is considerably less. The popularity of e-filing means that the Society requires far fewer than this number of paper filings. The overall fixed cost to produce the Lawyer Annual Report each year remains in the range of \$200,000 to \$220,000, plus postage. Only about \$20,000 of these costs are associated with e-filing.
11. Significant staff resources are dedicated each year to the development and implementation of two separate methods of filing. With the addition of the Paralegal Annual Report, the time spent by Law Society staff in developing annual reporting mechanisms has doubled.

³ Despite savings in mailing costs, overall print production and scanning costs associated with the printed versions of the Report have increased within in the last year. The services provided by the provider are varied, technical and extremely complex. As the quality of work done by the provider has been consistently high, there has been no compelling reason to look for alternatives.

The Demographics for Paper Filing

12. According to data⁴ from October 2009 on the demographic information by age and firm size for the 25% of lawyers who continue to file the paper form of the Lawyer Annual Report:
 - a. sole practitioners make up the largest group (39%), followed by lawyers in firms of over 50 members (23%) and firms of two to nine lawyers (20%). These three firm size groups combined make up 82% of all lawyers who continue to file paper reports;
 - b. lawyers between the ages of 30 and 69 make up 90% of those who continue to file by paper. For sole practitioners, the age range is primarily from 40 to 69 and in the larger firms, most paper filings are from those 30 to 59 years of age.
13. For many lawyers, it is a choice to file the paper form.
14. The Committee learned from the Law Society's experience with the first filing of the Paralegal Annual Report in 2009 that the small number who did not e-file had no computer or e-mail address.

The Move to Electronic Processes

15. The Law Society is increasingly utilizing electronic capability for many of its processes. For the new Continuing Professional Development requirement, effective in 2011, lawyers and paralegals will be able to track their CLE activities through a web-based member's portal. Automatically generated notices will be delivered at regular intervals to update the lawyer or paralegal on their status. The portal, to be launched later this year, will also permit lawyers and paralegals to log in with a password and change their contact information, a By-Law requirement, securely and efficiently.
16. It is anticipated that within two years, the portal will make it possible for lawyers and paralegals to retrieve the electronic form for filing the Report, complete it online and submit it electronically.
17. As such, the expectation is that in the near future, lawyers and paralegals will exclusively use electronic capability for many regulatory processes.

4

FIRM SIZE	AGE (DECADE)							
	20	30	40	50	60	70	80	Total
1	42	334	835	1183	1027	281	74	3776
2-9	71	357	456	511	355	77	16	1843
10-19	36	231	225	209	112	37	4	854
20-29	21	87	75	102	53	10	1	349
30-39	14	85	83	82	42	7	1	314
40-49	13	53	43	57	29	1	2	198
50+	121	607	553	564	258	79	19	2201
TOTAL BY AGE	318	1754	2270	2708	1876	492	117	9535

The Recommendation for “Paperless” Filing

18. To address the cost and resource issues outlined above, the Committee agrees with the proposal from senior staff that the Law Society should virtually eliminate paper Reports. This would mean that e-filing would be the required method of filing for all lawyers and paralegals, with paper filing only available in exceptional circumstances.
19. An amendment to By-Law 8 would provide that e-filing would be the default method of submitting the Reports. A lawyer or paralegal would be permitted to apply to the Law Society to request that the Reports be submitted in another form (e.g. paper) in exceptional circumstances. The Law Society would be flexible in its approach in approving such requests, based on the circumstances.
20. The expectation is that all lawyers and paralegals would fulfill the By-Law requirement by e-filing, with the exception being paper filing. Communication about the change in the approach would be made following Convocation’s decision.
21. This change would eliminate nearly all the set-up costs, parallel processes, manual scanning, error correction, print costs and postage associated with the current manual filing process. The small number of printed forms could be entered manually into the Law Society’s AS400 database as required.

Summary

22. A major challenge currently faced by the Law Society, through its Administrative Compliance services, is the high cost per unit of maintaining the current paper filing and e-filing processes for the Report. The time and effort required to process paper files is a significant drain on the Law Society’s budget.
23. In the Committee’s view, there are few advantages associated with paper filing, and numerous disadvantages (including its effect on the environment). Given these factors, and considering the decreasing number of members using this filing option, it is time to phase out the paper form of the Reports. If Convocation agrees with the Committee’s recommendation, by-laws amendments will be prepared for a future Convocation.

INFORMATION

ENHANCEMENTS TO THE LAWYER AND PARALEGAL DIRECTORY

24. At its April 2010 meeting, the Committee received an information report from the Professional Regulation Division about improvements to the accessibility of information publicly available about a lawyer or paralegal’s discipline history with the Law Society and any current restrictions on a lawyer’s ability to practice law or a paralegal’s ability to perform legal services.

Introduction and Background

25. At present, the Lawyer and Paralegal Directory (the “Directory”) on the Law Society’s website provides basic information about lawyers and paralegals, including the licence type, whether a lawyer has the required insurance to provide real estate services to the public, the lawyer or paralegal’s status and his or her contact information.
26. If further information is required about the lawyer or paralegal, particularly his or her discipline history or current practice restrictions, the Law Society must be contacted. Any information that is available to the public is then provided by staff in the Monitoring and Enforcement Department.
27. Information concerning past discipline history and current practice restrictions is being added to the Directory to make public information about a lawyer or paralegal easier to access, in keeping with the Law Society’s “duty to act in a timely, open and efficient manner.”⁵ The information to be displayed will come from two sources, described below.

Information Concerning Discipline History

28. Information concerning a lawyer or paralegal’s discipline history will be pulled from the Professional Regulation Division’s Discipline History Project (“the Project”) and added to the Directory.
29. Prior to 2006, a lawyer’s discipline history with the Law Society was maintained in paper form only. While an electronic backup of the paper data existed, its utility was limited as it could not be searched and was not well organized. The paper data, which was stored in binders and file folders in the Discipline Department, was voluminous and also time-consuming to search.
30. Through the Project, which was commenced in 2006, an internal electronic database containing information available about discipline cases from February 27, 1986 to the present was developed and populated. Over the past four years, over 3,400 Law Society cases have been entered into the Project’s database. The database includes information about each hearing and appeal, relevant documents, including applications, Decisions and Orders, and summaries of each case, identified as being “publishable” or “non-publishable”.

Current Practice Restrictions

31. Currently, the Directory will disclose that the lawyer or paralegal’s practice is restricted, but no further details are provided. Details about any restrictions are only available if the Law Society is contacted. In the expanded version of the Directory, details about the restriction(s) will be displayed. These details will be drawn from information maintained by the Monitoring and Enforcement and Trustee Services Departments in the Professional Regulation Division’s case management system.
32. It is anticipated that the expanded version of the Directory will be ready for a six-month test period by Law Society staff at the end of June 2010. During the testing period, the format and content of the information will be assessed and a decision will be made on going “live” with the expanded version of the Directory, probably later in 2010.

⁵ *Law Society Act*, s. 4.2 4.

How the Enhanced Directory Will Work

33. When someone searches the Directory for a lawyer or paralegal, the screen that appears will contain the same information currently available concerning licence type, real estate insured, status and contact information. However, two new fields will be available: "Current Practice Restrictions" and "Discipline History."
34. When the user clicks on the Discipline History field, he or she will be transferred to the "Discipline History Information" screen. In this screen, all of the discipline cases (from the Project's database) that were heard in public and with publishable decisions and orders are displayed. By clicking on another link (under the "Proceeding Type"), the user will be transferred to a second screen that shows the summary of the matter.
35. In addition to the Discipline History, "Current Practice Restrictions" are also included in the expanded version of the Directory.
36. The content of the expanded Directory is demonstrated through the examples on the following pages, using a fictitious lawyer who has practice restrictions and a discipline history. The first "screenshot" shows what is currently available in the Directory, followed by a series of screenshots that demonstrate the information that will be available in the expanded Directory.

REPORT ON CIVILITY INITIATIVES

Introduction and Background

37. In February 2008, Attorney General Chris Bentley appointed The Honourable Patrick J. LeSage, C.M., Q.C. and Professor Michael Code to conduct a review of large and complex criminal case procedures, and to identify issues and recommend solutions to moving these cases through the justice system faster and more effectively. Mr. LeSage and Mr. Code undertook to write a report on their findings and in November, 2008, the Attorney General released their report entitled "Report of the Review of Large and Complex Criminal Case Procedures".
38. One focus of the Report was the role of counsel in adding to the length and complexity of some cases. The Report noted that the Law Society and the Courts have a joint responsibility to address issues of professional misconduct in the course of a long and complex trial and that both need to exercise their respective authority fully to safeguard a proper process. The Report called on the Law Society to treat cases of court room misconduct as serious professional misconduct and to address them as such in disciplinary proceedings.
39. The Report noted that junior lawyers need mentorship as a means to improve competency in relation to long and complex proceedings, and it recommended that the Law Society promote greater use of mentoring by senior lawyers.
40. The Law Society considered the Report and the action it should take to address not only the criticism leveled at the Law Society about its treatment of court room misconduct, but a number of the issues that underlie the conduct of lawyers identified in the Report, including the lack of effective mentoring for inexperienced counsel.

41. Civility and professionalism are important regulatory issues that merit ongoing review and discussion by the Law Society. The Law Society will continue to address these issues including by considering the recommendations contained in the Report. The report of the Treasurer on the Civility Forum and this report are part of that ongoing process. They also serve to describe the actions taken by the Law Society in response to the issues raised in the Report.

Civility Complaints Protocols and Protocol for Mentoring

42. Beginning in November 2008, the Law Society, through the Treasurer and benchers Glenn Hainey, held meetings with the Chief Justices of the Court of Appeal for Ontario, the Superior Court of Justice and the Ontario Court of Justice, other members of those courts, and representatives of the Attorney General's office and a number of legal organizations, such as The Advocates' Society and The Criminal Lawyers' Association, to determine ways to address the problems identified in the Report about courtroom conduct.
43. It became increasingly apparent during these discussions that many judges felt it would be most beneficial to have a procedure whereby a lawyer could be referred for mentoring rather than as the subject of a formal misconduct complaint to the Law Society. Many judges said they would welcome the opportunity to be able to refer lawyers, particularly younger lawyers, to senior members of the profession for mentoring in respect of the lawyer's inappropriate behaviour in the court room. In many cases, the judges felt that the conduct, although inappropriate, does not warrant a full Law Society complaints investigation, with the serious consequences that could result from that process.
44. To address these issues, Protocols for the three levels of the Court were developed, which provide for the referral by the Court of both complaints and requests for mentoring in appropriate cases. These Protocols were agreed to by the Courts and were approved in principle by the Ministry of the Attorney General, The Criminal Lawyers' Association and The Advocates' Society as workable and effective solutions to the problems identified in the Report.
45. The Protocols were designed to improve civility and professionalism among lawyers and paralegals appearing in court proceedings. The Protocols provide a procedure for trial and appeal judges and justices of the peace to refer incidents of misconduct to the Law Society. They also provide for a new process whereby judges can request that lawyers receive mentoring from a panel of senior members of the bar. The mentor will meet with the lawyer to discuss the conduct in question and assist in his or her development as an advocate.
46. The Protocols received favourable comment from the Honourable Patrick LeSage, co-author of the Report, who said in a press release published by the Law Society, "I wish to commend the Law Society and members of the judiciary for developing a protocol for handling matters of misconduct in the court room and achieving such a fine result in a complex and delicate area."
47. Similar comments were made by representatives of the Criminal Lawyers Association and the Advocates Society.

48. The Protocols and the protocol on referral of mentoring requests are available on the Law Society's "Civility Challenge" web page at <http://www.lsuc.on.ca/latest-news/a/the-civility-challenge/>.

The Law Society Civility Forum 2009- 2010

49. At May 2010 Convocation, the Treasurer is reporting on the Law Society's Civility Forum, which was a series of 11 meetings hosted by the Treasurer for lawyers and paralegals throughout Ontario. The meetings were held from November 2009 to February 2010.
50. The objective of the Civility Forum was to engage in a dialogue with lawyers and paralegals, to share the Law Society's experience with civility and to learn about the day to day experience of practising professionals. A second purpose was to discuss proposed solutions for the issues of civility that were identified, and the relative merits of those solutions.
51. The Forum was well received by lawyers and paralegals with more than 900 registrants. Those attending included lawyers, paralegals and students. The attendees were also representative of a variety of areas of practice and years of seniority. The discussion was often lively, and there were usually a variety of views on the subjects discussed. In all locations, the participants were engaged and interested in the subject of civility.
52. It is anticipated that the Treasurer will outline in his report some proposals for a continuing focus on civility.

The Law Society's Regulatory Response to Issues of Civility

53. A variety of remedial and formal regulatory responses to civility complaints have been employed by the Law Society.
54. While the number of complaints involving professionalism issues, including civility, over the last five years has increased⁶, the rate of recidivism for lawyers who have been subject to a complaint involving professionalism issues and who have received a remedial response by the Law Society continues to be low.
55. As with other types of complaints, professionalism complaints are addressed at various stages in the regulatory process. Where a civility issue warrants investigation and review by the Proceedings Authorization Committee (PAC), PAC, in its discretion, has a number of options. It may choose not to direct further investigation or may authorize the closure of the case. It may authorize that a lawyer or paralegal receive a Letter of Advice (LOA), or attend an Invitation to Attend (ITA) or a Regulatory Meeting, or that formal disciplinary proceedings be pursued.
56. In some professionalism cases, the misconduct is so serious that a formal disciplinary response is required. Other cases necessitate a formal disciplinary response where a lawyer or paralegal engages in less serious conduct but has a cognate history of misconduct, or where the Law Society has tried previously to address the lawyer's or

⁶ In 2004, almost 11% of all cases contained an allegation of unprofessional behaviour. This number increased until 2008 when it had risen to 35% of all regulatory cases.

paralegal's behaviour through a remedial response. Penalties have ranged from a reprimand up to and including license suspension. In 2009, among 67 hearings involving 71 applications that contained one or more particulars alleging unprofessional behavior, nine applications involved issues of incivility.

57. Where an LOA, ITA or Regulatory Meeting is authorized, the case is closed once the letter has been sent or the meeting has been held.
58. The Regulatory Meeting is a relatively new process, instituted in 2007. It is an informal resolution process designed for cases where a lawyer's or paralegal's conduct has been the subject of public comment, whether in the courts or in the media, and in the normal course the conduct would more likely result in a remedial response such as an ITA. Like the ITA, the Regulatory Meeting is a meeting with Benchers and other senior members of the profession to discuss the conduct and its effect. A lawyer or paralegal who agrees to participate in the Regulatory Meeting, however, must also agree that the results will be made public, much like a discipline decision. Consequently, the fact that the meeting was held, who attended and the reason for it are public with the consent of the lawyer or paralegal.
59. To date, there have been seven Regulatory Meetings held which have involved professionalism issues: 1 in 2007; 1 in 2008; 3 in 2009; and 2 in 2010.
60. Statistics reveal that a remedial response is effective and that the Law Society's approach to remedially address relatively minor complaints of professionalism is generally successful with minimal recidivism. A review of professionalism cases, from 2004 to 2009, reveals that;
 - a. 68% of the lawyers had only one professionalism complaint,
 - b. 18% of the lawyers had two professional complaints,
 - c. 7% of the lawyers had three professionalism complaints, and
 - d. 3% of the lawyers had more than three professionalism complaints.
61. Thus, since 2004, only 3% of lawyers against whom there was a complaint of unprofessional behaviour generated repeated numbers of additional similar complaints. In contrast, 68% of the lawyers against whom a complaint of this nature was made after 2004 never received any subsequent complaints.

Concluding Comments

62. As the regulator of lawyers and paralegals, the Law Society is committed to promoting the highest standards of civility and professionalism. The responses to the concerns set out in the Report illustrate that the Law Society takes its responsibilities seriously.
63. In its efforts to address issues of civility, the Law Society has worked with its partners in the justice system to develop tools that will assist in the effective administration of justice in Ontario. These efforts will continue as the Law Society monitors issues of civility and the most appropriate means to address them proactively and reactively.

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

64. The Professional Regulation Division's Quarterly Report (first quarter 2010), 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 January to March 2010.

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

- (1) Examples of the expanded Directory of Discipline History. (pages 12 – 16)
- (2) Copy of the Professional Regulation Division Quarterly Report for the period January to March 2010. (pages 23 – 56)

It was moved by Ms. Rothstein, seconded by Mr. Porter, that Convocation approve in principle an amendment to By-Law 8 (Reporting and Filing Requirements) to require that the Lawyer and Paralegal Annual Reports be submitted electronically.

Carried

ROLL-CALL VOTE

Anand	For	Henderson	For
Backhouse	For	Krishna	For
Banack	For	Legge	For
Braithwaite	For	Lewis	For
Bredt	For	McGrath	For
Caskey	For	Marmur	For
Chilcott	For	Minor	For
Conway	For	Pawlitza	For
Crowe	For	Porter	For
Dickson	For	Potter	For
Dray	For	Pustina	For
Elliott	For	Rabinovitch	For
Epstein	For	Rothstein	For
Eustace	For	Ruby	For
Fleck	For	Sandler	For
Go	For	Schabas	For
Gold	For	Simpson	For
Gottlieb	Against	C. Strosberg	For
Haigh	For	H. Strosberg	For
Hainey	For	Swaye	For

Halajian	For	Symes	For
Hare	For	Tough	For
Hartman	For	Wright	For
Heintzman	For		

Vote: 46 For; 1 Against

Items for Information

- Enhancements to the Lawyer and Paralegal Directory
- Report on Civility Initiatives
- Professional Regulation Committee Quarterly Report

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IN CAMERA

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EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITE SUR L'EQUITE ET LES
AFFAIRES AUTOCHTONES REPORT

Ms. Minor presented the Report.

Report to Convocation
May 27, 2010

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

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Paul Copeland
Mary Louise Dickson
Avvy Go
Susan Hare
Doug Lewis
Dow Marmur
Judith Potter
Linda Rothstein
Beth Symes

Purposes of Report: Decision and Information

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

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Law Society Intervention (in Camera) TAB A

For Information..... TAB B

Change of Status Quantitative Study – Report of Research Findings

Public Education Equality and Rule of Law Series 2010

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on May 5, 2010. Committee members Janet Minor, Chair, Mary Louise Dickson, Avvy Go, Doug Lewis, Dow Marmur, Judith Potter and Beth Symes participated. Chantal Brochu, representative of the Association des juristes d'expression française de l'Ontario, and Milé Komlen, Chair of the Equity Advisory Group also participated. Anne Kilpatrick and Gloria Roheim, The Strategic Counsel, attended to make a presentation about the findings of the Change of Status Survey. Staff members Josée Bouchard, Susan Tonkin and Mark Wells attended.

DECISION

HUMAN RIGHTS MONITORING GROUP
REQUEST FOR LAW SOCIETY INTERVENTION

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IN PUBLIC

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INFORMATION
CHANGE OF STATUS QUANTITATIVE STUDY – REPORT OF
RESEARCH FINDINGS

19. In 2009, the Law Society of Upper Canada retained The Strategic Counsel to undertake a longitudinal study with lawyers who change their professional status in the profession. The 2010 *Change of Status Quantitative Study – Report of Research Findings* is available for members of Convocation on Benchers Net at the following:

<http://www.lsuc.on.ca/benchernet/convocation-reports/a/final-reports-to-convocation/>

20. The report is also publicly available at the following:

<http://www.lsuc.on.ca/news/b/conv/>

21. The report also appears on the Law Society website (www.lsuc.on.ca) in the Retention of Women Project section.
22. The report provides findings from a survey conducted via an online methodology among a sample of Law Society lawyers who changed status in 2009. In total, 5263 lawyers filed a change of status with the Law Society last year and a total of 1257 respondents completed the survey, a strong response rate of 31%. The following is a summary of findings.

Respondent Characteristics – Gender Differences

23. The differences between men and women who are changing status become evident quickly when examining the characteristics of the survey sample.
24. First, change of status notifications in 2009 has been more prevalent among women than among men. Of the 1257 respondents who completed the survey, six-in-ten (61%) are women compared to 29% men. Of those who have reported a change of status that does not involve parental leave (n=1071), a majority are also women (55%). These proportions stand in contrast to the Law Society's lawyer member base (62% male).
25. Further, those who have changed status are younger in comparison with the Law Society's member base. Over six-in-ten change of status survey respondents (64%) are under 45 years of age compared to less than half of the member base (46%). The following is noted:
 - a. In particular, it is male survey respondents who are relatively young compared to the representation in the membership.
 - b. Over one-half of male survey respondents (57%) are under 45 years compared to only 36% among the Law Society's membership overall.
 - c. While the incidence of women respondents who are under 45 years is high (70%), the incidence is also quite high among the Law Society's membership overall (62%).

Work Setting

26. Among those who have changed status in 2009, there is a significant 12-point decline from previous to current status in the proportion who report being in private practice (50% and 38%, respectively).
27. The greatest drop in private practice among this change of status group is away from larger firms (those with 50 or more lawyers). Whereas 15% of respondents report that they worked in a large firm in their previous position, only 7% report that their current position is in a large firm (an 8 point decline).

Work Setting – Gender Differences

28. Overall, women who have changed status are more likely to have moved out of private practice than are men who have changed their status. The following is noted:
 - a. The proportion of women who were in private practice before their change in status is 15 points higher than the proportion of women in private practice following the change (47% and 32%, respectively).

- b. Among men, there is also a decrease, although less pronounced (54% prior versus 46% current position).
- 29. The longer women who have changed status have been at the bar, the less likely they are to have been in private practice in their previous position. This trend is further accentuated when current practice setting is examined:
 - a. Over one-half of women called to the bar less than five years ago or five to ten years ago report that their previous position was in private practice (56% and 59%, respectively). However, that proportion drops sharply to one-third (34%) among women who have been practising for eleven to nineteen years.
 - b. This same pattern is evident for current status, with the proportion dropping from 44% in private practice among women called to the bar less than five years ago to only 15% among those called for 20 years ago or more.
- 30. A similar, although less dramatic, pattern is evident among men. Overall, the proportion of men in private practice following their change of status is significantly lower than it was prior to the change (46% and 54%, respectively).
- 31. What really distinguishes women from men who have made a change of status, however, is the degree to which they have moved out of private practice.
 - a. The proportion of women whose change of status resulted in a move away from private practice is significantly greater at two points in their career:
 - i. There is a significant 25 point decline in the proportion of women in private practice among the group called to the bar five to ten years ago. Among men, there is a drop of 16 points. Although a drop of this magnitude might appear to be significant statistically, it is not. This may be a result of the relatively limited sample of men called 5-10 years ago available for analysis.
 - ii. Further, there is also a significant decline among women called for 20 years or more (12 points from 27% to 15%). Among men, there is no significant decline in private practice at this career stage.
 - b. By the time they have been in practice 20 years or more, only 15% of women who changed status remain in private practice. The corresponding proportion among men is 40%.
- 32. The results suggest that a Change of Status out of private practice is strongly related to life stage, more so than simply years called to the bar. Both women and men who have young dependent children (under 6 years of age) are more likely to move out of private practice than are those in other stages of life. However, it is women who are most likely to be moving out of private practice at this stage, by a margin of almost two-to-one over men. The findings are as follows:
 - a. Among women with dependent children under six years of age, over half (57%) were in private practice prior to their change of status. However, only one-third (32%) report being in private practice after the change of status.

- b. While there is a similar shift among men, it is less pronounced (a 12 point decline compared with the 25 point decline among women).
- 33. The greatest proportion of women who have filed a change of status and have younger dependent children are currently in a non-private practice setting (44% of those with dependent children under 6 years of age, and 49% of those with children 6-12, are currently in a non-private practice position).
- 34. While there is a decrease in the proportion of men in private practice, regardless of life stage, the greatest proportion of men still remain in private practice. The decrease in the proportion of those in private practice appears to be made up in the proportion of men moving out of law. The findings are as follows:
 - a. Over one-half of men with no dependent children (52%), 44% of those with dependent children under 6 years of age, 55% of those with children 6-12, and 40% of those with children 13 years of age and older are currently in a private practice setting.
 - b. The incidence of men who have left the practice of law, however, does increase among those who have dependent children under 6 years of age (up 9 points to reach 27% in current position), while the proportion in non-private practice remains statistically unchanged (22% in current position).
 - c. Among those with dependent children 6-12 years of age, there are no changes in the proportions in specific practice types/settings.

Change of Practice Type or Setting – Differences between Equity-Seeking Groups

- 35. Among all respondents to the Change of Status Survey (excluding those who indicated parental leave as their reason for status change), the strong majority (71%) do not identify themselves as being part of an equity-seeking group. The remainder are split between those who self-identify as belonging to a racialized equity-seeking group (14%) and those who identify themselves as equity seekers but not based on race (15%).

Non-Equity-seeking Group

- 36. Among those who do not self-identify as equity-seeking, there has been a significant decline in the proportion of those who are in private practice from previous to current position. The findings are as follows:
 - a. One half (50%) report that they were in private practice prior to their status change. The proportion who is in private practice in the current position is 40% - a decline of 10 points.
 - b. There has been a commensurate increase in the proportion reporting that they are no longer in the practice of law (up 9 points from 17% to 26%).

Equity Seekers

- 37. The trend among equity seekers is similar to that of non-equity seekers. In fact, non-equity seekers and those belonging to equity-seeking groups do not significantly differ from one another in their incidence of private practice prior to or following their change in status. The findings are as follows:

- a. What distinguishes the two equity-seeking groups from one another, however, is that one - the racialized equity-seeking group - is more likely to have started out in private practice prior to their change of status (55%) compared to the non-racialized group (45%).
 - b. Nonetheless, both equity-seeking groups experience declines in the proportions reporting that they are working in private practice after their change of status, as follows:
 - i. 55% to 40% among the racialized equity group (15 point decline).
 - ii. 45% to 31% among the non-racialized equity group (14 point decline).
38. For both equity-seeking groups, there have been significant increases in the proportions reporting that they are not currently practising law. This is consistent with the trend for the non-equity-seeking group.

Unaided Reasons for Change of Status

39. One of the key objectives of the research is to explore what factors may be leading lawyers to leave private practice and the factors that encourage lawyers to stay in private practice. The research explained this through both unaided and aided questions. Those who have changed status were asked to describe in their own words why they made the change. The reasons given are varied, and no single issue or set of issues dominate.
40. The greatest proportion of respondents (31%) indicate that they changed their status because of the end of an existing contract or position, either due to a corporate restructuring (e.g., downsizing), or as a result of personal circumstances such as a decision to retire or the need to take a parental leave.
41. About one-quarter (26%) of respondents report that their change of status was due to the appeal of certain characteristics of the position to which they have moved (excluding increased remuneration or benefits). These reasons do include issues such as better opportunities/new challenges/ better quality of work, the ability to better use their skills, the ability to change their practice area to focus on a different area of law.
42. Remuneration and/or benefits are noted by just over one-in-ten respondents (11%) as the reason for their change of status.
43. There are no differences between men and women in the reasons noted above for a change of status. The one area, however, where differences are observed is in the area of work-life balance. The findings show as follows:
- a. Women, by a margin of two-to-one over men (21% and 9%, respectively), indicate that they changed their status due to needs related to balancing work with other responsibilities and needs (e.g., Work/life balance - work/family balance; Better hours/ control over hours/ better control of schedule/ flexible work schedule; Reduction in stress; Child care/ child care requirements/ wanting to spend more time with children or family; Reduction in workload/ workload; Spousal requirements/ spouse's career needs; Burn out at job).

Area of Practice

44. The greater proportions of change of status respondents indicate that in their previous position their area of practice was civil litigation (17%) or corporate/commercial law (14%). There are no significant changes in the proportions noted that currently practise in those areas after a change of status. (15% and 14% respectively).
45. Less than 10% of respondents indicate having practiced in any of the other major categories and there are no significant differences from previous to current positions in the proportions who identify pursuing each of these practice areas.

Attitudes toward the Value and Benefits of Previous Versus Current Position

46. A further means of exploring this issue was through an investigation of the perceived benefits and values of current positions versus previous positions among those who have changed status.
47. Respondents were asked to indicate the extent to which they agree that their previous versus current positions provide certain types of offerings/opportunities in the following areas:
 - a. work-related opportunities and challenges;
 - b. benefits;
 - c. work-life balance; and
 - d. positive relationships with colleagues.
48. The results suggest that for both men and women, greater proportions of those who made a change of status find their current position provides them with real enjoyment compared to their previous position.
49. Work-life balance is a distinguishing factor for those who have moved into non-private practice. For both men and women who have left private practice to go to non-private practice, there have been significant increases in the proportions who feel that "The job allows me to balance career and family". By contrast, there have been significant decreases in the proportions reporting that their workload is too heavy or that their job is very stressful from their previous to current position.
50. Those who have remained in private practice are distinguished from those who moved into non-private practice in their belief that their new position offers them the following opportunities: "The job allows me to use my talents and legal skills", "I have the freedom to decide what I do in my job" and "The opportunities for promotion are excellent". Those who have remained in private practice are much more likely to report that these opportunities are available in their new position compared to their previous position. By contrast, there is no difference between previous and current positions on these measures for those who moved into non-private practice.
51. What distinguishes men and women on these attitudes is the extent to which women find that their new positions offer them a better work-life balance. Women are more likely to find that their current position offers them a better opportunity to balance their work/life commitments and to find their new position less stressful.

Attitudes towards the Value and Benefits of Previous Versus Current Position

52. Law firms frequently offer a variety of benefits or operating policies in order to attract employees. These benefits or policies tend to fall into categories such as the following:
 - a. health-related (e.g., medical, dental, long-term disability, sick leave);
 - b. parental benefits (e.g., paid or unpaid parental leave, childcare benefits);
 - c. flexible work arrangements (e.g., Job sharing, part-time work, flexible work hours);
 - d. harassment or equity policies (e.g., Harassment and discrimination policy, accommodation for special needs policy);
 - e. career advancement options (e.g., part-time partnerships, continuing legal education; formal mentoring policy); and
 - f. financial benefits (e.g., pension plans).
53. Respondents were asked to identify whether the benefits or operating policies noted above were offered to them by their previous employer/firm and whether they are offered in their current position.
54. An increase in the incidence of these benefits/policies from previous to current position may suggest that they play some role in the decision to make a change in status. While it cannot be determined if they “drive” the decision to change, they provide a perspective as to the types of workplace benefits/policies that are valued by lawyers.
55. The research suggests that a number of benefits/policies may contribute to a change of status as respondents are significantly more likely to report that these benefits/policies are offered in their current position relative to their previous position. Many relate specifically to more flexible work arrangements, as follows:
 - a. flexible full-time work hours (30% previous position/47% current position – 17 point increase).
 - b. leave of absence or sabbatical (26% previous position/21% current position – 5 point increase).
 - c. paid parental leave (21% previous position/26% current position – 5 point increase).
 - d. part-time work (16% previous position/25% current position – 9 point increase).
 - e. job sharing (4% previous position/9% current position – 5 point increase).
56. The likelihood that these benefits/policies are factors in a change is most strongly evident among women.

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES
2010

NATIONAL ABORIGINAL DAY – June 11, 2010

Reception – Convocation Hall (5:00 p.m. – 7:00 p.m.)

Developments in Progress at the Federal Court of Canada

Keynote Speaker – Justice Leonard Mandamin, Federal Court of Canada

PRIDE WEEK – June 16, 2010

Panel Discussion – Upper Barristers' Lounge (4:00 p.m. – 6:00 p.m.)

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

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FINANCE COMMITTEE REPORT

Ms. Hartman presented the Report.

Report to Convocation
May 27, 2010

Finance Committee

Committee Members
Carol Hartman, Chair
Chris Bredt, Vice-Chair
Raj Anand
Larry Banack
Jack Braithwaite
Mary Louise Dickson
Jack Ground
Susan Hare
Janet Minor

Ross Murray
 Judith Potter
 Jack Rabinovitch
 Paul Schabas
 Gerald Swaye
 Brad Wright

Purpose of Report: Decision and Information

Prepared by
 Wendy Tysall, Chief Financial Officer
 416-947-3322

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For Decision

J. Shirley Denison Fund Applications (In Camera)Tab A

For Information.....Tab B

Lease of Office Space

COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on May 6, 2010. The Committee members in attendance were: Carol Hartman, Chair, Chris Bredt, Vice-Chair, Raj Anand, Larry Banack, Janet Minor, Ross Murray, Judith Potter, Gerald Swaye, and Brad Wright.
2. Staff in attendance were Malcolm Heins, Wendy Tysall, Fred Grady and Andrew Cawse.

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FOR INFORMATION

LEASE OF OFFICE SPACE

14. There is no longer sufficient space at Osgoode Hall to accommodate the Office of the Complaints Resolution Commissioner ("CRC"). The Law Society has located 2,040 square feet of suitable space at 155 University Avenue. The space is suitable as it is accessible to the public and provides independence for the CRC.
15. The annual cost of the five year lease (with an option to extend) is expected to be \$78,000. Lease costs for the remainder of 2010 can be funded from within the budget for leased space.
16. There are funds available within the Capital Allocation Fund for \$100,000 in leasehold improvements and furniture costs.

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Reports for Information

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

- Change of Status Quantitative Study
- Public Education Equality Series Calendar 2010

Finance Committee Report

- Rental Space Offsite for Complaints Resolution Commissioner

Audit Committee Report

- First Quarter Financial Statements for the Law Society of Upper Canada
- Investment Compliance Report

Report to Convocation
May 27, 2010

Audit Committee

Committee Members
Beth Symes (Chair)
Marshall Crowe
Seymour Epstein
Glen Hainey
Doug Lewis
Bill Simpson

Purpose of Report: Information

Prepared by:
Wendy Tysall, Chief Financial Officer
416-947-3322

COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on May 5, 2010. Committee members in attendance were Beth Symes (c), Marshall Crowe, Seymour Epstein, Glenn Hainey, Doug Lewis and Bill Simpson.
2. Staff in attendance were Malcolm Heins, Wendy Tysall and Fred Grady

FOR INFORMATION

LAW SOCIETY OF UPPER CANADA FINANCIAL STATEMENTS FOR THE THREE MONTHS
ENDED MARCH 31, 2010

3. The Audit Committee recommends the financial statements for the first quarter of 2010 be received by Convocation for information.

Law Society of Upper Canada Financial Statements Highlights
For the three months ended March 31, 2010

Fund Descriptions

General Fund

4. The General Fund is the Society's operating fund representing the bulk of its revenues and expenses relating to the licensing and regulation of lawyers and paralegals. Detailed results of operations for lawyers and paralegals are combined on the Statement of Revenue and Expenses. Summarized results for both lawyers and paralegals are reported on the Statement of Changes Fund Balances. Supplementary schedules comparing actual results to budget are also provided for lawyers and paralegals.

Restricted Funds

5. The Compensation Fund is restricted by statute. The Fund exists in order to mitigate losses sustained by clients as a result of the dishonesty of a lawyer or paralegal. The fund is financed primarily through annual levies on lawyers and paralegals, investment income and recoveries of grants previously paid. The annual Compensation Fund levy for the 2010 year was set at \$257 for lawyers and \$183 for paralegals. The respective figures for the 2009 year were \$226 and \$145.
6. The Errors and Omissions Insurance (E&O) Fund accounts for the mandatory professional liability insurance program of the Society which is administered by LAWPRO. Insurance premium expense, as well as related levies and income from their investment are tracked within this fund. The Society is insured for lawyers' professional liability and recovers annual premium costs from lawyers through a combination of annual base levies and additional levies that are charged based on a lawyer's claims history, status, and on the volume of specified categories of legal transactions.
7. The Capital Allocation Fund is the source of funding for the Society's acquisition of major capital assets and the repair and upgrade of Osgoode Hall. The fund is replenished by a dedicated annual levy, on all lawyers and paralegals of \$65 in 2010, increased from \$45 in 2009.
8. The Invested in Capital Assets Fund represents the net book value of the Society's physical assets. Additions to the fund are made by the capitalization of assets acquired through the Capital Allocation Fund. Additions are recorded annually by means of an inter-fund transfer on the Statement of Changes in Fund Balances. Amortization is reported as an expense of the fund.
9. The County Libraries Fund reports the transactions between LibraryCo Inc. and the Law Society. The Law Society levies an amount on lawyers as approved by Convocation in the annual budget, currently \$203 in 2010 and \$220 in 2009. This levy is reported as income of the fund and payments to LibraryCo Inc. are reported as an expense of the fund.

10. The Working Capital Reserve is maintained by policy of Convocation to ensure cash is available to meet the operating needs of the Society. By policy, the fund is maintained at a balance of up two months' operating expenses.
11. Other Restricted Funds:
 - The Parental Leave Assistance Program for lawyers has been funded with \$540,000, representing the entire annual fee allocation for the fiscal year. The program, which commenced on March 12, 2009, provides financial support to practising lawyers in firms of five lawyers or less, who do not have access to other maternity, parental or adoption financial benefits under public or private plans. Eligible lawyers receive a fixed sum of \$750 per week for up to twelve weeks, to assist in defraying overhead costs during the leave from practice. During the first quarter of 2010, seventeen applicants received benefits under the program with another seven applications under review with benefits to begin after March 31, 2010. With expenses of approximately \$110,000 in the first three months of the year, the program is tracking under budget although by the end of April, it is in line with actuarial estimates for the program. In 2009, a total of fifty one applications were processed resulting in the payment of benefits under the program.
 - The Repayable Allowance Fund is used to provide financial assistance to those enrolled in the Society's Lawyer Licensing Process. The fund is replenished annually through the budget process by a \$100,000 annual contribution from the lawyer general fund.
 - The Society's Endowment Fund is the J. Shirley Denison Fund, administered under the terms of Mr. Denison's will by Convocation for the relief of poverty for lawyers and licensing process lawyer candidates.
 - The Special Projects Fund is used to carry forward funding to a future fiscal period for a program or activity for which funding is not provided in the current year budget. For 2010, the fund is primarily comprised of funding for the Civil Needs Project, Data Management and Heritage First. Also included is a contribution from Canada Life for the ongoing maintenance of the Society's lawns, gardens and trees.

Financial Statement Highlights

12. The Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit organizations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.
13. The Financial Statements for the three months ended March 31, 2010 comprise the following statements with comparative numbers for March 31, 2009:

- Balance Sheet
- Statement of Revenues and Expenses
- Statement of Changes in Fund Balances

14. Supplemental schedules include the Compensation Fund and the Errors and Omissions Insurance Fund.

Balance Sheet

15. Current assets at the end of March 2010 have increased to \$176.2 million from \$158.3 million due to the increased members levies and premiums, higher prepaid insurance premiums and higher prepaid expenses. At March 31, 2010, current assets comprise \$18.8 million in cash, \$29.7 million in short-term investments, \$55.8 million in accounts receivable (annual fees, insurance premiums and levies owing) and \$72.4 million in prepaid expenses.
16. Cash balances have increased to \$18.8 million from \$11.5 million mainly due to increased cash flow resulting from higher annual fees and the surplus brought forward from 2009. These monies were previously held as short-term investments and are now being invested in premium bank accounts with rates of return equivalent to 90 day T-bills without the transaction and safekeeping costs.
17. Short-term investments are shown at fair value of \$29.7 million compared to \$28.5 million in 2009. Investments are held in the following funds:

Fund (\$ 000's)	2010	2009
General Fund	\$27,696	\$24,900
Compensation Fund	1,033	3,643
E&O Fund	985	-
Total	\$29,714	\$28,543

18. Prepaid expenses have increased to \$72.4 million from \$63.4 million. Most of this balance relates to annual E&O insurance premiums paid for the year, the remainder of which will be expensed over the next three quarters of 2010.
19. The investment in LAWPRO is made up of two parts. The investment represents the share capital of \$4,997,000 in LAWPRO purchased in 1991 when LAWPRO was established plus the contributed capital of \$30,645,000 accumulated between 1995 and 1997.

20. Portfolio investments are shown at fair value of \$71.8 million compared to \$87.6 million in 2009. The decline is largely attributable to the payment to LAWPRO of the amount owing at December 31, 2009 (approximately \$19 million), partly offset by the \$8 million recovered through settlement of the E&Y/Tillinghast litigation. Investments are held in the following funds:

Fund (\$ 000's)	2010	2009
Errors & Omissions Insurance Fund	\$31,903	\$52,293
Compensation Fund	27,587	24,167
General Fund	12,313	11,137
Total	\$71,803	\$87,597

21. Deferred revenue has increased to \$101.2 million from \$89.5 million. This relates to annual E&O insurance premiums and general fund annual fees received for the year, the remainder of which will be recognized over the next three quarters of 2010.
22. The amount due to LAWPRO has decreased to \$50.7 million from \$59.4 million. The payable will decline by year-end as insurance premiums and levies collected are paid to LAWPRO. Any balance owing to LAWPRO at year end is paid by March 31, of the following year.
23. Unclaimed trust funds continue to increase, now totaling \$2.0 million compared to \$1.8 million at March 31, 2009.
24. Fund Balances have decreased to \$131.2 million from \$131.8 million with 2010 activity analyzed on the Statement of Changes in Fund Balances.

Statement of Revenues and Expenses

25. The General Fund incurred a deficit of \$213,000 at the end of the first quarter of 2010, compared with a deficit of \$243,000 in 2009. This is due to an increase in net expenses of \$790,000 partly offset by an increase in revenues of \$820,000.
26. The Society's restricted funds report a surplus of \$9.2 million for the period. The surplus is primarily in the E&O Fund (\$7.4 million) and in the Compensation Fund (\$1.3 million).
27. The E&O Fund surplus was largely due to the settlement of the E&Y/Tillinghast litigation matter for \$8 million and reported as other revenue under restricted funds.
28. The surplus in the Compensation Fund is partly due to a lower than budgeted provision for unpaid grants. On a monthly basis, a net provision is made on the outstanding claims against lawyers and paralegals. When the number of files closed exceeds those opened, as was the case in the first quarter, a negative figure results. Further contributing to the surplus is higher than budgeted investment income on long-term investments including unrealized and realized gains.

29. General Fund annual fee revenue is recognized on a monthly basis. Annual fees recognized in the first quarter have increased to \$9.8 million in 2010 from \$9.7 million in 2009, with a fee decrease of \$1 per lawyer and \$25 per paralegal, offset by an increase in the number of lawyers and paralegals billed.
30. Professional development and competence revenues have increased to \$3.6 million from \$2.8 million in 2009. This is due to increased continuing education course and materials revenue and an increase in licensing candidates, both for lawyers and paralegals.
31. Restricted funds annual fees declined primarily due to the timing of the recognition of annual fee revenue for LibraryCo. In 2009 the Law Society advanced annual fees earlier in the year in order to fund the cost of electronic products in excess of the grant provided by the Law Foundation of Ontario. The decrease in annual fee revenue is consistent with the decline in county library expenses in 2010.
32. Premiums and levies have increased to \$21.8 million from \$16.4 million. This increase is primarily a result of the increase in base premiums charged to lawyers in 2010.
33. Investment income in the restricted funds has increased to \$1.3 million from \$457,000 due mainly to net gains of \$800,000 on investments, split evenly between the Compensation Fund and the E&O Fund. This represents \$1.2 million in realized gains, offset by \$400,000 in unrealized losses. The payment to LAWPRO of the \$19.0 million outstanding at the end of 2009 necessitated the disposition of investments primarily managed by CIBC resulting in the realization of approximately \$500,000 of realized gains.
34. Other income in the restricted fund has increased to \$8.0 million from \$143,000 due to the settlement of E&Y/Tillinghast litigation in the first quarter of 2010.
35. Regulatory expenses of \$4.8 million are higher than the same period in 2009 by \$250,000. The 2010 budget envisaged these expenses increasing by \$700,000 for the year in response to the increasing number of complaints and the requirement for additional intake resources dedicated to paralegal regulation. Year-to-date, the increase in actual expenses is concentrated in Investigations for the budgeted staffing increases and in Complaints Resolution and paralegal good character hearings where temporary staff were hired later in 2009.
36. Professional development and competence expenses are \$379,000 higher than for the same period in 2009 (\$4.3 million versus \$3.9 million). Increases were budgeted in Spot Audit and Practice Review, where additional staffing is required to meet the goal of auditing all Ontario law firms once every five years and to support the increased number of revisits to small and sole firm lawyers. In the first quarter, staffing is higher than in 2009; however the full budgeted complement is not yet in place. Further contributing to the variance is the timing of purchases in the Great Library. Spending on loose leaf materials and electronic resources is ahead of that in the first quarter of 2009.
37. Administrative expenses are \$121,000 more than the same period in 2009, consistent with budgeted increases.

38. Other expenses include benchers related payments, payments to the Federation, insurance, catering costs and other miscellaneous expenses and total \$1.9 million for the first three months of 2010.
39. Expenses in the Errors and Omissions Insurance Fund have decreased to \$23.1 million from \$25.0 million. This is largely due to a decline in adverse claim developments from March 2009 to March 2010.
40. Compensation Fund expenses have decreased to \$1.6 million from \$1.9 million. The main contributor to this decrease has been the provision for unpaid grants which has experienced a reversal in claims provision due to the closing of files, resulting in a negative balance of \$76,000, compared to a prior year figure of \$412,000 based on estimated liabilities. The provision is adjusted monthly based on the number of new inquiries and open claims net of claims paid and cases closed. Costs for spot audit, investigations and discipline allocated from the general fund have increased over 2009, as budgeted.
41. County Libraries Fund expenses are \$1.7 million less than for the same period in 2009 (\$1.7 million versus \$3.4 million) primarily due to the timing of transfers. In 2009, the transfer of funds to cover second quarter grants to the libraries was completed prior to April 1st.
42. Expenses for the Parental Leave Assistance Plan were \$109,000 in the first quarter of 2010. Comparatives for 2009 are not available as the program was not established until March 12, 2009

Statement of Changes in Fund Balances

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

Compensation Fund – Schedule of Revenues and Expenses

44. Total annual fee revenue has increased by \$336,000 primarily as a result of an increase in the lawyer and paralegal levies from \$226 to \$257 and from \$145 to \$183 respectively.
45. Investment income has increased by \$459,000. Investment income includes unrealized gains of \$214,000. Limited unrealized losses are expected in future periods due to recent interest rate forecasts released by the Bank of Canada.
46. Expenses have decreased by \$293,000 primarily as a result of the decreased provision for grants offset by increased costs for spot audits approved in the 2010 budget. The expanded spot audit program was the primary driver in the increase in the annual levy for the lawyers' compensation pool.

47. Errors and Omissions Insurance Fund – Schedule of Revenues and Expenses

- Annual fees and levies have increased \$5.4 million primarily due to increased premiums.
- Investment income has increased by \$342,000 over 2009. Investment income includes unrealized losses of \$276,000.
- Other income includes \$8 million from the settlement of outstanding E&Y/Tillinghast litigation.
- Administrative expenses have increased by \$408,000 over 2009 due to litigation expenses incurred in relation to the above-noted settlement.
- There has been a recovery in the provision for claims of \$164,000, primarily due to a reduction in claims liabilities relating to the 1991 to 1993 claims years.
- LAWPRO insurance premiums have decreased by approximately \$2.6 million over 2009, primarily due to improved current year claims experience at LAWPRO in 2010 compared to the same period in 2009.

THE LAW SOCIETY OF UPPER CANADA**Balance Sheet***Unaudited**Stated in thousands of dollars**As at March 31*

	<u>2010</u>	<u>2009</u>
Assets		
Current Assets		
1 Cash	18,849	11,492
2 Short-term investments	29,714	28,543
3 Cash and short-term investments	48,563	40,035
4 Accounts receivable	55,144	54,887
5 Prepaid expenses	72,448	63,357
6 Total current assets	176,155	158,279
7 Investment in LAWPRO	35,642	35,642
8 Portfolio investments	71,803	87,597
9 Capital assets	17,775	18,805
10 Total Assets	301,375	300,323

Liabilities and Fund Balances**Current Liabilities**

11 Accounts payable and accrued liabilities	4,130	4,944
12 Deferred revenue	101,194	89,452
13 Due to LAWPRO	50,748	59,381
14 Total current liabilities	156,072	153,777

15	Provision for unpaid grants/claims	13,209	13,488
16	Unclaimed trust funds	2,002	1,811
17	Total Liabilities	171,283	169,076

Fund Balances**General funds**

18	Lawyers	8,005	7,385
19	Paralegals	1,681	1,332

Restricted funds

20	Compensation	22,085	19,748
21	Errors and omissions insurance	64,751	67,541
22	Capital allocation	4,192	4,770
23	Invested in capital assets	17,775	18,805
24	County libraries	(8)	-
25	Other	936	991
26	Working capital reserve	10,675	10,675

27	Total Fund Balances	130,092	131,247
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28	Total Liabilities and Fund Balances	301,375	300,323
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THE LAW SOCIETY OF UPPER CANADA**Statement of Revenues and Expenses***Unaudited**Stated in thousands of dollars**for the three months ended March 31*

2010				2009			
	General Fund	Restricted Funds	Total	General Fund	Restricted Funds	Total	
Revenues							
1	Annual fees	9,835	5,137	14,972	9,663	6,316	15,979
2	Insurance premiums and levies	-	21,816	21,816	-	16,434	16,434
	Professional development and competence	3,603	-	3,603	2,775	-	2,775
4	Investment income	166	1,257	1,423	170	457	627
5	Other	1,450	8,035	9,485	1,627	143	1,770
6	Total revenues	15,054	36,245	51,299	14,235	23,350	37,585
Expenses							
7	Professional regulation	4,831	-	4,831	4,581	-	4,581
	Professional development and competence	4,285	-	4,285	3,906	-	3,906
9	Administrative	2,296	-	2,296	2,175	-	2,175
10	Other	1,887	-	1,887	1,610	-	1,610
11	Client service centre	1,235	-	1,235	1,268	-	1,268
12	Facilities	1,022	-	1,022	1,043	-	1,043
13	Policy and legal services	542	-	542	511	-	511
14	Communications	282	-	282	299	-	299
15	Equity	233	-	233	230	-	230
16	Tribunals	215	-	215	217	-	217

17	Errors and omissions insurance fund	-	23,087	23,087	-	25,046	25,046
18	Compensation fund	-	1,596	1,596	-	1,889	1,889
19	Capital allocation fund	-	225	225	-	417	417
20	Invested in capital assets - amortization	-	223	223	-	687	687
21	County libraries fund	-	1,727	1,727	-	3,427	3,427
22	Parental leave assistance plan	-	109	109	-	-	-
23	Repayable allowance fund	-	17	17	-	26	26
24	Endowment fund	-	17	17	-	34	34
25	Total expenses	16,828	27,001	43,829	15,840	31,526	47,366
26	Less: Expenses allocated to Compensation Fund	(1,560)	-	(1,560)	(1,362)	-	(1,362)
27	Net expenses	15,268	27,001	42,269	14,478	31,526	46,004
28	(Deficit) / Surplus	(214)	9,244	9,030	(243)	(8,176)	(8,419)

THE LAW SOCIETY OF UPPER CANADA

Compensation Fund

Schedule of Revenues and Expenses

Unaudited

Stated in thousands of dollars

for the three months ended March 31

		2010	2009
	Lawyers	Paralegals	Total
Revenues			
1 Annual fees	2,177	111	2,288
2 Investment income	604	-	604
3 Recoveries	6	-	6
4 Total Revenues	2,787	111	2,898
Expenses			
5 Provision for unpaid grants	(96)	20	(76)
6 Spot audit	685	32	717
7 Share of investigation and discipline	399	12	411
8 Administrative	423	24	447
9 Salaries and benefits	97	-	97
10 Total Expenses	1,508	88	1,596
11 Surplus	1,279	23	1,302

THE LAW SOCIETY OF UPPER CANADA

Errors and Omissions Insurance Fund

Schedule of Revenues and Expenses

Unaudited

Stated in thousands of dollars

for the three months ended March 31

	2010 Actual	2009 Actual
REVENUES		
1 Insurance premiums and levies	21,816	16,434
2 Investment income	653	311
3 Other income	8,000	-
4 Total revenues	30,469	16,745
EXPENSES		
5 Administrative	429	21
6 Claims	(164)	(361)
7 Insurance	22,822	25,386
8 Total expenses	23,087	25,046
9 Surplus (Deficit)	7,382	(8,301)

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FOR INFORMATION
INVESTMENT COMPLIANCE REPORTING

52. Compliance Statements for the General Fund and Compensation Fund long and short-term portfolios and the Errors & Omissions Insurance Fund long-term portfolio as at March 31, 2010 are attached for information.

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CONVOCATION ROSE AT 11:30 A.M.

Confirmed in Convocation this 29th day of June, 2010.

Treasurer