22nd June, 2005

MINUTES OF CONVOCATION

Wednesday, 22nd June, 2005
9:00 a.m.

PRESENT:

The Treasurer (George D. Hunter), Aaron, Alexander, Backhouse, Banack, Bourque, Boyd, Campion, Carpenter-Gunn, Caskey, Chahbar, Cherniak, Coffey, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Elliott, Feinstein, Filion, Finkelstein, Furlong, Gotlib, Gottlieb, Harris, Heintzman, Krishna, Lawrence, Legge, MacKenzie, Marrocco, Martin, Murray, Pattillo, Pawlitza, Porter, Potter, Robins, Ruby, Silverstein, Simpson, Strosberg, Swaye, Symes, Topp, Wardlaw, Warkentin and Wright.

…….

Secretary: Katherine Corrick

The Reporter was sworn.

…….

IN PUBLIC

…….

ELECTION OF TREASURER

The Secretary announced the results of the votes cast:

Abraham Feinstein – 23

George Hunter – 36

Mr. Hunter was declared elected as Treasurer.

It was moved by Mr. Feinstein, seconded by Ms. Potter, that the vote be noted as unanimous and that the ballots be destroyed.

Carried

Mr. Hunter took the Treasurer's chair.

Mr. Marrocco addressed Convocation followed by remarks by the Treasurer.

ELECTION OF BENCHER

WHEREAS George Hunter, who was elected from the Province of Ontario "B" Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors, has been elected as Treasurer, to take office on June 22, 2005; and

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

It was moved by Mr. Cherniak, seconded by Mr. Chahbar -

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

Carried

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of the May 26th, 2005 Convocation were amended as follows:

The motion at the bottom of page 4 states that "It was moved by Mr. Wright, seconded by Mr. Gottlieb that paragraph 153 …..". It should read, "It was moved by Mr. Wright, seconded by Dr. Gotlib that paragraph 153…".

The Draft Minutes of May 26th, 2005 as amended were confirmed.

REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Ruby presented the Report of the Finance & Audit Committee.

Finance and Audit Committee
June 22, 2005

Committee Members:
Clayton Ruby (c)
Abdul Chahbar (v-c)
Peter Bourque
Andrew Coffey
Paul Dray
Neil Finkelstein
Allan Gotlib
Holly Harris
Allan Lawrence
Derry Millar
Ross Murray
Laurence Pattillo
Laurie Pawlitza
Alan Silverstein
Gerry Swaye
Beth Symes
Bradley Wright

Purpose of Report: Decision
Information

Prepared by the Finance Department

THE REPORT:

1. The Finance and Audit Committee ("the Committee") met on June 9, 2005. Committee members in attendance were: Clayton Ruby (c.), Abdul Chahbar (vc.), Peter Bourque, Andrew Coffey, Paul Dray, Holly Harris, Allan Lawrence, Ross Murray, Lawrence Pattillo, Laurie Pawlitza, Alan Silverstein, Gerry Swaye, Beth Symes and Bradley Wright.

2. Other Benchers in attendance were Constance Backhouse, George Hunter and Gavin MacKenzie.

3. Elizabeth Brown and Bonnie Roy-Choudhury from Hicks Morley assisted the Committee on pension governance.

4. Staff attending were Malcolm Heins, Wendy Tysall, Laura Cohen, Katherine Corrick, Terry Knott, Fred Grady and Andrew Cawse.

5. The Committee is reporting on the matters as indexed.

FOR DECISION:

PENSION GOVERNANCE PROCESS (SEE PENSION PLAN FOR THE EMPLOYEES OF THE LAW SOCIETY OF UPPER CANADA ON PAGE 56)

TAB A

The Committee recommends Convocation's approval of the proposed pension governance structure as set out in the attached documentation titled "Pension Plan for the Employees of the Law Society of Upper Canada". To this end, Convocation is requested to approve the following resolutions:

A. WHEREAS Convocation of the Law Society of Upper Canada (the "Law Society") sponsors the Pension Plan for the Employees of the Law Society of Upper Canada (the "Plan") and is the administrator of the Plan;
B. AND WHEREAS in accordance with Section 15 of the Plan, the Law Society has reserved the right to amend the Plan;
C. AND WHEREAS the Law Society wishes to adopt the amended and restated Plan text as at January 1, 2003, a copy of which is attached;
D. AND WHEREAS the Law Society wishes to adopt the Law Society of Upper Canada Pension Plan Governance Structure and Guidelines dated as of January 1, 2005;

E. AND WHEREAS the Law Society wishes to delegate the administrative oversight duties set out in the Governance Guidelines to the Finance & Audit Committee to better reflect the current administrative structure of pension plan governance by the Law Society;
F. AND WHEREAS the Law Society wishes to confirm and recognize the existence of the Pension Committee of the Law Society which is charged with the day to day administration of the Plan in accordance with the roles and responsibilities established under the Plan and the Governance Guidelines;
G. AND WHEREAS the Law Society wishes to direct the Pension Committee of the Law Society to complete all necessary regulatory filing to give effect to these resolutions.

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective as of January 1, 2003, the Law Society of Upper Canada adopts the amended and restated Pension Plan for the Employees of the Law Society of Canada attached hereto.

2. Effective as of January 1, 2005, the Law Society of Upper Canada adopts the Pension Plan Governance Structure and Guidelines attached hereto.

3. Effective as of January 1, 2005, The Law Society of Upper Canada delegates the administrative oversight duties set out in the Governance Guidelines to the Finance & Audit Committee. Hereinafter, all matters coming within the duties will be referred to the Finance & Audit Committee which shall act on behalf of Convocation in relation to such matters.

4. Effective as of January 1, 2005, The Law Society of Upper Canada confirms and recognizes the existence of the Pension Committee of the Law Society of Upper Canada to continue its role in day to day Plan administration as set out in the Plan and the Governance Guidelines. Further, the Law Society confirms the Committee's composition, roles and responsibilities as set out in the Pension Plan Governance Structure and Guidelines.

5. The Law Society directs the Pension Committee to complete all necessary regulatory filings to give legal effect to these resolutions.

AND BE IT FURTHER RESOLVED THAT any authorized signing officer of Convocation is authorized, empowered and directed to execute and deliver in the Law Society of Upper Canada's name under corporate seal or otherwise, all documents, amendments and instruments and to take all other such action as may be appropriate and requisite for the purpose of carrying into effect the foregoing resolutions.

Background

1. The Law Society sponsors the Pension Plan for the Employees of the Law Society of Upper Canada, a defined contribution plan. Recently the Law Society has undertaken a review of its Pension Plan and associated documentation to ensure compliance with current governance standards for pension plans.

2. Under the proposed governance structure, final responsibility for Plan administration rests with Convocation as prescribed by the *Pension Benefits Act*. As allowed, one of the proposed resolutions delegates these functions to be fulfilled by the Finance and Audit Committee on behalf of Convocation to better reflect the true administrative structure of the Law Society.

3. As detailed in the attached documentation titled "Pension Plan for the Employees of the Law Society of Upper Canada" (page 56), the resolutions

   - adopt the Pension Plan text,
   - confirm the existence of a Pension Committee (comprising the CEO, CFO and Director of Human Resources) which reports to the Finance & Audit Committee,
   - directs the Pension Committee to complete all necessary regulatory filings,
   - adopts the Governance Guidelines and
   - delegates administrative tasks as set out in the Governance Guidelines to the Finance & Audit Committee and the Pension Committee.

FOR DECISION:

TAB B

LIBRARYCO INC. REPORTING

The Committee recommends to Convocation that LibraryCo funding be suspended after July 4, 2005 if appropriate financial statements for the first and second quarter of 2005, and those that come thereafter are not received from LibraryCo.

Section 5.3 of the Unamimous Shareholder Agreement for LibraryCo Inc. states that:

> "(LibraryCo) shall prepare quarterly financial reports during the Fiscal Year on the operations or affairs of the Corporation. The periodic reports must be delivered to the shareholders and directors of the Corporation, LSUC, CDLPA….."

Since its inception LibraryCo has struggled to meet the reporting standards required by the Law Society. It has fallen to the Committee to deal with these recurring and unnecessary issues. As an example of past issues, copies of letters to LibraryCo dated September 23, 2004, January 26, 2005, May 2, 2005, May 17, 2005 and June 14, 2005 are attached for the information of Benchers. Please read them.

Benchers, Law Society staff and LibraryCo staff have spent a considerable amount of time attempting to improve the quality and timeliness of LibraryCo's reporting. Virtually every Audit Sub-Committee and Finance & Audit Committee meeting on the quarterly financial reports has been dominated by discussions on LibraryCo's reporting. As noted above, there has been much correspondence on the matter. There have been numerous telephone calls between the Law Society and LibraryCo with the objective of understanding and improving the financial reporting, and Law Society staff have made visits to LibraryCo with the same objective.

However the Committee received the latest report from the Audit Sub-Committee noting that the Sub-Committee had been unable to properly review the first quarter financial statements for LibraryCo because of late delivery and content problems. At our last meeting, with the assistance of Gavin MacKenzie, the Chair of LibraryCo Inc., the Committee discussed the long standing issues with LibraryCo's reporting.

The Committee concluded that the latest issues with LibraryCo's reporting should be documented in a letter to Mr. MacKenzie as Chair of LibraryCo so that all parties would be aware of what was required to remedy these first quarter financial statements, and to once again make clear what was expected from LibraryCo's reporting in future quarters.

The Law Society remits more than $6 million a year to LibraryCo and the Committee also concluded that their concerns about reporting and related governance issues were so longstanding that S(9) of By-Law 30 – County Law Libraries, should be invoked if LibraryCo did not satisfy the Committee's reporting requirements. S(9) of By-Law 30 states:

> S9(1) "Convocation may, in its absolute discretion, in respect of a fiscal year, suspend or reduce funding of (LibraryCo)" and
> S9(2) "Before taking action under subsection (1), Convocation shall give the board of directors of the Corporation notice of its intent and a reasonable opportunity to comply with the relevant provisions of this By-Law or to provide the required information."

LibraryCo's financial statements for the second quarter of 2005 are due at the Law Society on August 15. Although smaller payments are made monthly, the next significant funding instalment will be remitted to LibraryCo by the Law Society on July 4, 2005. The Committee therefore recommends to Convocation that after July 4, 2005 no further funds be provided to LibraryCo until their reporting for the first, second and all subsequent quarters and year end is received on time and with format and content that meets ordinary accounting standards and is acceptable to the Audit Sub-Committee and the Finance and Audit Committee. If this motion is approved, the Committee intends to report to Convocation in September whether the funding instalment of approximately $1.3 million due to be remitted to LibraryCo on October 3 should be withheld.

FOR INFORMATION:

TAB D

GENERAL FUND - FINANCIAL STATEMENTS FOR THE QUARTER ENDED MARCH 31, 2005

The first quarter financial statements for the General Fund are attached for information.

Law Society of Upper Canada
General Fund
Financial Statement Highlights
For the three months ended March 31, 2005

The attached unaudited financial statements for the first quarter of 2005 have been prepared on a full accrual basis consistent with the annual financial statements. Known expenses have been accrued. Revenues are recognized when they are earned. For example, membership fees are recognized equally over the course of the year. Tuition for the Bar Admission Course is recognized in the second, third and fourth quarters of the year consistent with the timing of the course.

Balance Sheet

- Cash and short-term investments have decreased by $1.1 million over the first quarter of 2004 as construction proceeds on the north wing. The trend will continue over the remainder of the year. An additional $6 million will be paid from cash and short-term investments before the project is complete in early 2006.

- Accounts receivable have increased by $1.955 million consistent with the relatively static membership fee and increased membership numbers.

- Portfolio investments have increased slightly over 2004 as realized gains from investments have been re-invested in the long-term portfolio. There is no significant difference between book and market value at the end of the quarter.

- Accounts payable and accrued liabilities have increased by $2.4 million. This is partially the result of an accrual for an anticipated litigation settlement as well as an increase in normal operating payables.

- The decrease in the capital allocation fund balance of $2.8 million from March 2004 reflects progress on the north wing project.

- Deferred revenue of $35 million is comprised largely of members' fees billed but not yet earned and Bar Admission Course tuition fees billed but not yet earned.

First Quarter Revenue and Expenses

- Annual membership fee revenue is recognized on a monthly basis. Membership fees have increased from $8.6 million in 2004 to $8.9 million in 2005 with an increase in membership of approximately 1,000 members.

- The Society received costs of $364,000 for the copyright infringement case that was successfully argued at the Supreme Court of Canada.

- Overall, expenses are tracking to 2004 and the budget with the exception of professional regulation and other expenses. Professional regulation shows an increase in expenses in 2005 of approximately $373,000 consistent with the increased resources provided for the investigation and prosecution of mortgage fraud. Other expenses have increased by approximately $746,000 reflecting an accrual of $700,000 for the anticipated settlement of a long-standing claim against the Society.

- Administrative expenses are reporting a positive variance of $201,000. The largest variance is the result of lower than budgeted recruitment costs (approximately $30,000) and EAP expenses ($53,000) in the human resources department and lower than budgeted operating costs for the information systems department ($65,000).

- Included in the budget for other expenses is a contingency allowance of $300,000 (one quarter of the annual $1.2 million). To date we have allocated funding for Tsunami relief ($44,000), 393 University leaseholds and rent

($320,000) and the Laskin event ($35,000). The majority of this spending will be reflected in future quarters in 2005.

- Bencher and Convocation is under budget as expenses for reimbursement, costs of catering for bencher functions are lower than anticipated and there have been no payments for planned remuneration. An allowance of $200,000 for the costs of bencher remuneration was included in the 2005 budget. A task force has been struck by the Finance and Audit Committee to develop a formula for implementation.

- The unrestricted fund shows a deficit of $1,094,000. This deficit compares to an anticipated budget deficit of $1.9 million in the first quarter. The 2005 budget was approved with an unrestricted fund deficit of $1.4 million to be covered by the $1.6 million fund balance from 2004. It is too early in the year to predict if the deficit will in fact approach that number by the end of the year.

- To the end of March 2005 $26,000 in grants have been approved from the J.S. Denison Fund.

Changes in Fund Balances

- With the exception of the J. Shirley Denison Fund, the Society's endowment funds were approved for transfer to the Law Society Foundation by the Public Guardian and Trustee. These statements do not reflect that transfer as the actual transfer of funds occurred early in the second quarter. With the introduction of the Licensing Process in 2006, the awarding of prizes from the endowments dependent on outstanding academic achievement in certain courses, for example, will no longer be possible. An application was submitted on January 11, 2005 to the Public Guardian and Trustee requesting authorization to transfer the Society's endowment prize funds to the Law Society Foundation and to change the purpose of the prize specific trust funds to that of bursaries. On March 23, 2005, the application was approved by the Public Guardian and Trustee.

Analysis of Balances

Note 1	Cash and Short Term Investments (including interest receivable)	Short term investments	20,015
		Bank Balance	4,914
			24,929
Note 2	Accounts Receivable/Prepaids	Fee revenue	20,376
		BAC Tuition	6,100
		Law Foundation	797
		GST	309
		Prepaid	281
		Other receivables	767
			28,630

Note 3	Capital Assets	Balance 31/12/04	18,121
		North costs to 31/03/05	1,400
		Depreciation	(462)
		Balance 31/03/05	19,059
Note 4	Accounts Payable Accrued Liabilities	Trade Payables	7,266
		Due to Comp Fund	4,591
			11,857
Note 5	Deferred Revenue	Members Fees	27,925
		BAC Tuition	6,100
		CLE	405
		Certification	125
		Lawyer referral service	250
			34,805

FOR INFORMATION:

TAB E

LAWYERS FUND FOR CLIENT COMPENSATION - FINANCIAL STATEMENTS
FOR THE QUARTER ENDED MARCH 31, 2005

The first quarter financial statements for the Lawyers Fund for Client Compensation are attached for information.

Law Society of Upper Canada
Lawyers Fund for Client Compensation
Financial Statement Highlights
For the three months ended March 31, 2005

The first quarter of 2005 has been completed and the financial position of the Lawyers Fund for Client Compensation ("the Fund") and the Fund's balance ($18.3 million) is approximately equal to what was reported in March of 2004 ($18.4 million). The Fund's Financial Statements for the three months ended March 31, 2005 identify a deficit of $1,162,000 for the quarter compared to a surplus of $1,011,000 for the first quarter in 2004.

An actuarial valuation of the reserve was prepared as at March 2005 and the balance has been increased by $861,000 over its valuation at December 31, 2004. This increase is largely due to one solicitor that is generating multiple claims to the Fund. These matters are at an early stage and there is still much uncertainty about the outcome. Without providing too much detail so as not to prejudice any future Law Society proceedings, the majority of claims relating to this member involve breach of trust claims where claimants' money was solicited by a rogue third party in an employment scheme requiring monies to be advanced by potential employees of the rogue's company. Although the claimants were not clients of the member, they may fall within the Fund's purview by virtue of the Fund's guidelines. In these cases funds were advanced to the member's trust account but ultimately paid out to the rogue. The reserve currently provides approximately $1.0 million for these claims.

As a result of this increase in the reserve and the significant increase in grants actually paid in the first quarter of 2005 over the same period in 2004, net grants expense has increased to $1,909,000 from $78,000 in the first quarter of 2004, although an actuarial valuation of the reserve was not done in March 2004. Other expenses are in line with the 2004 amounts with the exception of insurance, which was eliminated in 2005.

- First Quarter Balance Sheet

- The only significant changes in the Balance Sheet from March 2005 to March 2004 are the increase in long-term investments and the increase in the reserve for unpaid grants. The value of portfolio investments has increased consistent with the level of returns from the portfolio. Of note is the large positive variance ($799,000) in the market value of the portfolio when compared to its book value. The increase in the reserve is primarily the result of claims against a single member.

First Quarter Revenue and Expenses

- Fee revenues of $1.5 million are down by $160,000 from the first quarter of 2004. The reduction in the annual levy from $230 to $200 per member is offset by an increase in total membership. Annualized fee revenue for the Fund will approximate $6 million.

- Investment income has decreased to $322,000 from $573,000. Again, it should be noted that the Fund's long-term investment portfolio has unrealized gains of approximately $800,000.

- Grant payments of $1,057,000 are significantly higher than for the similar period in 2004 as a result of increased payments of outstanding claims in the first quarter.

- Net grants expense of $1,909,000 compared to just $78,000 in 2004 is largely attributable to the actuarial valuation of the reserve.

- The Fund's insurance coverage was eliminated in 2005 hence the lack of an expense compared to 2004.

FOR INFORMATION:

INVESTMENT COMPLIANCE REPORTS

TAB F

The investment compliance reports for the General Fund and Compensation Fund long- and short-term portfolios are attached for information.

FOR INFORMATION:

TAB G

STATEMENT OF COMPLIANCE – SHORT TERM PORTFOLIO

(pages 42 – 44)

FOR INFORMATION:

STATEMENT OF COMPLIANCE – LONG TERM PORTFOLIO

(pages 45 – 46)

FOR INFORMATION:

TAB H

COMPLIANCE REPORT – COMPENSATION FUND - FOYSTON, GORDON & PAYNE

FOR INFORMATION:

COMPLIANCE REPORT – GENERAL FUND - FOYSTON, GORDON & PAYNE

FOR INFORMATION:

TAB I

LAWPRO FINANCIAL STATEMENTS FOR THE QUARTER ENDED MARCH 31, 2005

The first quarter financial statements for the Errors & Omissions Fund and the Lawyers' Professional Indemnity Company are attached for information.

(pages 49 – 55)

TAB J

PENSION PLAN FOR THE EMPLOYEES OF THE LAW SOCIETY OF UPPER CANADA

TO: CONVOCATION

FROM: THE FINANCE AND AUDIT COMMITTEE (FINANCE COMMITTEE)

DATE: JUNE 22, 2005

RE: PENSION PLAN FOR THE EMPLOYEES OF THE LAW SOCIETY OF UPPER CANADA

The Law Society of Upper Canada sponsors the Pension Plan for the Employees of the Law Society of Upper Canada ("Pension Plan" or "Plan"). Recently, the Law Society has undertaken a review of its Pension Plan and associated documentation.
Attached are the following documents:

1. Flow chart outlining the administrative structure of the Plan (for information page 58);

2. Executive Summary of changes made to Pension Plan documents (for information page 59);

3. Pension Plan for the Employees of The Law Society of Upper Canada (page 65) (changes to be adopted by Convocation – see #5);

4. Governance Guidelines for the Pension Plan for the Employees of The Law Society of Upper Canada ("Guidelines" or "Governance Guidelines") (page 81) and Statement of Investment Policies and Procedures for the Pension Plan for the Employees of The Law Society of Upper Canada (page 99) (included in Appendix D of the Governance Guidelines) (to be adopted by Convocation – see #5);

5. Resolutions of Convocation (to be passed by Convocation) (page 120).

TO: CONVOCATION

FROM: THE FINANCE AND AUDIT COMMITTEE (FINANCE COMMITTEE

DATE: JUNE 22, 2005

RE: EXECUTIVE SUMMARY OF CHANGES TO PENSION PLAN DOCUMENTS FOR THE PENSION PLAN FOR THE EMPLOYEES OF THE LAW SOCIETY OF UPPER CANADA

This memo briefly summarizes the purpose of the attached documents for approval by Convocation. There are four pension related documents which have been drafted or reviewed by the law firm of Hicks Morley Hamilton Stewart Storie LLP. Document (d) below contains Resolutions to be passed by Convocation.

The attached documents are:

a. Page 65 - Pension Plan for the Employees of The Law Society of Upper Canada ("Pension Plan" or "Plan");
b. Page 81 - Governance Guidelines for the Pension Plan for the Employees of The Law Society of Upper Canada ("Guidelines" or "Governance Guidelines");

c. Page 99 - Statement of Investment Policies and Procedures for the Pension Plan for the Employees of The Law Society of Upper Canada (included in Appendix D of the Governance Guidelines);

d. Page 120 - Resolutions of Convocation.

The documents have been reviewed and approved by the Audit Sub-Committee of the Finance and Audit Committee. They have also been approved by the Finance and Audit Committee.

1. Background:

The Pension Plan for the Employees of the Law Society of Upper Canada (the "Law Society") was originally established on March 1, 1947 to provide benefits to employees pursuant to a group policy issued by the Standard Life Assurance Company ("Standard Life"). The Plan was amended a number of times over the years, and today the Plan operates as a defined contribution pension plan funded through a contract issued by Standard Life. Membership in the Plan is compulsory for employees hired after January 1, 2003 upon meeting the eligibility requirements outlined in the Plan. The Law Society, through the Pension Committee and in consultation with its advisors Aon Consulting Inc., is responsible for selecting the investment options which are made available to Members of the Plan. Each Member is responsible for choosing the fund (or funds) in which their contributions will be invested from a selection of investment options offered under the Plan. Member contributions, with exception of designated employees, range between 1% and 6% of their earnings and these contributions are matched by the Law Society. The term designated employee means an employee who holds an executive position with the Law Society and is designated by the Chief Executive Officer of the Law Society. Designated employees do not contribute to the Pension Plan and receive a 12% employer contribution based on their earnings.

2. Changes to Plan Documents:

(a) Pension Plan for the Employees of The Law Society of Upper Canada (page 65)

The Pension Plan text was revised and amended to reflect the Law Society's goal to have all of its pension plan documents internally consistent and legally correct. Major changes to the structure of the Pension Plan were not made, however a number of minor changes were made to the Plan text. These include:

- A new definition of Registered Retirement Income Fund was added to reflect the fact that Standard Life offers Members of the Plan a number of annuity options including a Life Income Fund and Locked In Retirement Fund;
- The definition of annual earnings was amended to include lump sum merit payments;
- The definition of spouse was amended to be in compliance with An Act to Amend Various Statues in Respect of Spousal Relationships which changes the definition of spouse in Ontario to included persons of the same sex;
- A new definition of "Designated Employee" was added to reflect employees who hold this title, please see the Pension Plan for the specific definition;
- The concept of an annuity policy was added throughout the text and replaces the term group pension policy to reflect the specific type of contract that Standard Life offers under the Pension Plan;

- Under the Portability of Benefits section of the Plan, revisions were made to reflect the fact that cash refunds or transfer values of the contributions made to the Plan include any gains attributable to plan and less any losses;

- The Plan text was revised to allow cash settlements to be paid on a lump sum basis for portability of non-locked in contributions; and

- The membership criteria for part-time members was revised to allow part-time workers who work at least an average of 20 hours per week to join the plan on the first day of the month following the date on which they complete 12 months of service. This exceeds the minimum standard set out in the *Pension Benefits Act* (Ontario).

The Pension Plan was restated in late 2003 however, in an effort to review and provide consistency among all Pension Plan documents this document was not formally adopted until a review of all pension documentation was completed. The decision to restate the Plan effective January 1, 2003 was made to reflect the date that membership eligibility requirements and contribution levels changed.

(b) Governance Guidelines for the Pension Plan for the Employees of The Law Society of Upper Canada (page 81)

A new document was drafted to establish a framework for Pension Plan governance for the Law Society. It reflects the Law Society's on going commitment to establishing good governance practices respecting its Pension Plan management and embracing changing industry standards which seek to create more transparency and accountability for pension plan management. In part, this changing standard is derived from the introduction of the Canadian Association of Pension Supervisory Authorities ("CAPSA") Guidelines which were introduced in October 2004. Through CAPSA, a new industry standard has emerged which seeks to ensure that pension plans operate under a formalized governance framework such as the one developed by the Law Society. The consultation for this framework began at the Law Society in 2003 and the Guidelines represent the culmination of extensive discussions among members of the Law Society's Pension Committee and between the Pension Committee and its external advisors.

The purpose of the Guidelines is to establish a framework for governing the operation of the Plan. The Guidelines are a 44 page document which sets out the responsibilities of all participants involved in Plan governance. A section has been created to outline duties and responsibilities for both the Finance Committee and the Pension Committee, the two main bodies responsible for Plan governance. It is contemplated that Convocation as the legal Administrator of the Plan will pass a resolution adopting the governance structure described in the Guidelines and will approve the Guidelines.

Under the Pension Plan governance structure, the Pension Committee is charged with the task of day to day administration of the Pension Plan. The Pension Committee is comprised of the Chief Executive Officer of the Law Society; the Chief Financial Officer of the Law Society; and the Director of Human Resources of the Law Society. It is required to meet as a committee on at least an annual basis and monitor the investment and administration of the Plan for compliance with the Pension Plan's terms and conditions and with regulatory obligations. This includes monitoring the investment performance of the Plan and investment managers. The Pension Committee also makes plan amendments of a technical or administrative nature.

Finally, the Pension Committee is responsible for hearing reports submitted by external providers and preparing an annual report for the Finance Committee. Detailed requirements of this report are listed in Appendix B of the Guidelines (page 95).

The Pension Committee has also been given responsibility for recommending the appointment of external providers to the Finance Committee by undertaking a thorough review of existing and potential external providers and selecting providers that best meet the Law Society's needs and interests. The Pension Committee will present the findings of any reviews it conducts on external providers to the Finance Committee along with its recommendation for appointment. The Pension Committee is responsible for supervising external agents and providers and internal Law Society staff who deal with pension issues.

In addition, the Guidelines include a reference to the Employee Advisory Committee. The Employee Advisory Committee is comprised of 8 to 10 active Pension Plan members who volunteer to serve on the committee and act as a focus group to discuss pension plan issues. The Employee Advisory Committee does not have a formal role in pension plan governance, however, it has a mandate to promote the Pension Plan and answer questions about the Plan to Law Society employees.

Under the governance structure, final responsibility for Plan administration rests with Convocation acting through the Finance Committee. This requirement is prescribed by the *Pension Benefits Act* (Ontario), which sets out the legal requirements of pension plan administration. The legal requirement for the Plan's administration and governance lies with Convocation, however through a delegating resolution to be passed by Convocation, these functions are to be fulfilled by the Finance Committee on behalf of Convocation.

Responsibilities of the Finance Committee are located at section 5 (page 85) of the Guidelines and include:

- Meeting with the Pension Committee and hearing a report by a member of the Committee at least annually;
- Adopting the Governance Guidelines;
- Approving the appointment of external agents and advisors on the recommendation of the Pension Committee;
- Reviewing, on a periodic basis, the minutes of the Pension Committee;
- Adopting the Statement of Investment Policy & Procedures for the Pension Plan, based on the recommendation of the Pension Committee; and
- Reviewing a written report from the Pension Committee outlining an assessment of the governance of the Plan, at least every three years.

It is confirmed that, in anticipation of Convocation approving the delegation Resolutions, the Finance Committee has adopted the Governance Guidelines at its meeting on June 9, 2005.

(c) Statement of Investment Policies and Procedures for the Pension Plan for the Employees of The Law Society of Upper Canada

This document was revised to be consistent in wording with the other Plan documents noted above. It is included as Appendix D to the Governance Guidelines (page 99). The Finance Committee adopted the Statement of Investment Policies and Procedures at its meeting on June 9, 2005.

3. Background about The Law Society and Standard Life:

The Law Society has maintained a relationship with the Standard Life Assurance Company since the Pension Plan's inception in 1947. This relationship has evolved and now Standard Life acts as the Plan's Custodian, provides investment managers and assists in recordkeeping.

4. Resolutions:

Resolutions to be passed by Convocation (page 120) consist of:

- Adoption of the Pension Plan text;
- Directing the pension committee to complete all necessary regulatory filings;
- Adopting the Governance Guidelines;
- Delegating administrative tasks as set out in the Governance Guidelines to the Finance Committee; and
- Confirming the existence and role of the Pension Committee.

The resolutions of Convocation form an integral part of the new pension governance structure of the Law Society. Since Convocation is the body responsible for overseeing the Pension Plan pursuant to the *Pension Benefits Act* (Ontario), the passing of the above resolutions is necessary to delegate administrative duties and authority. Further, these resolutions assist in instituting best practices and limiting potential liability with respect to the Pension Plan. Overall, the passing of these resolutions by Convocation support the Pension Committee's decision to work within the newly developed pension Governance Guidelines and incorporate them into the Law Society's pension administration.

PENSION PLAN

FOR THE EMPLOYEES OF
THE LAW SOCIETY OF UPPER CANADA

Registration Number 268052

JANUARY 2005

INTRODUCTION

This document sets out the terms of the Pension Plan for the Employees of The Law Society of Upper Canada (the "Plan") as revised on January 1, 2003.

The Plan originally commenced on March 1, 1947 with benefits provided by The Standard Life Assurance Company of Canada under Group Annuity policy number Gr. P. W. 10058 (money purchase benefits accrued to March 1, 1969) and under Pooled Investment Fund policy number Gr. P. W. 11215 PIF (defined benefits accrued on and after March 1, 1969), herein referred to as the "Prior Plan". The value of the benefits accrued to December 31, 1987 was determined by an actuary and allocated to the Plan on a money purchase basis under Tri-Plan policy number Gr. P. W. 73931 on January 1, 1988.

The Plan continues to be money purchase plan funded through a Group Retirement Solutions contract issued by The Standard Life Assurance Company of Canada. Effective May 31, 1995, the value of the assets held under group annuity policy number Gr. P.W. 73931 issued by The Standard Life Assurance Company of Canada was transferred to the Group Retirement Solutions contract group annuity policy number RS100010-S0141, and such value was allocated for the credit of the former plan members of the Tri-Plan policy, Gr. P.W. 73931, in the proportion of Employee to Employer required and/or voluntary contributions as was advised to The Standard Life Assurance Company of Canada by the Plan administrator. The terms of the Plan as described in this document apply for all benefits due in respect of the transferred amounts unless otherwise stated.

In accordance with the Report on the Transfer of Assets Following a Division of Business as at April 1, 1998, the value of the assets in respect of the Members of the Plan, who were employed by the Lawyers' Professional Indemnity Company as at April 1, 1998, was transferred to the Pension Plan for the Employees of Lawyers' Professional Indemnity Company, funded through Group Retirement Solutions contract No. RS100848-S0141, with The Standard Life Assurance Company of Canada.

In accordance with the Report on the Transfer of Assets Following a Division of Business as at April 1, 1999, the value of the assets in respect of the Members of the Plan who were employed by Legal Aid Ontario as at April 1, 1999, was transferred to the defined contribution component of the Legal Aid Ontario Employees' Pension Plan, funded through Group Retirement Solutions contract No. RS101351-S0141, with The Standard Life Assurance Company of Canada.

The Employer is responsible for selecting the investment options which are made available to Members for the purpose of investing contributions made by them and on their behalf to the Plan. Contributions to the Plan will be credited with such interest, dividends, gains and losses as can reasonably be attributed to the Funds which hold them. All investments will be held in the name of, or for the benefit of the Plan. Furthermore, contributions in respect of each Member of the Plan together with any other eligible amounts allocated to a Member in accordance with the terms of the Plan will be maintained in a separate account. Such amounts will be applied under the terms of the Group Retirement Solutions contract in accordance with the requirements of Applicable Legislation which will also govern the operation of the Plan. Unless stated otherwise herein, all contributions made to the Plan on behalf of a Member by the Employer are in respect of service rendered in Canada. The Standard Life Assurance Company of Canada will only assume liability for payment of those benefits payable from an annuity, Registered Retirement

Income Fund (“RRIF”), Locked-In Retirement Income Fund (“LRIF”) or Life Income Fund (“LIF”) purchased from it.

The Employer will be the administrator of the Plan and will be responsible for the overall operation and administration of the Plan. The Employer has retained The Standard Life Assurance Company of Canada to assist it with the administration of the Plan. The Employer will remit contributions to The Standard Life Assurance Company of Canada to be invested in accordance with the requirements of Applicable Legislation. Investment earnings under the Plan will be allocated to each Member’s account on a reasonable basis and, in accordance with Applicable Legislation, such allocations will occur no less frequently than once annually. Fees and expenses related to the general administration of the Plan are paid from the pension fund unless they are paid by the Employer.

Contributions may be deposited under the Plan by the Employer monthly within the 30 days from the end of the month in which they are due.

DEFINITIONS

"Annual Earnings" means the basic remuneration received from the Employer during the year, including lump sum merit payments but excluding any payment for overtime, bonuses and gifts.

During a contributory period of leave of absence, the Annual Earnings of a Member are to be a prescribed amount for the purposes of the Plan. While this prescribed amount will generally be equal to the Member's rate of Annual Earnings in effect immediately prior to the date of leave of absence without pay, it is more specifically determined in accordance with, and limited by Applicable Legislation.

"Applicable Legislation" means the *Pension Benefits Act* (Ontario), R.S.O. 1990 or any similar Act (and the regulations issued thereunder) having jurisdiction over the Plan and will include the applicable provincial rules and regulations and/or the federal *Income Tax Act* (Canada) and Regulations governing registered pension plans.

"Assurance Company" means The Standard Life Assurance Company of Canada.

"Commencement Date of the Plan" means March 1, 1947, the original effective date of the Plan.

"Continuous" in relation to employment, membership or service, means without regard to periods of temporary suspension of employment, membership or service and without regard to periods of lay-off from employment.

“Designated Employee” means an Employee who holds an executive position with the Employer and is designated as a “Designated Employee” by the Chief Executive Officer of the Employer or in the case of the Chief Executive Officer, designated by Convocation for the purpose of participation in the Plan in accordance with the Addendum To The Pension Plan For The Employees of The Law Society of Upper Canada.

“Effective Date” means May 31, 1995, the effective date of group annuity policy number RS100010-S0141.

"Employee" means a person employed by the Employer other than:

(a) an Employee who, as at January 1, 1988, elected to continue to participate in the Prior Plan; or

(b) any Chief Executive Officer of the Employer hired on or after January 15, 2001 who elects not to participate in the Plan.

"Employer" means The Law Society of Upper Canada.

"Funds" means the investment options selected by the Employer which are offered to Members in connection with the Plan.

"Maturity Date" means December 31 coincident with or following the date the Member or Spouse, as applicable, attains age 69, or any other time as provided by the *Income Tax Act* (Canada). Upon reaching Maturity Date, the payment of retirement income to the Members as provided for by the Plan, if not having commenced earlier, must commence.

"Member" means an Employee who has enrolled in the Plan in accordance with the requirements of Clause 2.

"Plan Year" means the period commencing on January 1 in any year and ending on the December 31 of the same year.

“Registered Retirement Income Fund” means any form of Registered Retirement Income Fund prescribed by Application Legislation and includes a Life Income Fund if provincially prescribed as such, and may mean a Locked-In Retirement Fund, in provinces that provide for a Locked In Retirement Fund.

"Spouse" means, in respect of a Member, a person to whom a Member has been married to each other or is not married to the Member but is living with the Member in a conjugal relationship continuously for a period of not less than three years; or in a relationship of some permanence, if they are the natural or adoptive parents of a child, as defined in the *Family Law Act* (Ontario).

"YMPE" means the year’s maximum pensionable earnings level as defined under the Canada Pension Plan.

MEMBERSHIP

Permanent full-time Employees in the service of the Employer will be eligible to join the Plan on the first day of the month following the date on which they complete 12 months of service.

Employees may join the Plan on the first day of the month following the completion of eligibility requirements but are required to join the Plan on the first day of the month following the attainment of age 30.

With effect from January 1, 2004, permanent full-time Employees hired on or after January 1, 2003 are required to join the Plan on the first day of the month following the date on which they complete 12 months of service.

Part-time permanent Employees who work at least an average of 20 hours per week are required to join the Plan on the first day of the month following the date on which they complete 12 months of service.

To become enrolled in the Plan an application for membership must be completed and submitted.

The Employer reserves the right to waive the eligibility requirements for membership in the Plan.

Note: Persons employed with The Law Society of Upper Canada temporarily on a contract basis are not eligible to join the Plan. Employment on contract is defined to include employment as an independent contractor, through agencies, or on payroll.

CONTRIBUTIONS

Each Member of the Plan will be required to contribute, by payroll deduction, a minimum of 1% and up to a maximum of 6% of his or her Annual Earnings.

The Employer will contribute, on behalf of each Member, an amount equal to the required contributions of the Member. Upon joining the Plan, if the Member does not elect a contribution percentage, the Employer will deduct 1% of the Member's Annual Earnings from his or her payroll and make a matching contribution to the Plan on behalf of the Member.

A Member may elect to change the level of his or her contribution level for each calendar year by written notification submitted to the Employer by October 1st of the immediate previous calendar year.

Employer contributions and Member contributions, if any, are deductible under the provisions of subsections 147.2(1) and 147.2(4), respectively, of the *Income Tax Act* (Canada). Such Employer and Member contributions together with any forfeited amounts reallocated to Members will not exceed the maximum amounts which may be used to establish a Member's pension adjustment by virtue of subsection 147.1(8) of the *Income Tax Act* (Canada). Contributions must be returned to the contributor in the event that any contributions or reallocations made in respect of a Member in a calendar year cause the Plan to become revocable.

A Member may transfer to the Plan on a direct plan to plan basis any amount due to him or her from another registered plan. Such amounts will be transferred and administered under the Plan in accordance with the Applicable Legislation.

NORMAL RETIREMENT DATE

A Member's Normal Retirement Date will be the first day of the month coincident with or following his or her 65th birthday.

RETIREMENT BEFORE OR AFTER NORMAL RETIREMENT DATE

A Member may retire early on the first day of any month within the 10 years prior to his or her Normal Retirement Date. If a Member defers retirement, contributions will continue to be made and the Member will receive his or her pension on the first day of the month following retirement but not later than the 31st of December of the year in which the Member attains age 69.

TERMINATION OF EMPLOYMENT

A Member who terminates his or her employment before Normal Retirement Date, and before completing a Continuous period of at least two years of membership in the Plan and/or Prior Plan, will receive, in accordance with the Member's election, either a cash refund of the value of the Member's contributions to the Plan, or, a deferred life annuity (including a Registered Retirement Income Fund) purchased from a Canadian licensed insurance company payable from Normal Retirement Date for the amount of pension which can be purchased by the value of the Member's contributions to the Plan, adjusted for any losses or earnings.

If, at the date of termination of employment, the Member has completed a Continuous period of two years of membership in the Plan and/or Prior Plan, benefits are locked-in and he or she may not receive a cash refund but instead will receive a deferred life annuity purchased from a Canadian licensed insurance company and payable from Normal Retirement Date in respect of contributions made by the Member and the Employer on behalf of the Member, adjusted for any losses or earnings. This deferred life annuity cannot be surrendered for cash.

In lieu of a deferred life annuity, the Member can exercise his or her portability options in accordance with Clause 8, Portability of Benefits.

That part of the value of Employer contributions not vested upon termination of employment will be forfeited by the Member. Subject to Applicable Legislation, such forfeited amounts and all earnings or losses attributable to the forfeited amounts will be applied by the Employer as a credit against subsequent Employer contributions, used to pay administrative expenses under the Plan, returned to the Employer, or reallocated in a uniform manner to Members actively participating in the Plan and/or Prior Plan. All forfeitures must be paid or applied by December 31st of the calendar year following the date of their occurrence.

A Member cannot withdraw contributions from the Plan while in the service of the Employer, nor can a Member who leaves the service of the Employer make further contributions under the Plan.

Note: Members who are within ten years of attaining their Normal Retirement Date on the date of termination of employment may elect to purchase an annuity from a Canadian licensed insurance company which provides an early retirement pension in lieu of any of the other options otherwise available in accordance with the terms of this Clause.

DEATH

Subject to any applicable law, a Member may designate a beneficiary and subsequently change this beneficiary, by written notice or in his or her will. The Spouse of the Member will be deemed to be his or her designated beneficiary, in respect of contributions made by the Member and the Employer on behalf of the Member (adjusted to include earnings and losses) accrued on and after January 1, 1987, regardless of any other beneficiary designation, unless a waiver has been signed by the Member's Spouse in the manner prescribed by Applicable Legislation.

If a Member dies before retirement, a cash refund will be made of the value of those contributions to the Plan made by or on behalf of the Member, including contributions made by the Employer on behalf of the Member, less any losses attributed to those contributions allocated to the Fund(s) selected by the Member and including any gains attributed to those

contributions allocated to the Fund(s). Payment will be made to the designated beneficiary or estate of the Member and/or to the Member's Spouse, if any, according to their entitlement under the Plan.

A Spouse may exercise portability rights in accordance with Clause 8, (Portability of Benefits) and Applicable Legislation, or may elect to apply the refund towards the purchase of an immediate annuity for life or a deferred annuity for life from a Canadian licensed insurance company, beginning not later than his or her Maturity Date or, if the Spouse has already reached Maturity Date, within one year after the date of the Member's death. A Spouse may choose to purchase an annuity which may be guaranteed for a period not exceeding 15 years.

Any beneficiary designated under the Plan, recognized as a Common-law Partner under the *Income Tax Act* (Canada), may exercise portability rights in accordance with Clause 8, Portability of Benefits and Applicable Legislation.

PORTABILITY OF BENEFITS

Amounts payable under the Plan are fully portable in accordance with sections (a) and (b) below:

(a) Portability of Non Locked-In Contributions:

An election may be made by a Member to receive a taxable cash refund or to transfer the value of the contributions made to the Plan by the Member and by the Employer on behalf of the Member, less any losses and including any gains attributed to the contributions:

(i) another registered pension plan if the other pension plan so allows, or

(ii) a registered retirement savings plan, or

(iii) a Registered Retirement Income Fund, or

(iv) a deferred life annuity contract may be purchased.

(b) Portability of Locked-In Benefits:

An election may be made by the Member to transfer the value of contributions made to the Plan by the Member and by the Employer on behalf of the Member, less any losses and including any gains attributed to the contributions:

(i) another registered pension plan if the other pension plan so allows, or

(ii) a Registered Retirement Savings Plan (RRSP) that meets the conditions stipulated by Applicable Legislation with respect to the continuing administration of the funds transferred, or

(iii) any form of Registered Retirement Income Fund,

provided that no transfer will be effected except upon receipt of evidence that the value of contributions to be transferred will be administered in accordance with the conditions prescribed by Applicable Legislation regard portability of locked-in benefits.

Alternatively, a deferred or immediate life annuity contract, as the case may be, may be purchased from a Canadian licensed insurance company.

Notes: (a) Contributions are determined to be "locked-in" if such contributions cannot be provided as a cash refund under the terms of the Plan.

(b) In certain provinces, the RRSP referred to in subsection (b)(ii) above is called a Locked-In Retirement Account, and in other provinces this RRSP is called a Locked-In Registered Retirement Savings Plan (Locked-In RRSP).

NORMAL FORM OF PENSION

When a Member retires, the total value of all contributions to the Plan made by the Member and the Employer on behalf of the Member, will be used to purchase an annuity which provides a pension for the Member. The pension is payable by monthly installments in equal periodic amounts for a minimum of ten years and as long thereafter as the pensioner lives.

If a Member has a Spouse, the pension payable from the annuity purchased shall be payable during the lifetime of the Member, provided that if the Member predeceases his or her Spouse, pension payments shall continue to be made during the lifetime of the Spouse at the rate of 60% of the amount being paid to the Member immediately prior to the date of his or her death.

A pension that has been purchased may not be surrendered or commuted once pension payments have commenced, except in the event of death of a pensioner.

Notes: (a) Pensions must be purchased from a person licensed or otherwise authorized ` under the laws of Canada or of the province to sell such pensions.

(b) At the date of retirement of the Member, he or she may elect one of the portability options described in Clause 8, (Portability of Benefits).

OPTIONAL FORMS OF PENSION

At any time prior to actual retirement, a Member may elect to purchase an annuity paid in one of the forms described below. A Member who has an eligible Spouse may elect a joint annuitant option which provides his or her surviving Spouse with a pension continuing at a higher rate than that described in Clause 9, (Normal Form of Pension), without exceeding 100%. However, no other optional forms of pension may be elected by a Member who has an eligible Spouse, without the submission of a provincially approved waiver form signed by the Member and his or her Spouse within the 12 months immediately preceding the Member's date of commencement of pension.

OPTIONAL GUARANTEED PERIODS: The Member may elect to purchase an annuity, which pays a pension to the Member

(i) during his or her lifetime with no further guarantee, or

(ii) during his or her lifetime and in the event of his or her death before the end of the chosen guaranteed period (not exceeding 15 years) to the beneficiary for the balance of the period.

JOINT ANNUITANT OPTION: The Member may elect to purchase an annuity which pays a pension to the Member with the provision that after the death of the Member, payments will continue to the Spouse during his or her lifetime.

The Member selects the level of pension to be paid to the Spouse when electing this option. If either the Member or Spouse dies before pension payments are due to commence, the election of this option will automatically be cancelled.

ANNUAL INCREASE OPTION: The Member may elect to purchase an annuity which pays a pension to the Member for his or her lifetime, with the provision that the pension will be increased on January 1st each year at a rate not exceeding 4% per annum. This option must be selected by the Member at the time of his or her retirement and is available with or without a guaranteed period.

LEAVES OF ABSENCE

A Member who is required to contribute to the Plan who

(a) goes on a statutory maternity leave or parental leave, or

(b) is absent from work due to a work-related injury, and is receiving a benefit in accordance with the *Workplace Safety and Insurance Act*,

may elect to continue to make Member contributions. If the Member so elects, the Employer must continue to contribute on the Member's behalf during the maternity or parental leave period or, in respect of a work-related injury, for a period of one year following the date a work-related injury occurred, in accordance with Applicable Legislation.

If the leave of absence is other than described above and is with pay, the Member contributions, if applicable, may either continue to be made or may be discontinued, at the option of the Member. If the Member elects to continue to make contributions, Employer contributions, on behalf of the Member, will continue to be made. If such absence is without pay, Member and Employer contributions may either continue or be discontinued during the period of absence, at the discretion of the Employer.

Any period of leave of absence with or without pay will count as Continuous service and Continuous membership under the Plan.

When contributions to the Plan continue during periods of leaves of absence without pay, such contributions will be based on the Member's rate of Annual Earnings in effect immediately prior to the leave of absence to a cumulative maximum of five years worth of full-time remuneration upon which contributions may be made plus an additional three such years in respect of maternity or parental leave. Any period of maternity or parental leave must be in accordance with Applicable Legislation.

ASSIGNMENT

The contributions provided under the terms of the Plan are not capable of being assigned, charged, anticipated, given as security, or surrendered.

EVIDENCE OF AGE

Evidence satisfactory to the Plan administrator of the age of Members, of Spouses with entitlements to a pre-retirement death benefit, and of any persons who are designated as joint annuitants must be produced if requested.

CASH SETTLEMENT

Locked-in contributions under the Plan may be payable as a lump-sum cash settlement on the prescribed basis and in the prescribed manner, if:

(a) the annual pension, payable from an annuity purchased, at the Normal Retirement Date is less than 2% of the YMPE at the date the pension becomes payable, or

(b) the former Member has an illness or physical disability that is likely to considerably shorten his or her life expectancy, as certified by a medical practitioner.

CHANGE OR TERMINATION OF THE PENSION PLAN

The Employer intends to maintain the Plan in force but reserves the right to amend or discontinue the Plan.

If the Plan is amended, the contributions provided in respect of remuneration and service prior to the date of amendment will not be adversely affected. Replacement of the Plan by another will be treated as an amendment to the Plan unless the requirements of Applicable Legislation stipulate otherwise.

If the Plan is discontinued, the total value of all Member contributions and Employer contributions made on behalf of the Member, will be used to purchase an annuity which pays a pension or any other options otherwise available to the Member upon termination of employment. If a surplus should result it will be returnable to the Employer, subject to Applicable Legislation. The assets held under the Plan will not be distributed without the prior written consent from the Superintendent of Financial Services, Ontario.

SPOUSAL BREAK-UP

Upon notification, the contributions made by and on behalf of a Member included in a decree, order or judgment of a competent tribunal or pursuant to a written agreement in settlement of rights out of a spousal break-up will be divided and administered in accordance with Applicable Legislation.

DISCLOSURE

The terms and conditions of the Plan must be given to an eligible Employee within 60 days following the earlier of the date on which employment commences and the date on which the Plan is established or otherwise within 60 days prior to an Employee becoming eligible to join

the Plan. A Member must also be supplied with the information of any change in the terms and conditions of the Plan within 60 days after registration of a Plan amendment and with any other information which may be prescribed by Applicable Legislation.

Within six months after the end of a Plan Year, the Plan administrator will provide to each Member a statement indicating his or her entitlement under the Plan. A separate copy will be provided to the Spouse on request.

Upon written request from a person entitled to benefits under the Plan, including a Member, former Member or Spouse, or the duly authorized representative of any such person, the Plan administrator will make available for inspection all documents and information in respect of the Plan and pension funds that is prescribed under Applicable Legislation. Such persons also have the right to receive information and details of entitlements and options on termination, death and retirement before settlement is made. The Plan administrator must comply within the prescribed period of time as set out by Applicable Legislation.

AGENTS

The Employer, The Law Society of Upper Canada, may in its capacity as legal administrator of the Plan, delegate certain administrative duties to third parties including external agents and employees of The Law Society of Upper Canada.

ADDENDUM

TO THE PENSION PLAN

FOR THE EMPLOYEES OF

THE LAW SOCIETY OF UPPER CANADA

(applicable to the Designated Employees)

This Addendum is in addition to and forms part of the Plan. All definitions and provisions contained in the Plan apply to the terms of this Addendum unless otherwise stated herein. The provisions of this Addendum will be effective January 1, 2003 and are applicable only in respect of the Designated Employees.

MEMBERSHIP

An Employee who is a Designated Employee will join the Plan on the first day of the month following the date of hire or becoming a Designated Employee if later.

To become enrolled in the Plan an application for membership must be completed and submitted.

CONTRIBUTIONS

Designated Employees are not required nor permitted to contribute to the Plan.

The Employer will contribute on an annual basis, on behalf of each Designated Employee, an amount equal to 12% of the Member's Annual Earnings.

Employer contributions are deductible under the provisions of subsections 147.2(1) and 147.2(4), respectively, of the *Income Tax Act* (Canada). Such contributions together with any forfeited amounts reallocated to Designated Employees will not exceed the maximum amounts which may be used to establish a Designated Employee's pension adjustment by virtue of subsection 147.1(8) of the *Income Tax Act* (Canada). Contributions must be returned to the Employer in the event that any contributions or reallocations made in respect of a Designated Employee in a calendar year cause the Plan to become revocable.

A Designated Employee may transfer to the Plan on a direct plan to plan basis any amount due to him or her from another registered plan. Such amounts will be transferred and administered under the Plan in accordance with Applicable Legislation.

PENSION PLAN
FOR THE EMPLOYEES OF
THE LAW SOCIETY OF UPPER CANADA

POLICY No. RS100010-S0141

The Pension Plan for the Employees of The Law Society of Upper Canada, amended and restated as at January 1, 2003, is hereby accepted and adopted.

ADOPTED on behalf of
THE LAW SOCIETY OF UPPER CANADA

_____ _____
Date Signature

_____
Title

LAW SOCIETY OF UPPER CANADA

PENSION PLAN GOVERNANCE STRUCTURE

AND GUIDELINES

1. HISTORY AND BACKGROUND OF THE PLAN

The Pension Plan for the Employees of The Law Society of Upper Canada (the "Plan" and/or "Pension Plan") originally commenced on March 1, 1947 with benefits provided by The Standard Life Assurance Company under a group annuity. This Plan allowed for money purchase benefits to accrue to March 1, 1969 and for defined benefits to accrue on and after March 1, 1969. The value of the benefits accrued to December 31, 1987 was determined by an actuary and allocated to the Plan on a money purchase basis under a Tri-Plan policy on January 1, 1988.

Today, the Plan continues to be a money purchase plan, or defined contribution pension plan, funded through a contract issued jointly by The Standard Life Assurance Company and its subsidiary, The Standard Life Assurance Company of Canada referred to by The Standard Life Assurance Company as the "Group Retirement Solutions" contract. Membership in the Plan is compulsory for employees hired after January 1, 2004 upon meeting the eligibility requirements. Members of the Plan include all employees of The Law Society who have joined the Plan ("Member(s)" and/or "Member(s) of the Plan").

The Law Society of Upper Canada (the "Law Society" or "Employer"), is responsible for selecting the investment options which are made available to Members for the purpose of investing contributions made by them and on their behalf to the Plan. All investments are held in the name of, or for the benefit of the Plan. Furthermore, contributions in respect of each Member of the Plan together with any other eligible amounts allocated to a Member are maintained in a separate account. Such amounts are applied under the terms of the Group Retirement Solutions contract in accordance with the requirements of the *Pension Benefits Act* (Ontario) and the *Income Tax Act* (Canada) (the "Applicable Legislation") which govern the operation of the Plan. Member contributions range between 1% and 6% of the Member's earnings. Employer contributions on behalf of a Member are equal to the Member's contributions, with the exception of Designated Employee(s).

Each Member chooses the investment for the Member's contributions, and the Employer's contributions made on behalf of the Member from the selection of investment options offered under the Plan from time to time.

The Law Society is the legal administrator of the Plan and is responsible for the overall operation and administration of the Plan. The Law Society has retained The Standard Life Assurance Company to assist it with the administration of the Plan. The liabilities of the Plan

are equal to the sum of the amount balances in the Members' individual accounts. The size of the liabilities of the Plan and each Member's ultimate retirement benefit is thus completely dependent on the amount of contributions to Member accounts, and the investment earnings, if any, on the contributions.

2. INTRODUCTION

Pension plan governance is the framework that is put into place to ensure that the administrator of a pension plan meets its fiduciary responsibilities and duties. The pension plan governance structure and governance guidelines being adopted by the Law Society for the Pension Plan for the Employees of the Law Society follow.

3. GOVERNANCE PRINCIPLES

The following principles are adopted by the Law Society respecting the governance of the Plan:

1. The Pension Plan will have a clear mission as defined in the Mission Statement;

2. Those involved in Plan governance will consider the interests of the Members and the beneficiaries of the Plan;

3. Responsibilities and accountabilities are to be allocated clearly. Each participant in governance, management and operations of the Plan shall have a clearly defined and documented role, and an identified party to whom he/she is accountable. Accountability is enhanced by disclosure to the party to whom he or she is accountable;

4. The governing parties shall monitor compliance with established documented objectives; and

5. The persons with responsibilities for governance, management and operations shall be qualified and knowledgeable. There shall be a periodic assessment of the governance of the Plan. The governance process must be reviewed and modified over time to ensure its effectiveness.

4. GOVERNANCE STRUCTURE

The following parties are the major participants in the governance of the Plan:

1. The Law Society, as employer of the employees eligible to participate in the Plan;

2. Convocation is a meeting of Benchers with authority to govern the affairs of the Law Society;

3. The Finance and Audit Committee of Convocation (the "Finance Committee" including "Member(s) of the Finance Committee"), which has been delegated authority by Convocation to act on its behalf in carrying out its obligations with respect to the Pension Plan;

4. The Committee (also referred to as the "Pension Committee" and/or "Member(s) of the Committee" and/or "Committee Member(s)"), which has been appointed by

the Finance Committee. Responsibility for the day to day governance, management and operation of the Plan rests with the Pension Committee, subject to the oversight of the Finance Committee;

5. The following members of the Law Society's management – the Chief Executive Officer ("CEO"), the Chief Financial Officer ("CFO"), and the Director of Human Resources ("Director of HR") to whom the Finance Committee has delegated certain tasks;

6. The employees of the Law Society who assist the Finance Committee and/or the Pension Committee with certain tasks (the "Employees"); and

7. External agents and advisors who are retained for specific duties set out in their contracts and mandates. Agents and advisors include the following and are identified specifically in Appendix A (page 17):

   a. Custodian;
   b. Auditor;
   c. Legal Counsel;
   d. Investment Managers;
   e. Recordkeepers; and
   f. Consultant.

5. TERMS OF REFERENCE OF THE PARTIES –THE FINANCE COMMITTEE

A. General

Convocation, acting through the Finance Committee, has two roles in respect of the Plan. As the directing mind of the Law Society, it is the legal administrator of the Plan pursuant to section 8 of the *Pension Benefits Act* (Ontario) (the *"PBA"*). Convocation is also the sponsor of the Plan. Convocation has delegated responsibilities towards administration and governance of the Pension Plan to the Finance Committee.

B. Administrator

1. Law Society, as the administrator is at the center of pension plan management and conduct, and as such is the entity ultimately responsible to all participants – the plan beneficiaries, the plan sponsor and the regulatory authorities;

2. Law Society as administrator has delegated its duties to the Finance Committee;

3. Many of the Finance Committee's administrative duties can be performed by other entities, in particular the Pension Committee and external agents. However, the ultimate responsibility for administration of the Plan lies with the Finance Committee;

4. As the administrator, the Law Society, along with the Pension Committee, is obliged to act in the best interests of the Plan's beneficiaries and is subject to fiduciary obligations under the common law and under the *Pension Benefits Act* (Ontario);

5. The Finance Committee and the Pension Committee must satisfy themselves that the Pension Plan complies with Applicable Legislation and the terms of the Pension Plan in the following areas:

    a. Plan administration requirements;

    b. Plan contribution requirements; and

    c. Pension fund investment requirements.

C. Governance

1. The Finance Committee shall adopt and amend the governance guidelines for the Plan as required based on the recommendation of the Pension Committee;

2. The Finance Committee will appoint, on the recommendation of the Pension Committee, external agents and advisors to the Plan, including:

    a. Custodian;
    b. Auditor;
    c. Legal Counsel;
    d. Investment Managers;
    e. Third Party Administrator or Recordkeepers; and
    f. Consultant.

3. The Finance Committee will review on a periodic basis the activities and minutes of the meetings of the Pension Committee;

4. The Finance Committee will meet with the Pension Committee or its Chair on a periodic basis but no less frequently than annually. Contents of these reports will include information referenced in these guidelines and outlined at Appendix B and

5. The Finance Committee will avoid any conflicts of interest with respect to the Plan, as outlined in Appendix C.

D. Asset Management

1. The Finance Committee will adopt the Statement of Investment Policy & Procedures for the Pension Plan for the Employees of the Law Society of Upper Canada (the “SIP&P”) and any amendments to the SIP&P, based on the recommendations of the Pension Committee, as required. The SIP&P is found at Appendix D.

E. Governance Review

1. The Pension Committee will periodically, but not less frequently than every three years, conduct an assessment of the governance of the Plan;

2. The review will be conducted by the Pension Committee, or an agent appointed by the Committee, and a written report will be presented to the Finance Committee;

3. The report will include topics such as:

   a. The Committee's achievements of its Terms of Reference;

   b. The degree of adherence to the governance principles; and

   c. The effectiveness of the governance guidelines.

F. Plan Sponsor

1. In its role as the Plan's sponsor, the Law Society, acting through the Finance Committee, is responsible for adopting, amending, winding up and contributing to the Plan.

6. TERMS OF REFERENCE OF THE PARTIES - THE PENSION COMMITTEE

A. General

The Finance Committee is assisted in the overall administration of the Plan and in overseeing the investment of the Plan assets by the Pension Committee, subject to final approval of the Finance Committee. Under the governance and reporting structure set out in this document, the Pension Committee reports to the Finance Committee.

B. Objectives of the Pension Committee

1. To ensure that the investment and administration of the Plan comply with Plan terms and conditions and with Applicable Legislation, including the monitoring of the investment performance and managers from time to time;

2. To ensure that the policies adopted by the Committee for purposes of administering the Plan apply with Applicable Legislation; and

3. To recommend Plan amendments to the Finance Committee.

C. Membership of the Pension Committee

1. The Pension Committee shall be composed of:

   a. The Chief Executive Officer of the Law Society;
   b. The Chief Financial Officer of the Law Society;
   c. The Director of Human Resources of the Law Society; and
   d. Any additional members appointed at the discretion of the Finance Committee.

2. Changes to the composition of the Pension Committee shall be communicated to the Finance Committee by the Pension Committee;

3. A secretary will be selected by the Pension Committee (the "Secretary") and will sit on the Pension Committee in a non-membership role; and

4. Membership on the Pension Committee will not be based on a fixed term, however, the Finance Committee will review the composition of the Committee from time to time and amend or change the composition of the Committee as necessary and shall note any such changes.

D. Pension Committee Processes

1. The Director of Human Resources will act as Chair for the Pension Committee;

2. The Chair will set the agenda for meetings;

3. Meetings of the Committee may be called by the Chair or any other Member of the Committee;

4. The Secretary is responsible for keeping the minutes of the meeting;

5. Written minutes shall be taken at every meeting and, together with copies of any supporting analyses or reports submitted to the Committee or prepared by the Committee, shall be permanently retained in a Minute Book or document book held by the Secretary;

6. Copies of the minutes shall be distributed to each Committee Member as soon as possible after each meeting by the Secretary;

7. The minutes shall be approved or amended by the Pension Committee at the next meeting of the Committee;

8. The Committee shall meet at least twice a year but will strive to meet quarterly;

9. Any two Members of the Committee may sign any documents necessary to give effect to actions agreed upon by the Committee in accordance with these Guidelines; and

10. One or more Members of the Committee may participate in a meeting by establishing voice contact through electronic or telephonic means.

E. Voting

1. A majority of the membership of the Pension Committee will constitute a quorum;

2. Each Member of the Pension Committee is entitled to one vote;

3. A majority vote, by a show of hands, constitutes the passing of a motion. In the case of Committee Member(s) participating by electronic or telephonic means, that Member's vote shall be registered by voice;

4. If a deciding vote is required to break a tie vote, it shall be cast by the Chair (in addition to his or her vote as a Committee Member);

5. External assistance may be made available to the Pension Committee, if required, but any such advisor(s) do not have the right to vote at meetings of the Pension Committee; and

6. Recommendations of the Pension Committee shall be made with majority support of the Committee Members present at any Pension Committee meeting.

F. Committee Position Descriptions

1. The Chair. This position is generally responsible for the integrity of the Committee's processes and has the following specific duties:

   a. Acts as the spokesperson for the Committee concerning decisions and policies adopted by the Committee;

   b. Establishes the date, time, and location for all meetings for each calendar year in advance;

   c. Issues the call for meetings and ensures that the agenda and pre-meeting reading materials are distributed before the meeting;

   d. Confirms that the meeting is duly convened and properly constituted;

   e. Conducts the meeting. In the absence of the Chair, one of the other Members of the Committee shall be chosen by the Members of the Committee to preside at that meeting;

   f. Decides on points of order and other issues of procedure;

   g. Ensures that the minutes of the previous meeting are adopted, or amended and adopted, as need be;

   h. Decides on the order of speakers;

   i. Decides when there has been sufficient discussion to call for a vote; and

   j. Puts motions and amendments to a vote and declares the results.

2. The Secretary. This non-membership position is generally responsible for the integrity of the Committee's documents and has the following specific duties:

   a. Records the minutes and maintains the minutes of each meeting in a Minute Book, along with copies of presentations and analysis;

   b. Distributes the minutes of each meeting to each Committee Member within a reasonable time after the completion of the Pension Committee meeting;

   c. Maintains a record of decisions made by the Committee and the Finance Committee; and

d. Reviews new items of business to determine if the topic has been considered previously.

3. Committee Members (including the Chair) have a duty to:

a. Conduct the business of the Committee;

b. Give due consideration to the opinions of other Committee Members;

c. Abide by the rulings of the Chair;

d. Support the external communications of the Chair;

e. Attend any orientation program(s) provided for new Committee Members;

f. Attempt to keep abreast of current pension investment, administration, legislative and regulatory issues and trends through information provided by the Law Society, external sources and conferences;

g. Comply with all policies adopted by the Pension Committee; and

h. When required, evaluate the performance of the Law Society's management with responsibilities for the Plan, external agents and advisors, and the governance system.

G. Pension Committee Responsibilities

1. Each of the Members of the Pension Committee shall be indemnified in respect of their duties as a Member of the Committee, except that such indemnification shall not extend to dishonest conduct or wilful misconduct;

2. The Pension Committee shall provide a copy of the governance structure and guidelines to all parties involved in the administration of the Plan;

3. The Pension Committee will ensure that necessary training is provided to the Pension Committee and Employees responsible for pension administration to assist them to fulfil their obligations under the Plan. The Pension Committee will report on the training provided to the Pension Committee and Employees responsible for pension administration to the Finance Committee from time to time;

4. External agents and advisors will report to and be monitored by the Pension Committee;

5. The Pension Committee will determine the appointment of external agents and advisors, subject to the approval of the Finance Committee;

6. The Committee shall oversee and monitor the performance of such external agents and advisors with responsibilities concerning the Plan and shall report to the Finance Committee at least annually on their performance;

7. The Pension Committee will document the selection process for external agents and advisors;

8. The Pension Committee will recommend that Law Society signing officers enter into written agreements with specified external agents and advisors which outline the services they will provide and the fees associated with such services;

9. Plan amendments of a technical or administrative nature can be made by the Pension Committee, subject to the approval of the Finance Committee; and

10. The Committee shall, where appropriate, make recommendations to the Finance Committee for amendments to the Plan that are desirable and/or necessary.

H. Asset Management

1. The Pension Committee will draft the Statement of Investment Policies and Procedures ("SIP&P") for the Pension Plan and any amendments to the SIP&P for the approval of the Finance Committee;

2. The SIP&P will include investment return objectives, benchmarks, constraints, specifics regarding the investment monitoring process, and the steps that will be taken when an Investment Manager is not performing in accordance with the benchmarks set in the SIP&P;

3. The Pension Committee will use an independent investment measurement service to monitor the performance of the Investment Manager. Measurement reports will be requested and reviewed at least once a year by the Pension Committee;

4. The Pension Committee will cause Law Society staff to review the monthly financial statements prepared by the Custodian, and other available documentation, at least annually and prepare a written report to the Pension Committee about its review;

5. The Pension Committee will cause the Auditor to prepare an annual report to:

   a. Ensure that contributions are being made to the Plan as required and are remitted in accordance with the provisions of Applicable Legislation;

   b. Validate that all payments from the Plan are in accordance with the Plan terms;

   c. Ensure that payments are made in accordance with the Plan and Applicable Legislation; and

   d. Ensure the investments of the Plan comply with the SIP&P and Applicable Legislation.

6. The Pension Committee will meet with the Auditor to review reports; and

7. The Pension Committee will conduct an investment review meeting, at least annually, with the Custodian, Investment Manager, Recordkeeper and Consultant.

I. Plan Administration

1. The Pension Committee, through the Director of Human Resources, will supervise the handling of communications from and to Members of the Plan;
2. The Pension Committee is to ensure that Employees who are responsible for communicating with Members are providing communication that:

   a. Is consistent with Plan text and administration procedures; and

   b. Complies with Applicable Legislation.

J. Plan Design

1. The Pension Committee may recommend and implement Plan design changes and will review any related Plan amendments before they are submitted to the Finance Committee for approval.

K. Reports Required/Reviewed

1. The Pension Committee will review a report, at least annually, from Employees and prepared by agents or advisors at the request of Employees responsible for day-to-day administration of the Plan that will include:

   a. Procedures in place for handling Plan Member enrolments, terminations, retirements and deaths;
   b. Procedures in place for payments from the Plan; and
   c. Samples of employee communication material including sample annual Member statements.

2. The Pension Committee will prepare an annual report for the Finance Committee that includes the following:

   a. Confirmation that the required reports have been filed and the required disclosure information has been provided to the Plan Members, as detailed in Appendix E;

   b. Confirmation that the Plan has been administered in accordance with Applicable Legislation and the filed Plan documents; and

   c. A summary of the reports that the Pension Committee has received measuring the investment performance in relation to the SIP&P.

L. The Employee Advisory Committee

1. The Employee Advisory Committee is composed of 8 to 10 members who volunteer to serve on the committee;

2. The Employee Advisory Committee acts as a focus group to discuss Pension Plan issues; and

3. This committee does not play a formal role in Pension Plan governance, however, it has a mandate to promote the Pension Plan and answer questions about the pension plan to Law Society employees.

7. CONFLICT OF INTEREST POLICY

All individuals involved in pension governance at the Law Society will be subject to the Conflict of Interest Policy found at Appendix C .

8. GOVERNANCE SELF-ASSESSMENT

1. The governance structure will be reviewed from time to time to meet emerging challenges;

2. The Pension Committee is to review the governance structure to ensure that the governance of the Plan serves the Plan's objectives;

3. The review will consist of reviewing and answering the following questions:

a. Do all the parties understand their roles and responsibilities under the Plan?

b. Are all parties carrying out these roles of responsibilities in a proper manner?

c. Are there adequate control mechanisms under the current governance structure to ensure that the Plan and beneficiaries are protected from conflicts of interest and dishonest and incompetent external agents and advisors?

d. Do the parties have complete information to perform their duties, to monitor the risks facing the Plan, and to map out strategies to manage the risks?

e. Has the Pension Committee delivered on the objectives of the Plan?

f. Has the Pension Committee considered the appropriateness of an independent audit of the governance procedures?

APPENDIX A

External Agents and Advisors as at January 1, 2005:

a. Custodian – Standard Life Assurance Company ("Standard Life")

b. Auditor – Deloitte & Touche LLP

c. Legal Counsel – Hicks Morley Hamilton Stewart Storie LLP

d. Investment Managers – Standard Life (includes investment managers of those investment funds to which Standard Life makes direct investments)

e. Recordkeepers – Payroll, Human Resources and Standard Life

f. Consultant – Aon Consulting

APPENDIX B

Reporting Requirements of the Pension Committee

Written Reporting Obligations:

The annual report of the Pension Committee should include, where applicable, discussion on the following topics. If no discussion is necessary, the report should indicate that the topic has been considered but there is nothing to report. The report should list the dates of events and recommendations/actions where applicable.

1. Internal Staff Reporting:

   a. Discuss how Employees are handling Plan Member enrolment, terminations, retirements and deaths;

   b. Discuss what procedures Employees have in place for payments from the Plan. This should include a discussion on whether any changes have been made to the payment process and the reasons for such change;

   c. Ensuring that Member contributions are being remitted into the pension fund within 30 days following the month they were received or deducted;

   d. Reporting of statistical data on the number of Plan enrolments, the number of Plan terminations, the number of retirements and the number of deaths in the Plan for the year; and

   e. The Employees report section should include a copy of sample annual Member statements for the Pension Committee's information.

2. Investment and Legislative Review:

   a. Income Tax Act:

      (i) Discussion on filing of annual information return including when the return will be filed and when the previous year's return was filed. The annual information return should be filed six months after the Plan year end;

      (ii) Discussion on filing of audited financial statements including when the statements are anticipated to be filed and when the

statements were filed for the previous year. The audited financial statements should be filed within six months after each fiscal year end of the Plan;

(iii) Discussion on whether there have been any amendments made to the Plan. If amendments have been made, the report should document the amendments and their filing status. Plan amendments should be filed within 60 days of the amendment date; and

b. Pension Benefits Act:

(i) Discussion on the status of annual Member statements and their distribution. A sample copy of a statement should be included in the report. The PBA requires that the statement be provided to Members by June 30 of the following year and must include notice of any amendments made during the Plan year;

(ii) If applicable, discussion on if any termination statements have been issued. Discussion on whether the statement has been provided to the terminated Member and payment status. The PBA requires that a termination statement be provided within 30 days after the Member's termination date and payouts must be made within 60 days of when the Member chooses a termination option;

(iii) If applicable, discussion on whether retiring Members were given their retirement options 60 days prior to a Member's normal retirement date or the date the Member intends to retire. The PBA states that if adequate notice is not provided to Members before retirement, retirement options must be provided to them within 30 days after the retirement application is received; and

(iv) If applicable, discussion on whether any Members have made written requests to view Plan documents, annual information returns, financial statements, the SIP&P, or correspondence with regulatory authorities.

Overall, this section of the report should document and confirm that the Plan has been administered in accordance with Applicable Legislation and the filed Plan documents.

c. Review of Auditor's Report:

(i) Discussion that the Pension Committee has met with and reviewed the auditor's report, including:

(ii) Acknowledgement that they have ensured that contributions are being made to the Plan as required and are remitted in accordance with Applicable Legislation which is noted above;

(iii) Validation that all payments from the Plan are in accordance with the Plan terms; and

(iv) Ensuring that investments of the Plan comply with the SIP&P and Applicable Legislation.

3. Administrative Compliance

(i) Discussion on how many times the Pension Committee met and, if applicable, external individuals who were present at the meetings;

(ii) Discussion on any resolutions that were passed by the Pension Committee, including attaching a copy of the resolution, and the outcome of the vote;

(iii) Discussion on the investment review meeting that is to occur at least annually with the Custodian, Investment Manager, Recordkeeper and Consultant. The report should include discussion on who was present at this meeting and what generally was discussed at the meeting;

(iv) Discussion on any Plan amendments or Plan design changes that are being proposed. Discussion should include reference to why the changes are being made/proposed, the stage of development and future plans/actions; and

(v) Discussion on Employee Advisory Committee meetings. This should include reference to how many times this committee met, what general discussion took place, and future business.

4. Notable Actions Taken
List any notable actions taken by the Pension Committee in the year.

APPENDIX C

Conflict of Interest Policy

A. Application

1. This policy applies to all parties with responsibilities for Pension Plan administration (the "Parties").

B. Conflict of Interest

1. A conflict of interest arises when an individual has acquired any pecuniary or personal interest, direct or indirect, real or perceived, in any matter which concerns the Plan which conflict with their duties and powers in respect of the Plan, or which impair their ability to make an unbiased judgement in completing their responsibilities to the Plan, including:

a. Exercising his or her powers or discretion with respect to the Plan in his or her own interest;

b. Placing him or herself in a situation of conflict between his or her personal interest and the duties of his or her office as they relate to the investment or administration of the Plan;

c. Having or appearing to have any monetary interest, direct or indirect, in any matter in which any of the Plan's assets are concerned, except as a Member of the Plan;

d. Receive any consideration for his or her personal account from any person dealing with the Plan in a transaction involving assets of the Plan; and

e. Acting in a transaction involving the Plan on behalf of a person whose interests are adverse to the Plan or its members.

For the purposes of this section, an individual shall not be considered to have any such conflict of interest merely by virtue of them being a Member of the Plan.

2. Where a conflict of interest exists:

a. The party with the conflict shall advise the Pension Committee as soon as possible after becoming aware of the conflict;

b. The Chair of the Pension Committee shall determine the appropriate steps required to mitigate the conflict. However, the party who knows that he or she has a conflict of interest, whether or not disclosure of the conflict has been made, shall refrain from acting with respect to administration of the Plan or the assets of the Plan, pending receipt of a decision by the Chair following the Chair's assessment of the conflict; and

c. The failure of a party to comply with the procedures described in this section shall not of itself, invalidate any decision, contract or other matter.

APPENDIX D

STATEMENT OF INVESTMENT
POLICIES AND PROCEDURES

The Pension Plan for the Employees of
The Law Society of Upper Canada

Registration Number 268052

Effective as of June 2004

1. OVERVIEW

1.1 This document constitutes the Statement of Investment Policies and Procedures (the "Policy") applicable to The Pension Plan for the Employees of The Law Society of Upper Canada (the "Plan") sponsored by The Law Society of Upper Canada (the "Employer") to provide retirement income for members and beneficiaries of the Plan (the "Members").

1.2 The purpose of the Policy is to define the investment principles, objectives and policies which are appropriate to the needs of the Plan and the major procedures which support their implementation.

1.3 The Employer acting through its Board of Directors is the administrator of the Plan (the "Administrator"). The Administrator has delegated certain administrative responsibilities under the Plan to an appointed committee (the "Pension Committee"). The Administrator has also delegated certain administrative responsibilities to The Standard life Assurance Company of Canada ("Standard Life").

1.4 In particular, the Administrator has appointed Standard Life as record-keeper for the assets and liabilities under the Plan. All assets shall be invested in pooled funds (the "Funds" or individually the "Fund") and Guaranteed Investment Certificates ("GICs") offered by Standard Life.

1.5 The investment objectives and policies of each of the Funds offered to Members under this Plan shall be as stated in the appropriate Fund's statement of investment policies, which form part of this Policy. If there are discrepancies between this Policy and the Fund's Statement of Investment policies, the provisions of the Fund's statement of investment policies shall apply and Standard Life shall advise the Administrator. Standard Life shall ensure that the Administrator has up-to-date copies of each Fund's statement of investment policies, and that each Fund satisfies the provisions of such statement of investment policies.

1.6 The Pension Committee shall review this Policy annually to ensure that it continues to be appropriate for the objectives of the Plan, and shall either confirm or amend it.

1.7 The Pension Committee shall submit any changes to the Policy to the Administrator within 60 days of their adoption. If the changes affect Members, Standard Life or the investment managers, the Pension Committee shall also promptly communicate such changes to them, as applicable.

1.8 All those involved in the management of the assets of the Plan shall be required to annually acknowledge and comply with the applicable provisions of this Policy.

2. BACKGROUND INFORMATION

2.1 The Plan is a defined contribution pension plan. Membership in the Plan is compulsory for employees hired after January 1, 2004 upon meeting the eligibility requirements.

2.2 Member contributions range between 1% and 6% of the Member's earnings. Employer contributions on behalf of a Member are equal to the Member's contributions.

2.3 The liabilities of the Plan are equal to the sum of the vested assets the Members hold in their individual accounts. The size of the liabilities of the Plan is thus completely dependent on the amount of net cash flows to Member accounts, the allocation of contributions to each Fund and GIC, and the investment performance of the Fund and GIC selected.

2.4 Each Member chooses the Fund for the Member's contributions, and the Employer's contributions made on behalf of the Member from the selection of Funds and GICs offered under the Plan, thereby influencing the risk exposure of the Member's portion of the assets of the Plan.

2.5 Members bear the risk of adverse investment performance and, should a Member choose to purchase an annuity when leaving the Plan, the risk of fluctuations in interest rates.

2.6 Termination, retirement and death benefits are determined by the vested value of each Member's account.

3. INVESTMENT OBJECTIVES AND ALLOCATION

3.1 The primary investment objective of the Plan is to permit Members to accumulate assets within the Plan in order to provide for their respective retirement income, considering contributions made under the Plan and the Members' individual investment objectives and risk tolerances.

A secondary objective is to provide Members with the ability to diversify the assets in their individual accounts to enable them to achieve the level of overall risk and return appropriate to their particular needs.

3.2 To achieve the above objectives, Members shall be offered a range of investment options that:

- cover a range of asset classes with imperfect correlations and differing risk/return characteristics;
- are distinguishable and have different investment styles or objectives;
- are well diversified and professionally managed; and
- charge fees that are reasonable for their asset class and investment style.

3.3 More specifically, the following categories of investment options shall, at a minimum, be offered to Members of the Plan:

- Balanced funds, because they provide diversification across asset classes and attractive risk and return characteristics;

- Canadian Equity funds, because they provide protection against inflation over the long term and are expected to generate attractive long-term returns relative to non-equity funds;

- Money Market funds, because they provide liquidity and stable income;

- Fixed Income funds, because they provide stable investment income and most closely match the changes in annuity prices resulting from changes in interest rates;

- Foreign Equity funds, because they provide added diversification and are expected to offer attractive returns compared to other investment options;

- Pre-determined portfolios, because they provide diversification across asset classes and allow Members to select portfolios tailored to their risk level; and

- GICs, because they provide stable and predictable income.

3.4 In selecting the investment options to be offered under the Plan, the Pension Committee may take into account the size and growth of the Plan, industry trends, administrative feasibility, diversification, and costs associated with the options.

3.5 The following investment options are offered to Members of the Plan:

Investment Category	Investment Option
Balanced	McLean Budden Balanced Growth Standard Life Diversified Trimark Balanced
Canadian Equities	McLean Budden Canadian Equity Growth Standard Life Canadian Equity Index Standard Life Canadian Small Cap Equity Standard Life Canadian Equity Trimark Canadian Equity
Canadian Fixed Income	McLean Budden Fixed Income Standard Life Bond Standard Life Canadian Bond Index
Canadian Money Market	Standard Life Money Market Standard Life Mortgage
Real Estate	Standard Life Real Estate
Foreign Equities	Jarislowsky Fraser International Equity McLean Budden Global Equity GEAM U.S. Equity Standard Life U.S. Equity Standard Life U.S. Equity Index Standard Life International Equity

	Standard Life International Equity Index Trimark Global Equity
Pre-determined Portfolios	See Section 3.5a
GICs	1 to 5-year terms (compound interest) Daily Interest Account

3.5a Pre-determined Portfolios

Years to retirement	Conservative	Moderated	Aggressive
More than 25 years	15% Canadian Equity Trimark 15% Canadian Equity MB 30% Canadian Bond Index SL1 20% 5 Year Compound Interest 10% US Equity GEAM 10% International Equity JF	19% Canadian Equity Trimark 19% Canadian Equity MB 22% Canadian Bond Index SL1 10% 5 Year Compound Interest 15% US Equity GEAM 15% International Equity JF	23% Canadian Equity Trimark 22% Canadian Equity MB 25% Canadian Bond Index SL1 15% US Equity GEAM 15% International Equity JF
Between 10 and 25 years	13% Canadian Equity Trimark 12% Canadian Equity MB 25% Canadian Bond Index SL1 30% 5 Year Compound Interest 10% US Equity GEAM 10% International Equity JF	17% Canadian Equity Trimark 16% Canadian Equity MB 17% Canadian Bond Index SL1 20% 5 Year Compound Interest 15% US Equity GEAM 15% International Equity JF	20% Canadian Equity Trimark 20% Canadian Equity MB 30% Canadian Bond Index SL1 15% US Equity GEAM 15% International Equity JF
Between 3 and 10 years	10% Canadian Equity Trimark 10% Canadian Equity MB 20% Canadian Bond Index SL1 45% 5 Year Compound Interest 8% US Equity GEAM 7% International Equity JF	17% Canadian Equity Trimark 16% Canadian Equity MB 22% Canadian Bond Index SL1 25% 5 Year Compound Interest 10% US Equity GEAM 10% International Equity JF	15% Canadian Equity Trimark 15% Canadian Equity MB 40% Canadian Bond Index SL1 15% US Equity GEAM 15% International Equity JF

The Administrator may remove Funds or GICs or select additional Funds or GICs from time to time, if deemed to be in the best interest of the Plan and the Members.

3.6 The Standard Life Money Market Fund is also used for investment of forfeitures.

3.7 While the Administrator has responsibility for selecting which investment options are offered under the Plan, it does not offer Members advice on how to allocate their contributions among the available options.

4a. MONITORING

4.1 The Pension Committee shall, at least once a year:

a) evaluate the investment performance of each Fund and GIC, compared with its investment goals and the risk taken to achieve these returns;

b) review the assets and cash flows of the Plan;

c) review the appropriateness of the selection of Funds and GICs offered under the Plan; and

d) review the Funds and GICs offered by Standard Life and monitor its record of service to the Plan.

4.2 The primary investment goal of each actively managed Fund shall be to achieve a rate of return, before deducting investment management fees, equal to or greater than the total return produced by the appropriate financial index or benchmark, as follows:

Fund Type	Investment Fund	Relative Return Objective
Balanced	McLean Budden Balanced Growth Standard Life Diversified Trimark Balanced	McLean Budden Balanced Benchmark[1]+ 1% Standard Life Diversified Benchmark[2] Trimark Balanced Benchmark[3]
Canadian Equities	McLean Budden Canadian Equity Growth Standard Life Canadian Equity Standard Life Canadian Equity Index Trimark Canadian Equity	S&P/TSX (Capped) Composite Index + 1.5% S&P/TSX Composite Index S&P/TSX Composite Index S&P/TSX Composite Index
Canadian Small Cap Equities	Standard life Canadian-Small Cap Equity	S&P/TSX Small Cap[4]
U.S. Equities	GEAM U.S. Equity Standard Life U.S. Equity Standard Life U.S. Equity Index	S&P 500 (Cdn $) Index S&P 500 (Cdn $) Index S&P 500 (Cdn $) Index
International Equities	Jarislowsky Fraser International Equity Standard Life International Equity Standard Life International Equity Index	MSCI EAFE (Cdn $) Index MSCI EAFE (Cdn $) Index MSCI EAFE (Cdn $) Index
Global Equities	McLean Budden Global Equity Trimark Global Equity	MSCI World (Cdn $) Index+ 1% MSCI World (Cdn $) Index
Fixed Income	Standard Life Bond Standard Life Canadian Bond Index Standard Life Mortgage	SC Universe Index SC Universe Index SC Mortgage Index
Real Estate	Standard Life Real Estate	NAREIT
Money Market	Standard Life Money Market	SC 91-Day T-Bill

1. *33% S&P/TSX (Capped), 25% MSCI World (Cdn $), 37% SC Universe and 5% SC 91-Day T-Bill.*
2. *32.5% S&P/TSX, 10% S&P 500 (Cdn $), 10% MSCI EAFE (Cdn $), 42.5% SC Universe and 5% SC 91-Day T-Bill effective July 1, 2000.*
   37.5% S&P/TSX, 7.5% S&P 500 (Cdn $), 7.5% MSCI EAFE (Cdn $), 42.5% SC Universe and 5% SC 91-Day T-Bill prior to July 1, 2000.
3. *60% S&P/TSX and 40% SC Universe.*
4. *TSX 200 prior to January 1, 2003.*

The secondary investment goal of each actively managed Fund shall be to achieve a rate of return in the top half of a recognized universe of investment managers with similar mandates.

4.3 The investment goal of each index Fund shall be to achieve a rate of return, before deducting investment management fees, within an annual tracking range of 1% of the total return produced by the appropriate financial index in Canadian dollars.

4.4 The measurement time period for assessment of investment performance and investment risk shall be four years. However, time periods of less than four years should also be considered in the evaluation of investment performance.

Recognizing that the returns achieved over such shorter period may vary significantly from the relevant goals, the general trend of results relative to the goals and the likelihood that satisfactory results can reasonably be expected over 4-year moving periods should form the basis for the evaluation of a Fund manager's performance.

4.5 In evaluating a Fund for Standard Life, the Pension Committee shall also consider non-quantifiable factors, such as:

- turnover of key personnel;
- significant increase or decrease in the number of clients or assets under management;
- changes in organizational stability or ownership; and
- changes in investment style or unusual changes in portfolio composition.

4.6 The Pension Committee shall receive annually, from Standard Life and/or the Funds' managers, a statement of compliance with this Policy, plus a confirmation that no investigation or disciplinary action by the regulatory authorities has taken place since the last such statement.

4.7 The Pension Committee shall give consideration to the impact of administrative expenses and external management fees on the returns of the Funds.

Standard Life will make available quarterly reports on the performance of the Funds both before and after expenses. The Pension Committee will be responsible for ensuring that expenses paid under the Plan are both competitive and appropriate.

The Pension Committee may change the investment options if the quantitative or qualitative variables are not satisfactory. In this case, the Pension Committee shall recommend whether to add a fund, which follows the same style as the underachieving Fund, or whether to block or replace the Fund.

4b. INVESTMENT FUND REVIEW PROCEDURES

The following procedures would be applied when the Fund or GIC fails to meet the quantitative or qualitative objectives outlined in this Policy:

If there are concerns in the event the Fund or GIC does not meet the quantitative objectives specified in this Policy, a detailed qualitative analysis of the reason(s) of underperformance shall be undertaken. The decision on blocking and/or eliminating/replacing a Fund should be based on the qualitative analysis and the level of concern.

There are 3 possible outcomes applicable for each Fund following the qualitative analysis:

1. "Serious Concerns": May require a need to block, eliminate and/or replace the Fund or GIC.

2. "Some Concerns": The Fund or GIC in question will be red-flagged which means the Fund would be monitored for any special characteristics to be reviewed over a probation period of one year or less.

3. "No Concerns": Fund or GIC and investment manager are meeting both quantitative and qualitative measures.

REVIEW PROCESS FLOWCHART

(see page 112)

5. GENERAL PROVISIONS

5.1 Eligible investments. The selection of investments in each of the Funds or GICs offered to Members under this Plan shall be subject to the policies and guidelines of the appropriate statement of investment policies of the Fund or GIC.

5.2 Legal limitations. All investments shall be maintained within the legal limitations stipulated for registered pension plans under the *Pension Benefits Act* (Ontario) and its Regulations, and the Income Tax Act (Canada) and its Regulations, each as amended from time to time.

5.3 Professional standards. All investment decisions shall be made in compliance with The Code of Ethics and The Standards of Professional Conduct adopted by the Association for Investment Management and Research (AIMR).

5.4 Plan limitations. Except with the written permission of the Administrator, the Plan shall not engage in:

- borrowing, except where the borrowing is necessary to cover a short-term contingency, including but not limited to paying Plan benefits and expenses, and the borrowing is for a period that does not exceed ninety days;
- the guarantee of third-party borrowing;
- the purchase of securities on margin;
- the granting of loans to individuals; and
- short selling.

5.5 Securities lending. The assets of a Fund or GIC may only be loaned by the investment manager through a professional custodian if explicitly allowed by the appropriate Fund's statement of investment policies, and shall be conducted in a manner which is consistent with applicable legislation, under terms and conditions typical of those used for Canadian pension funds.

5.6 Valuation of Investments. The assets of the Plan shall be valued according to the following methods:

a) Funds or GICs shall be valued at the unit values supplied by Standard Life or the administrator of the Fund or GIC;

b) During their term, GICs shall be valued at cost plus accrued interest. The same methodology shall also be applied on the death, termination of employment or retirement of a Member. In the case of interfund transfers or upon termination of the arrangement with Standard Life, GICs shall be valued at their market value. The market value is calculated by projecting the value of the GIC to the end of its term, and discounting this amount back to the date of the event using interest rates prevailing at that time for new GICs of a similar term; and

c) Any other asset shall be valued at its market value when it is readily available from a recognized stock exchange or other organized facility. If a market valuation is not readily available, an estimate of the market value shall be computed based on a consistent and reasonable methodology. Such estimates shall be supplied at least annually by Standard Life or other qualified independent professionals.

5.7 Voting Rights. The manager of each Fund or GIC shall exercise the voting rights acquired through the Fund or GIC's assets, at all times acting prudently and solely in the financial interests of the Members and beneficiaries.

While the policy on voting rights is not enforceable by the Administrator since the Plan's assets are pooled with those of many other investors, the investment managers of the Funds or GICs or Standard Life shall advise the Pension Committee if a significant breach of this Policy is likely to occur or has occurred.

6. RELATED PARTY TRANSACTIONS AND CONFLICTS OF INTEREST

6.1 Transactions with related parties of the Plan as defined in Section 6.2 are prohibited except as allowed by Section 6.3, 6.4 or 6.5. Conflicts of interest of related parties, with conflicts defined in Section 6.6, must be avoided at all times.

6.2 For the purposes of these guidelines, related parties are defined as:

i) the Administrator;

ii) a member of the Pension Committee, a board, or other body that represents the Administrator of the Plan;

iii) an officer, director or employee of the Administrator;

iv) a person responsible for holding or investing the assets of the Plan, or any officer, director or employee thereof;

v) an association or union representing employees of the Employer, or an officer or employee thereof;

vi) an employer who participates in the Plan, or an employee, officer or director thereof;

vii) a member of the Plan;

viii) the spouse or child of any person referred to in any of paragraphs i) to vii);

ix) a corporation that is directly or indirectly controlled by a person referred to in any of paragraphs i) to viii); or

x) an entity in which a person referred to in paragraph i), ii), iii), or vi), or the spouse or a child of such a person, has a substantial investment.

6.3 The Administrator may not enter into a transaction with a related party on behalf of the Plan unless:

- the transaction is required for the operation or administration of the Plan; and
- the terms and conditions of the transaction are not less favorable to the Plan than market terms and conditions.

6.4 The Administrator may also enter into one or more transactions with a related party on behalf of the Plan if the value of such transactions is nominal or the transactions are immaterial to the Plan, more specifically if, in total, they represent less than 0.01% of Plan assets and less than $10,000.

6.5 The Administrator may not lend Plan assets to a related party and may not invest Plan assets in the securities of a related party unless those securities are acquired at a public exchange.

6.6 A conflict of interest arises when any of the above persons has or acquires any pecuniary or personal interest, direct or indirect, real or perceived, in any matter in which the Plan is concerned which conflict with the person's duties and powers in respect of the Plan, or which impair the person's ability to make an unbiased judgment in completing their responsibilities to the Plan.

6.7 Where a conflict of interest exists:

a) The person with the conflict shall advise the Pension Committee as soon as possible after becoming aware of the conflict;

b) The person with the conflict shall abstain from any discussion and voting on the matter in conflict; and

c) The Pension Committee shall determine the appropriate actions required, or if necessary seek the advice of legal counsel as to the actions required, to mitigate the effects of the conflict.

6.8 The failure of a person to comply with the procedures described in this Section shall not of itself invalidate any decision, action, direction, contract or other matter.

6.9 For managers of the Funds and Standard Life, at a minimum, The Code of Ethics and The Standards of Professional Conduct adopted by the Association for Investment Management and Research shall be expected to apply.

7. APPENDIX A: PROVIDER STATEMENT OF INVESTMENT POLICIES

STANDARD LIFE GROUP SAVINGS & RETIREMENT

STATEMENT OF POOLED FUND INVESTMENT POLICIES AND GOALS

SUBMITTED BY

THE STANDARD LIFE ASSURANCE COMPANY

AND ITS SUBSIDIARY,

THE STANDARD LIFE ASSURANCE COMPANY OF CANADA

APPENDIX E

A. Filing requirements included in the Pension Benefits Act and Income Tax Act include:

1. Annual Information Return (combined for PBA and ITA) must be filed six months after the plan year end [Regulation 18 and Regulation 8409(1)]

2. Audited Financial Statements must be filed within six months after each fiscal year end of the Plan occurring on or after the 31st of December, 1988 [Regulation 76(4)]

3. Amendments to the Plan text or trust agreements must be filed within 60 days of the amendment date [Section 12(1)]

4. Amendments to the Plan text or trust agreements must be filed within 60 days of the amendment date [Regulation 8512(2)]

5. Pension Adjustments must be filed and provided to Members within 60 days of the calendar year end [Regulation 8401(1)]

B. Disclosure requirements and access to information rules in the Pension Benefits Act include:

1. Annual Member Statements must be provided by June 30 and must include notice of any amendments made during the Plan year [Regulation 40(2)]

2. Termination Statements must be provided 30 days after the Member's termination date and payouts must be made within 60 days of when the Member chooses a termination option [Regulations 41(2) and 42(4)]

3. Retirement options must be provided at least 60 days prior to a Member's normal retirement date or the date the Member intends to retire. If no adequate notice is

provided of a Member's intention to retire, retirement options must be provided 30 days after the retirement application is received [Regulation 44(1)]

4. On written request, Members must have access to copies of Plan documents and amendments, annual information returns, financial statements, the SIP&P, correspondence with regulatory authorities [Regulation 45(1)]

C. Rules regarding timing of contributions under the Pension Benefits Act:

1. Member contributions must be remitted to the pension fund 30 days following the month they were received or deducted [Regulation 4(4)1]

2. Employer contributions must be remitted to the pension fund 30 days after the month for which contributions were payable [Regulation 4(4)3]

Resolutions
of
Convocation
of the Law Society of Upper Canada

Re: The Pension Plan for the Employees of the Law Society of Upper Canada

WHEREAS Convocation of the Law Society of Upper Canada (the "Law Society") sponsors the Pension Plan for the Employees of the Law Society of Upper Canada (the "Plan") and is the administrator of the Plan;

AND WHEREAS in accordance with Section 15 of the Plan, the Law Society has reserved the right to amend the Plan;

AND WHEREAS the Law Society wishes to adopt the amended and restated Plan text as at January 1, 2003, a copy of which is attached;

AND WHEREAS the Law Society wishes to adopt the Law Society of Upper Canada Pension Plan Governance Structure and Guidelines (the "Governance Guidelines") dated as of January 1, 2005, a copy of which are attached

AND WHEREAS the Law Society wishes to delegate the administrative oversight duties set out in the Governance Guidelines to the Finance and Audit Committee of Convocation (the "Finance Committee") to better reflect the current administrative structure of pension plan governance by the Law Society;

AND WHEREAS the Law Society wishes to confirm and recognize the existence of the Pension Committee of the Law Society which is charged with the day to day administration of the Plan in accordance with the roles and responsibilities established under the Plan and the Governance Guidelines;

AND WHEREAS the Law Society wishes to direct the Pension Committee of the Law Society to complete all necessary regulatory filing to give effect to these resolutions;

NOW THEREFORE BE IT RESOLVED THAT:

Effective as of January 1, 2003, the Law Society of Upper Canada adopts the amended and restated Pension Plan for the Employees of the Law Society of Canada attached hereto.

Effective as of January 1, 2005, the Law Society of Upper Canada adopts the Pension Plan Governance Structure and Guidelines attached hereto.

Effective as of January 1, 2005, The Law Society of Upper Canada delegates the administrative oversight duties set out in the Governance Guidelines to the Finance Committee (the "Duties"). Hereinafter, all matters coming within the Duties will be referred to the Finance Committee, which shall act on behalf of Convocation in relation to such matters.

Effective as of January 1, 2005, The Law Society of Upper Canada confirms and recognizes the existence of the Pension Committee of the Law Society of Upper Canada to continue its role in day to day Plan administration as set out in the Plan and the Governance Guidelines. Further, the Law Society confirms the Committee's composition, roles and responsibilities as set out in the Pension Plan Governance Structure and Guidelines.

The Law Society directs the Pension Committee to complete all necessary regulatory filings to give legal effect to these resolutions.

AND BE IT FURTHER RESOLVED THAT any authorized signing officer of Convocation is authorized, empowered and directed to execute and deliver in the Law Society of Upper Canada's name under corporate seal or otherwise, all documents, amendments and instruments and to take all other such action as may be appropriate and requisite for the purpose of carrying into effect the foregoing resolutions.

CERTIFIED to be a true and complete copy of the resolutions of Convocation of the Law Society of Upper Canada dated _____, 2005, and that said resolutions continued to be of full force and effect, unamended and unrescinded, as of the date hereof.

DATED this day of , 2005

_____
Signature

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

(1) Copies of letters to LibraryCo Inc. from the Chair, Finance & Audit Committee and Chief Financial Officer.

(pages 8 – 24)

(2) Copy of the General Fund Financial Statements for the quarter ended March 31, 2005.

(pages 31 – 34)

(3) Copy of the Lawyers Fund for Client Compensation Financial Statements for the quarter ended March31, 2005.

(pages 39 – 40)

Re: Pension Governance

It was moved by Mr. Ruby, seconded by Mr. Chahbar, that Convocation approve the following resolutions in Tab A:

A. WHEREAS Convocation of the Law Society of Upper Canada (the "Law Society") sponsors the Pension Plan for the Employees of the Law Society of Upper Canada (the "Plan") and is the administrator of the Plan;

B. AND WHEREAS in accordance with Section 15 of the Plan, the Law Society has reserved the right to amend the Plan;
C. AND WHEREAS the Law Society wishes to adopt the amended and restated Plan text as at January 1, 2003, a copy of which is attached;
D. AND WHEREAS the Law Society wishes to adopt the Law Society of Upper Canada Pension Plan Governance Structure and Guidelines dated as of January 1, 2005;
E. AND WHEREAS the Law Society wishes to delegate the administrative oversight duties set out in the Governance Guidelines to the Finance & Audit Committee to better reflect the current administrative structure of pension plan governance by the Law Society;
F. AND WHEREAS the Law Society wishes to confirm and recognize the existence of the Pension Committee of the Law Society which is charged with the day to day administration of the Plan in accordance with the roles and responsibilities established under the Plan and the Governance Guidelines;
G. AND WHEREAS the Law Society wishes to direct the Pension Committee of the Law Society to complete all necessary regulatory filing to give effect to these resolutions.

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective as of January 1, 2003, the Law Society of Upper Canada adopts the amended and restated Pension Plan for the Employees of the Law Society of Canada attached hereto.

2. Effective as of January 1, 2005, the Law Society of Upper Canada adopts the Pension Plan Governance Structure and Guidelines attached hereto.

3. Effective as of January 1, 2005, The Law Society of Upper Canada delegates the administrative oversight duties set out in the Governance Guidelines to the Finance & Audit Committee. Hereinafter, all matters coming within the duties will be referred to the Finance & Audit Committee which shall act on behalf of Convocation in relation to such matters.

4. Effective as of January 1, 2005, The Law Society of Upper Canada confirms and recognizes the existence of the Pension Committee of the Law Society of Upper Canada to continue its role in day to day Plan administration as set out in the Plan and the Governance Guidelines. Further, the Law Society confirms the Committee's composition, roles and responsibilities as set out in the Pension Plan Governance Structure and Guidelines.

5. The Law Society directs the Pension Committee to complete all necessary regulatory filings to give legal effect to these resolutions.

AND BE IT FURTHER RESOLVED THAT any authorized signing officer of Convocation is authorized, empowered and directed to execute and deliver in the Law Society of Upper Canada's name under corporate seal or otherwise, all documents, amendments and instruments and to take all other such action as may be appropriate and requisite for the purpose of carrying into effect the foregoing resolutions.

Carried

Re: J. S. Denison Trust Fund Applications (in camera)

It was moved by Mr. Ruby, seconded by Mr. Chahbar, that Convocation approve the payments from the J. Shirley Denison Fund to two members as set out in the Report.

Carried

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IN CAMERA

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IN PUBLIC

.....

Mr. Ruby presented the 2005 first quarter financial statements for the General Fund, Lawyers Fund for Client Compensation and LAWPro, and the Investment Compliance Report for the information of Convocation.

Re: LibraryCo Inc. Reporting

It was moved by Mr. Ruby, seconded by Mr. Chahbar, that Convocation instruct the Treasurer to write the Board of Directors of LibraryCo reminding them that the Law Society requires prompt provision of quarterly and annual financial reports and related information in accordance with generally accepted accounting principles, and pointing out that the only available next step if this is not done will be giving notice under section 9 of By-Law 30 respecting the suspension of funding. Additionally, the letter should make it clear that it is not notice under section 9 of By-Law 30.

It was moved by Mr. Wright, seconded by Mr. Porter, that the Ruby/Chahbar motion be tabled.

Carried

ROLL-CALL VOTE

Aaron	For	Krishna	Against
Alexander	For	Legge	For
Backhouse	For	MacKenzie	For
Banack	For	Martin	For
Bourque	For	Murray	For
Campion	For	Pattillo	For
Carpenter-Gunn	For	Pawlitza	For
Chahbar	Against	Porter	For
Cherniak	For	Potter	For
Coffey	For	Robins	For
Crowe	Against	Ruby	Against
Curtis	Against	Silverstein	Against
Dickson	For	Simpson	For
Doyle	For	Swaye	For
Dray	For	Symes	For
Eber	For	Topp	Against
Elliott	For	Warkentin	For
Feinstein	Against	Wright	For
Filion	For		
Finkelstein	For		
Gotlib	For		
Gottlieb	For		
Harris	For		
Heintzman	For		

Vote: 34 For; 8 Against

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Ms. Curtis presented the Report of the Professional Regulation Committee.

Professional Regulation Committee
June 22, 2005[1]

Report to Convocation

Committee Members
Carole Curtis, Chair
Mary Louise Dickson, Vice-Chair
Laurence Pattillo, Vice-Chair
Gordon Z. Bobesich
Anne Marie Doyle

[1] Deferred from May 26, 2005 Convocation

Sy Eber
George D. Finlayson
Patrick G. Furlong
Allan Gotlib
Ross W. Murray
Tracey O'Donnell
Mark Sandler
Roger D. Yachetti

Purposes of Report: Decision

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

OVERVIEW OF POLICY ISSUES

PROPOSED AMENDMENTS TO THE INVITATION TO ATTEND PROCESS

Request to Convocation

1. Convocation is requested to approve
   a. a new process called a regulatory meeting, modeled on the Invitation to Attend as an alternative to formal discipline proceedings, which would permit informal discussion between benchers and members, but which may be publicly noted, and

   b. an amendment to the confidentiality policy for Invitations to Attend to permit the Proceedings Authorization Committee to receive information about a member's prior Invitations to Attend.

Summary of the Issue

2. The Committee considered the merits of a regulatory process similar to the Invitation to Attend (ITA), but which, unlike the ITA, may be publicly noted. Although the ITA is a useful process, the private nature of an ITA does not permit the Law Society, in the appropriate case, to illustrate its public accountability as regulator through a public statement about the outcome of its investigation. Such cases may involve issues of lawyers' incivility in court referred to the Law Society by the presiding judge.

3. The Committee determined that a process should be created to reflect the current Invitation to Attend process that would include the ability to disclose publicly the fact that the conduct issue has been addressed by the Law Society.

4. With respect to the existing ITA process, the Committee determined that for the ITA to be an effective response to a minor breach of professional conduct, the Proceedings Authorization Committee (the PAC), which authorizes ITAs, should be aware of a

member's ITA history. Convocation's current policy imposes strict confidentiality around the member's past ITAs and the PAC is not permitted to review this history.

5. The Committee believes that if prior ITAs are disclosed to the PAC, its ability to make a determination on whether a Conduct Application or some other action should be authorized based upon a pattern of similar behaviour will be enhanced, as the information may include evidence of a pattern of conduct that resulted in a number of ITAs.

PROPOSED AMENDMENTS TO THE PROCEDURES FOR AN INTERLOCUTORY SUSPENSION AND RESTRICTION ORDER (INTERIM SUSPENSION ORDER)

Request to Convocation

6. Convocation is requested to approve the following amendments to the *Rules of Practice and Procedure* to enhance the process relating to motions for interlocutory suspension and restrictions orders (interim suspension orders):

   a. an amendment to Rule 8 to permit a motion for an interlocutory suspension and restriction order to be heard without notice to the member,

   b. an amendment to Rule 8 to permit the Hearing Panel to adjourn a motion without notice for the purpose of service if it concludes that the motion ought to have been served;

   c. an amendment to Rule 8 to provide the Hearing Panel with authority to vary or cancel the order;

   d. an amendment to Rule 8 to permit the introduction of a broad range of evidence on such motions by incorporating s. 15 of the *Statutory Powers Procedure Act,*

   e. an amendment to Rule 1.02(2) (Definitions) to redefine "originating process" to ensure that Rule 5.01(2)[2] does not conflict with the provisions of Rule 8 on service of a notice of motion for an interlocutory suspension or restriction order;

   f. housekeeping and clarifying amendments to Rule 7 (Motions) and Rule 5 (Service of Documents) as described in this report, and

   g. consequential amendments to Rules 13 and 15 as a result of the change in title to Rule 8 (Interlocutory Suspension and Restriction Orders).

   The motion to amend the Rules appears at Appendix 1.

Summary of the Issue

7. The current lengthy and complex process for an order for an interim suspension, given the purpose of the remedy, undermines the efficacy of this remedy, which is primarily

[2] 5.01(2) An originating process shall be served at least ten days before it is first returnable before a tribunal.

meant to address urgent problems apparent before the conduct investigation is complete and the Society is ready to prosecute a member on the merits of a Conduct Application. The process includes:

- Service and filing of a motion record with affidavit evidence which satisfies the Law Society's burden of proof (generally, to establish the misconduct to be alleged in the Conduct Application which deals with the merits of the misconduct); and

- Appearing before a Hearing Panel with at least three days' notice to the member at which the member has a right to a full hearing.

8. The Committee noted the more expeditious processes in other law societies in Canada for this remedy. In an environment of increased national mobility for lawyers, where two or more law societies may deal with the same lawyer on the same facts, the Committee's view was that as the Law Society's response differs from the other regulators, it may not be sufficient in situations where a member has been charged with a serious offence or is otherwise facing serious allegations.

9. The Committee believes that for the Law Society to use the interim suspension remedy most effectively, changes should be made to the *Rules of Practice and Procedure* to relax the procedural and evidentiary rules for interim suspension motions. The Committee also proposes a change to the title of the order to "interlocutory suspension and restriction order".

PROPOSED SUMMARY HEARING PROCESS

Request to Convocation

10. Convocation is requested to approve a process for summary hearings for specific regulatory matters, by approving an amendment to Rule 9.01 of the *Rules of Practice and Procedure* to permit these proceedings to go directly to the Hearing Panel, rather than to the Hearings Management Tribunal at first instance, after the Conduct Application is issued. The motion to amend Rule 9 appears at Appendix 1.

Summary of the Issue

11. The current Law Society hearing process provides for one type of hearing and pre-hearing process for all matters. This process is lengthy and complex, to the point where on occasion, prosecution becomes ineffective in more straightforward or interim matters.

12. The Committee agreed that a summary process should be created for Law Society conduct matters which are time-sensitive, are straightforward or otherwise lend themselves to such a process. In the Committee's view, the availability of a Law Society summary process would also free three-bencher hearings for more serious matters.

13. The Committee is proposing a summary hearing process, which would involve a single bencher hearing permitted under s. 2 of O. Reg. 30/99, for the following matters:

- Failing to maintain financial records as required by the by-laws,

- Failing to respond to inquiries from the Society, and

- Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the *Law Society Act.*

14. A summary investigations process within the Professional Regulation Division would compliment this process.

THE REPORT

TERMS OF REFERENCE/COMMITTEE PROCESS

15. The Professional Regulation Committee ("the Committee") met on April 14 and May 12, 2005. In attendance were Carole Curtis (Chair – April 14 meeting), Mary Louise Dickson (Vice-chair) and Laurie Pattillo (Vice-chair – Acting Chair, May 12 meeting), Anne Marie Doyle, Sy Eber, George Finlayson, Patrick Furlong, Allan Gotlib, George Hunter, Ross Murray, Tracey O'Donnell and Mark Sandler. Staff attending were Naomi Bussin, Lesley Cameron, Katherine Corrick, Anne-Katherine Dionne, Malcolm Heins, Terry Knott, Dulce Mitchell, Zeynep Onen, Elliot Spears, Sophia Sperdakos, Jim Varro and Andrea Waltman.

16. The Committee is reporting on the following matters:

For Decision

- Proposed amendments to the Invitation to Attend Process

- Proposed amendments to the process for an Interlocutory Suspension and Restriction Order (Interim Suspension Order)

- Proposed summary hearing process

PROPOSED AMENDMENTS TO THE INVITATION TO ATTEND PROCESS

THE NEW REGULATORY MEETING

A. INTRODUCTION AND BACKGROUND

17. Over the past several months, the Committee has been considering ways to improve the effectiveness of Law Society's regulatory processes. The Committee was assisted by information from the Director of Professional Regulation, Zeynep Onen, who identified various "gaps" in the Law Society's regulatory processes. The Committee also received input on certain issues from the Proceedings Authorization Committee ("the PAC"), through Ms. Onen.

18. One issue was the range of outcomes available to the PAC, and in this respect, the Invitation to Attend (ITA) process was reviewed. The ITA, which may be authorized by

the PAC, is a confidential meeting with a member to discuss an issue or issues of professional misconduct. There is no process between the ITA and a Conduct Application by which issues of professional conduct may be dealt with informally but which may be publicly noted. This becomes an issue in matters such as civility, which may arise the course of public court proceedings, where the facts may not be in dispute, but the interpretation of the actions in question is disputed.

19. While an ITA is an option in such cases, it does not provide the Law Society with the means to illustrate its public accountability as regulator, which would require that there be a public statement about the outcome of its investigation. The Committee determined that there was merit to considering a process similar to the Invitation to Attend but which would include the ability to disclose publicly the fact that the conduct issue has been addressed by the Society.

B. THE NEED FOR A NEW PROCESS

20. An example of the type of conduct that may require a more public response is incivility. The Committee noted that civility in the legal profession has been identified as a problem by the Law Society, the judiciary and the public.[3] A small but steady percentage of incoming complaints involve civility issues of one kind or another. While some matters can be resolved by Law Society staff through the member's apology or a staff caution, other cases require the Law Society to take public action.

21. The Committee concluded that the current remedies available to the Law Society to address issues of civility fall short of addressing the regulatory concerns this conduct raises. In order to maintain public confidence that the Society is successfully fulfilling its mandate, it must not only take action, but must be seen as taking action, against uncivil lawyers.

22. The specific concern resulting from the Law Society's inability to disclose or comment on civility cases disposed of by way of Invitations to Attend has been noted by, among others, the Chief Justice of Ontario, The Honourable R. Roy McMurtry:

> In *Marchand,* the Court of Appeal stated and I repeat that there was "a level of rancour and hostility rarely if ever seen in a Ontario court room which tarnished the administration of justice." Nevertheless, the appeal was dismissed and that was the end of the matter insofar as the public record is concerned.
>
> The public does not know whether the governing body of the legal professional ever considered the conduct of counsel in *Marchand.* If there was any invitation for counsel to attend before a panel of the discipline committee of the Law Society, such an occasion would be considered confidential under the present

[3] The Ontario Court of Appeal has made specific and critical comment about incivility of counsel in court proceedings on at least three occasions in the past few years: *Marchand (Litigation Guardian of) v. Public General Hospital Society of Chatham,* (2000), 51 O.R. (3d) 97, *Ontario New Home Warranty Program v. Bertrand & Frere Construction Co.,* [2001] O.J. No. 2014, and *R. v. Felderhof*, (2003), 68 O.R. (3d) 481. Chief Justice McMurtry, in his remarks on advocacy and professionalism at the Advocacy Policy Forum (February 17, 2004) also commented on the issue of incivility in the courtroom and the Law Society's role in addressing the issue.

Rules of Procedure and would not be known by members of the legal profession let alone the public.[4]

23. In the Committee's view, these comments do not mean that civility issues should be addressed only through formal discipline proceedings. Prosecution in many of these cases may not be an appropriate option. Often the members in these cases do not have a discipline history, but their conduct may have been noted in a court decision in a single case. Further, a member may argue that his or her conduct was justified, and in certain circumstances it is not clear whether or not the conduct was inappropriate. In the Committee's view, there must be opportunity for discussion between the member and benchers.

24. The Committee also learned that many of the members involved in these complaints do not raise regulatory concerns apart from their apparent incivility. For example, they may be recent calls and/or inexperienced, or may have lost their perspective in a particular case. The Law Society needs to preserve the educational and corrective aspect that is inherent in the Invitation to Attend process.

C. THE PROPOSED NEW PROCESS – THE NEW REGULATORY MEETING

25. In the Committee's view, a new process to deal with civility and other similar issues should provide an opportunity for:

- a discussion between the member and benchers so that the member may hear how the Law Society views his or her actions,
- the member to learn how his or her actions impact on others, such as the complainant, the legal profession and the administration of justice,
- the member to apologize, if appropriate;
- the member to take responsibility for his or her actions,
- the member to assist in addressing the harm created by his or her behaviour, and
- the Law Society to report to the public that the issue has been addressed.

26. The Committee noted processes in other jurisdictions and organizations that are designed to address these objectives. One example is a process used by the Law Society of British Columbia called the "conduct review". The conduct review process, set out in Part 4 of the Law Society's rules, includes the following key elements:

- The conduct review is not a hearing.
- The member is required to meet with the conduct review-subcommittee of the discipline committee for a discussion.

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[4] Remarks on advocacy and professionalism at the Advocacy Policy Forum (February 17, 2004).

- The purpose of the review is part educational and part disciplinary.
- After meeting with the member, the subcommittee will report its findings of fact to the member.
- The member has 30 days to dispute the findings.
- The subcommittee then makes a recommendation to the discipline committee. In almost all cases, the subcommittee recommends no further action. However, the subcommittee may recommend a prosecution or may conclude that the matter should never have been a conduct review in the first place.
- Following the conclusion of the conduct review, the fact that the review took place, the subcommittee report and any dispute filed by the member become part of the member's record, which can be used in any subsequent review of the member's conduct and in sentencing if the member is subsequently convicted of misconduct.
- While the report may not be disclosed to the public, the Law Society may publish a summary of the circumstances of the matter that has been the subject of a conduct review but the lawyer or complainant cannot be identified unless he or she consents in writing.

The Proposed Regulatory Meeting

27. Based on its review of the issue, the Committee is proposing the following model for the regulatory meeting process:

    a. The PAC may authorize an invitation to a member to attend a regulatory meeting.

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

        i. The voluntary nature of attendance at the meeting,

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

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

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

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

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

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

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

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

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

d. Only members who engaged in specified types of misconduct, the general criteria for which will be determined by the PAC, would be eligible for a regulatory meeting.[5]

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

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

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

ii. a lay bencher (community representative)

iii. the complainant.

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

h. The outcomes of such a meeting may include:

i. no further action and closing the file;

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

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

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[5] A threshold could be applied in deciding whether a regulatory meeting is appropriate. The term "low risk" was discussed as the type of conduct that would be appropriate for the regulatory meeting. The alleged misconduct must be considered "low risk" from the complainant's perspective (if there is one) and low risk to the public, in consideration of the broader issue of the public expectations of how the Society deals with these types of complaints. This may involve, for example, an assessment of whether the lawyer is likely to repeat the type of behaviour, or whether, if it can be determined, the behaviour which may be repeated may escalate in seriousness.

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

Implementation

28. The Committee sought the views of the Law Society's legislative drafter to determine if By-Law 21[6] , which provides for the action that PAC may authorize after reviewing a matter, required an amendment to permit the PAC to authorize a regulatory meeting.

29. The opinion of the drafter is that no amendment is required, as the following language used in By-Law 21 for the authorization of an Invitation to Attend is sufficiently broad to include the new procedure.

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

AMENDMENT TO THE CONFIDENTIALITY REQUIREMENT FOR PRIOR INVITATIONS TO ATTEND

A. INTRODUCTION

30. The current Convocation policy on Invitations to Attend (ITAs) imposes a strict blanket of confidentiality surrounding the ITA process. The policy stipulates that the Law Society staff cannot disclose a member's past ITAs orally or in materials submitted to the PAC, to benchers or to the Hearing Panel conducting an ITA or to the public.[7]

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[6] See Appendix 2.

[7] Current policies were established in 1997 and 1998. On June 27, 1997, Convocation affirmed its policy, arising from a prior Discipline Convocation, that no reference to an ITA should be made in the reasons of hearing panels or by Discipline Counsel. On that date, Convocation also debated whether the fact of an ITA should be included in the reasons of hearing panels in current discipline matters based on relevance of the issue(s) in the ITA to the current matter, in the limited case where the ITA arose from the withdrawal of a formal discipline charge at the hearing. Convocation answered the question in the negative. On January 23, 1998, Convocation determined that reference to a previous ITA should not be included anywhere in material submitted by staff or other investigators to the discipline authorization committee (now the PAC). This would also apply to materials prepared for an ITA itself. However, the current practice of staff recording the occurrence of an ITA was to be continued. Otherwise, no change

31. Based on a request from the Proceedings Authorization Committee, the Committee reviewed the merits of this confidentiality provision, and determined that to make the ITA process more effective, the PAC or benchers conducting an ITA should be informed of a member's past history of ITAs.

B. OVERVIEW OF THE ITA PROCESS

Legislative Authority For The ITA

32. Section 36 of the *Law Society Act* sets out the authority for an ITA that is conducted by a Hearing Panel in the context of a conduct application. The relevant excerpts of section 36 are as follows:

> (1) If an application has been made under section 34 [conduct application], the Hearing Panel may invite the member or student member in respect of whom the application was made to attend before the Panel for the purpose of receiving advice from the Panel concerning his or her conduct.
>
> (2) The Hearing Panel shall dismiss the application if the member or student member attends before the Panel in accordance with the invitation.

33. ITAs outside of the hearing context, such as those conducted by the PAC, are authorized by By-law 21 (Proceedings Authorization Committee), Section 9(1):

> After reviewing a matter, the [Proceedings Authorization] Committee may determine that no action should be taken in respect of the matter or … the Committee may take one or more of the following actions:
>
> 1. Approve, or give directions for, the informal resolution of the matter.
>
> 2. Authorize the Society to apply to the Hearing Panel for a determination of whether,
>
> i. a member or student member has contravened section 33 of the Act
>
> ii. a member or student is or has been incapacitated, or
>
> iii. a member is failing or has failed to meet standards of professional competence.
>
> *3. Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her conduct.*
>
> *3.1 Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her professional competence.*

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was made to the June 1997 policy of Convocation respecting information about ITAs at the hearing level. At that time, Convocation rejected a suggestion that the test for including information to the PAC about a prior ITA be the relevance of the issue in the prior ITA to the conduct being reviewed.

4. Send to a member or student member a letter of advice concerning his or her conduct.

4.1 Send to a member a letter of advice concerning his or her competence.

5. Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

6. Any other action that the Committee considers appropriate.
(Emphasis added)

The Role of the PAC

34. The role of the PAC, as set out in s. 4(a) of By-law 21, is to review all matters referred to it in accordance with By-law 21 or any other by-law and in respect of each matter, to determine whether any action mentioned in subsection 9(1) should be taken. As noted above, the actions set out in s. 9(1) include authorizing an ITA or the issuance of a conduct application.

The Need for Change

35. In order for the PAC to make an informed decision about the action that should be taken in response to a complaint, the Committee's view is that the PAC should know about a member's past ITAs, for the following reasons:

a. Past ITAs are relevant information about a member for the purpose of PAC's decision-making on a matter referred to it. In particular, the fact of a prior ITA, if relevant to a subsequent fact situation involving an issue of alleged professional misconduct, is something PAC should know, before deciding if (another) ITA is the appropriate disposition.

b. ITAs are generally authorized in situations where a Conduct Application is not warranted but the member has used poor judgment. However, in many instances, a member will attend successive ITAs based upon similar complaints, demonstrating that the member has repeatedly used poor judgment. In these circumstances, it is questionable whether an additional ITA is the most appropriate remedy for a member. PAC's knowledge of a former ITA will permit it to use this remedy most effectively;

c. Although a repeated pattern of similarly egregious behaviour would be known to Law Society staff, current policy prohibits the staff from advising the PAC of previous ITAs. This leads to an anomaly in circumstances where the PAC members do in fact know about previous ITAs because they were the part of the PAC that authorized the previous ITA(s).

36. If prior ITAs are disclosed to the PAC, its ability to make a determination on whether a Conduct Application or some other action should be authorized based upon a pattern of

similar behaviour will be enhanced, as the information may include evidence of a pattern of conduct that resulted in a number of ITAs.

C. THE PROPOSED CHANGE TO THE CONFIDENTIALITY POLICY

37. In the Committee's view, the Law Society must respond appropriately to the conduct of members who repeatedly breach the *Rules of Professional Conduct*, even where the breaches are of a more minor nature. For this reason and the reasons above, the Committee is requesting that the policy be amended to permit disclosure of prior ITAs to the PAC or the panel of benchers who sit for the purposes of an ITA authorized by the PAC.

38. The fact that the PAC knows of previous ITAs will not change their nature. The ITA will remain a remedy that is not penal or disciplinary. The PAC will consider past ITAs, not as equivalent to past discipline, but as indicative of a pattern of behaviour that the PAC, performing its vital regulatory role, needs to know about and integrate into its decision-making.

39. The amendment to the policy will not affect the prosecution of subsequent offences (i.e. matters authorized as Conduct Applications) and the concurrent discipline history that will be established, as the Hearing Panel cannot be advised of prior ITAs even if the PAC is aware of them.

40. The ITA will continue to be a final disposition of the complaint against the member, and will not appear on a member's disciplinary record that is available to the public.

The Proposed Grandparenting Provision

41. In the interests of fairness, the Committee is proposing that the new policy permitting disclosure of prior ITAs to the PAC should apply on a going forward basis.

42. Under this proposal, only ITAs authorized by the PAC that occur after the adoption of the disclosure policy by Convocation would form part of a member's ITA history. All members who have an ITA history prior to the adoption of the policy would be "grandparented" and no disclosure of their ITA history up to the date the new policy is adopted would be disclosed to the PAC.

43. Attached at Appendix 3 is an outline of the ITA policy and process that incorporates the revised disclosure provisions and the grandparenting proposal.

PROPOSED AMENDMENTS TO THE PROCEDURES FOR INTERLOCUTORY SUSPENSION AND RESTRICTION ORDERS (INTERIM SUSPENSION ORDERS)

A. BACKGROUND

44. One of the issues reviewed by the Committee over the past several months was the process by which the Society obtains an order for a member's interim suspension from the practice of law.

45. This review occurred in two parts. The first part focused on the test in the *Law Society Act* that the Hearing Panel applies to the Law Society's application for an order for an interim suspension. On February 24, 2005, based on the Committee's report on this issue, Convocation approved in principle an amendment to section 49.27 of the *Law Society Act* to change the test for obtaining an order for an interim suspension to reasonable grounds to believe that there is a significant risk that members of the public would be harmed.

46. The second matter, on which the Committee is now reporting, involves proposals for amendments to the Law Society's *Rules of Practice and Procedure*[8] to relax the evidentiary and procedural requirements for interim suspension motions.

B. THE CURRENT PROCESS AND THE NEED FOR CHANGE

47. As noted in the Committee's February 2005 report to Convocation, where there is a serious allegation of wrongdoing against a member that also raises a concern about protection of the public, a remedy available to most regulators is the ability to quickly suspend the member's privileges pending a determination of the allegations.

48. The Law Society has the authority to order the interim suspension of a member. Section 49.27 of the *Law Society Act* provides that the Hearing Panel may make an interlocutory order suspending a member. Currently, this section reads:

> The Hearing Panel may make an interlocutory order authorized by the rules of practice and procedure, but no interlocutory order may be made suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law unless the Panel is satisfied that the order is necessary for the protection of the public.

As noted above, Convocation approved an amendment that would change the test to one where the Law Society has reasonable grounds to believe that there is a significant risk that members of the public would be harmed

Concerns about the Current Procedural and Evidentiary Requirements

49. In the Committee's view, the lengthy and complex process for an order for an interim suspension, given the purpose of the remedy, undermines the efficacy of this remedy, which is primarily meant to address urgent problems apparent before the conduct investigation is complete and the Society is ready to prosecute a member on the merits of a conduct application. The purpose is to ensure that the public is protected.

50. Rule 8 of the *Rules of Practice and Procedure* governs the procedure for obtaining an interim order. Rule 8.02 provides that the Society may bring the motion for an interim order, and must do so with the authorization of the Proceedings Authorization Committee where no notice of application has been authorized. Rule 8 refers to Rule 7, which allows for affidavit evidence on a motion. However, Rule 7 is subject to Rule 11, pursuant to which hearsay evidence is not admissible unless the facts are not contentious. Pursuant to Rule 1, a motion for interim suspension is defined as a proceeding, meaning that Rule 11 would apply to such a motion.

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[8] The current Rules appear at Appendix 4.

51. Based on the above, where a motion for an interim suspension is brought prior to the authorization of a Notice of Application or the Hearing Panel has not commenced a hearing to determine the merits of a proceeding, the process requires:

    a. Proceedings Authorization Committee authorization of a motion seeking an interim suspension;

    b. Service and filing of a motion record with affidavit evidence which satisfies the Law Society's burden of proof, namely, that the order is necessary for the protection of the public. Generally this involves establishing the misconduct to be alleged in the conduct application which deals with the merits of the misconduct; and

    c. Appearance before a Hearing Panel[9] with at least three days' notice to the member at which the member has a right to a full hearing.

52. The Committee noted that other law societies in Canada have more expeditious processes than that of the Law Society. Many of the other provinces allow interim suspension motions to be heard and initially decided *ex parte*, subject to the member's right to seek a timely review. An example is the Law Society of Manitoba's process, in which staff may bring an application to suspend a member on an interim basis to a committee of benchers, who decide the matter. The member is provided with 24 hours notice, and may appear before the committee. The committee receives the investigator's report but the formal rules of evidence do not apply.

53. Further, among the law societies in Canada, the Law Society of Upper Canada is unique in requiring that the Hearing Panel be convened before issuing an interim suspension. In other law societies, the Hearing Panel or the equivalent is not required for an interim suspension to be granted. This is consistent with the variety of situations in which an interim suspension order will be appropriate – situations in which an apparent danger to the public exists and the benefit of protecting the public outweighs the specific prejudice to the member in the interim.

54. The differences between the Law Society of Upper Canada and the other law societies become more apparent as a result of the National Mobility Agreement, which will result in two or more law societies dealing with the same lawyer on the same facts. This interaction is highlighting the fact that the Law Society's response differs and, in the Committee's view, may not be sufficient in situations where a member has been charged with a serious offence or is otherwise facing serious allegations.

C. THE PROPOSALS

55. The Committee believes that for the Law Society to use the interim suspension remedy most effectively, changes should be made to the *Rules of Practice and Procedure* to relax the procedural and evidentiary rules for interim suspension motions. As a matter of form, the first change the Committee recommends is that the order be renamed

[9] O. Reg. 30/99 requires that a three member panel hear the application for an interim suspension. See Appendix 5 for a copy of the Regulation.

"interlocutory suspension and restriction order" to be consistent with the language used in the *Law Society Act* that describes such an order, noted in paragraph 48.

56. With respect to the evidentiary requirements, permitting the introduction of evidence that meets the definition of s. 15 of the *Statutory Powers Procedure Act*[10] would allow affidavit evidence, including hearsay evidence, reasons of a trial judge that are under appeal, and other documentary or other evidence that the Law Society could argue should be sufficient for the test it must meet under the Act. This standard for evidence on such a motion would increase the Law Society's ability to obtain interlocutory suspensions and generally reduce the resources required to successfully obtain this relief.

57. To facilitate the Law Society's ability to obtain suspensions quickly, where appropriate, the Committee agreed that the motion should be heard without notice to the member in urgent circumstances.[11] Currently, the Society is required to give 10 days notice if there is no conduct application. Otherwise it can move on three days notice.

58. Permitting only one Hearing Panel member to hear the motion would make scheduling of these motions easier. O. Reg. 30/99 made under the Act would require an amendment. As the Regulation can only be amended by the government, the Committee suggests that the Society communicate this issue to the government at the appropriate time.

59. After consulting with the Society's legislative drafter, the Committee is proposing the following amendments to the *Rules of Practice and Procedure:*

    a. an amendment to Rule 1, which defines "originating process", to delete reference to a notice of motion for an interim order; without this amendment, the motion for

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[10] The first three subsections of Section 15 read:

(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing

(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Conflicts

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

[11] For example, where a member is charged with a serious criminal offence, it may be necessary to seek an interim suspension based on the charges themselves, and long before trial takes place. The risk to the public may be too great to justify waiting for the member to be convicted in a criminal forum.

such an order (to be renamed an interlocutory suspension and restriction order) would require 10 days' notice under Rule 5.01(2) instead of three days under Rule 8;

b. a housekeeping amendment to Rule 5 (Service of Documents) to describe acceptable proof of service of a document, including proof of service on the representative of a person represented in a proceeding;

c. an amendment to Rule 8 to incorporate evidence permitted under s. 15 of the *Statutory Powers Procedure Act* with respect to a motion for an interlocutory suspension and restriction order;

d. an amendment to Rule 8 to permit a motion for such an order to be heard without notice to the member;

e. an amendment to Rule 8 to permit the Hearing Panel to adjourn a motion without notice for the purpose of service if it concludes that the motion ought to have been served;

f. an amendment to Rule 8 to provide the Hearing Panel with authority to vary or cancel the order;

g. an overhaul of Rule 7 (Motions), primarily in the nature of housekeeping amendments; and

h. consequential amendments to Rules 13 and 15 (Orders and Appeals respectively) as result of the new title "interlocutory suspension and restriction order".

The blackline version of these Rules appears on the next pages.

60. With respect to the notice period for motions under Rule 8, the current period is three days (Rule 8.03(1)). Rule 1.07 provides that "A tribunal by order may extend or abridge any time prescribed by these Rules on such terms as are just." Given these provisions, no changes to the notice period for interim suspension motions are proposed.

PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE (BLACKLINE VERSION)

RULE 1

General Rules
…

Definitions

1.02 …

(2) In these Rules,

"originating process" means a notice of application-, and a notice of hearing, ~~or a notice of motion for an interim order where a notice of application has not yet been served;~~

RULE 5 SERVICE OF DOCUMENTS

Proof of Service

5.02 (1) Service of a document may be proved by,

(a) an affidavit of the person who served it; or

(b) where a person is represented in a proceeding or on a motion and the document is served on the person's representative, the written admission or acceptance of service of the person's representative.

(2) The affidavit or written admission or acceptance of service may be printed on the back sheet or on a stamp or sticker affixed to the back sheet of the document served.

RULE 7 MOTIONS

Making the Motion

7.01 ~~7.02(1)~~ A motion shall be made by a notice of motion ~~in accordance with~~ (Form 7A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

~~(2) The notice of motion shall be served on all parties and, in the case of motions for disclosure, any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.~~

~~(3) The moving party shall serve on any person or party served with the notice of motion and file with the Clerk of the tribunal, at least seven days before the hearing date,~~

~~(a) a motion record containing the notice of motion and all affidavits and other material to be relied upon; and~~

~~(b) a factum, if desired by the moving party, and a book of those authorities referred to in the factum.~~

Scheduling the Motion

~~7.01 (1) The party bringing a motion to be heard on a date, other than the date scheduled for the hearing of the proceeding on its merits, shall obtain available dates and times for the hearing of the motion from the Hearings Coordinator.~~

~~(2) The party bringing a motion, on a date other than the date scheduled for the hearing of the proceeding on its merits, shall inform the Hearings Coordinator of the estimated length of time it will take to argue the motion when obtaining the available dates and times.~~

7.02 (1) A motion may be scheduled for hearing

(a) on any date on which the merits of the application to which the motion relates is scheduled to be heard; or

(b) on any date obtained from the Hearings Coordinator.

~~Responding to a Motion~~

~~7.03 The responding party may serve on the moving party and any person or party served with the notice of motion and file with the Clerk to the tribunal, at least three days before the hearing date,~~

~~(a) a responding record containing any materials not contained in the motion record to be relied upon; and~~

~~(b) a factum, if desired by the responding party, and a book of those authorities referred to in the factum.~~

Service of Notice

7.03 Where a motion is made on notice, the notice of motion shall be served on all parties and any person who will be affected by the order sought at least ten days before the date on which the motion is to be heard.

~~Evidence on the Motion~~

~~7.05 Subject to rules 11.01 (3) and 11.02, evidence on a motion shall be given by affidavit unless the tribunal orders otherwise.~~

Filing of Notice

7.04 Where a motion is made on notice, the notice of motion shall be filed, with proof of service, with the Clerk to the Tribunal, at least seven days before the date the motion is to be heard.

Abandoning a Motion

7.05 ~~7.06~~(1) A party who makes a motion may abandon it by serving ~~delivering~~ a notice of abandonment ~~in~~ (Form 4C) ~~to that effect to any person or party served with the notice of motion and the Clerk of the tribunal.~~ on every party or person served with the notice of motion and filing it, with proof of service, with the Clerk to the Tribunal.

(2) A party who serves a notice of motion and does not file it or appear at the hearing of the motion shall be deemed to have abandoned the motion unless the tribunal orders otherwise.

(3) Where a motion is abandoned or is deemed to be ~~have been~~ abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the tribunal orders otherwise.

Materials for Use on the Motion

~~7.04 (1) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.~~

~~(2) Where this rule requires materials to be filed with the Clerk to the tribunal, a party shall file with the Clerk,~~

~~(a) four copies of the materials where the motion is before a three member Hearing Panel;~~

~~(b) two copies of the materials where the motion is before a one member Hearing Panel, the HMT, or the AMT; or~~

~~(c) six copies of the materials where the motion is before the Appeal Panel.~~

7.06 (1) Where a motion is made on notice, the moving party shall serve a motion record on every party or person served with the notice of motion, and shall file it, with proof of service, with the Clerk to the Tribunal, at least seven days before the date on which the motion is to be heard.

(2) The moving party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter;

(b) a copy of the notice of motion; and

(c) all affidavits and other material to be relied upon.

(3) Where a motion is made on notice, the responding party may serve a motion record on the moving party and every party or person served with the notice of motion, and file it, with proof of service, with the Clerk to the Tribunal, at least three days before the date on which the motion is to be heard.

(4) The responding party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter; and

(b) any materials to be relied upon not contained in the moving party's motion record.

(5) Where a motion is made on notice, a party may serve on every party and person served with the notice of motion a factum and a book of the authorities referred to in the factum.

(6) The moving party shall serve its factum and book of authorities, if any, and shall file them, with proof of service, with the Clerk to the Tribunal, at least seven days before the date on which the motion is to be heard.

(7) The responding party shall serve its factum and book of authorities, if any, and shall file them, with proof of service, with the Clerk to the Tribunal, at least three days before the date on which the motion is to be heard.

(8) When filing materials with the Clerk to the Tribunal, a party shall file,

(a) two copies of the materials where the motion is to be heard by one member of the Hearing Panel, the HMT or the AMT;

(b) four copies of the materials where the motion is to be heard by three members of the Hearing Panel; and

(c) six copies of the materials where the motion is to be heard by the Appeal Panel.

Motions on Consent

7.07 (1) Despite rule 1.12, ~~W~~where a motion is on consent, the motion may be heard in writing without the attendance of the parties or persons affected by the order-, unless the tribunal orders otherwise._ , ~~and the written consent of the motion participants and a draft order shall be filed with the notice of motion.~~

(2) Where the motion is on consent, the moving party shall file the consent and a draft of the formal order, with the notice of motion, with the Clerk to the Tribunal.

Disposition of Motions

7.08 ~~When a motion is heard by a tribunal prior to the hearing of the proceeding on its merits, the tribunal may grant the relief sought, dismiss or adjourn the motion, in whole or in part and with or without terms, or may adjourn the motion to be disposed of by the tribunal hearing the proceeding on its merits.~~ After hearing a motion, a tribunal may,

(a) grant the relief sought;

(b) dismiss the motion, in whole or in part;

(c) adjourn the motion, in whole or in part; or

(d) if the motion is heard prior to the hearing of the merits of the application to which the motion relates, adjourn the motion to be disposed of by the tribunal hearing the merits of the application.

~~Written~~ Order

7.09 ~~(1) Immediately after a motion has been determined, the successful party shall and any other party or person served with the notice of motion may, deliver a draft of the formal order.~~

~~(2) An order shall be in accordance with Form 7B.~~

~~(3) An order delivered in accordance with subrule (1), or rule 7.07, shall be reviewed, amended if necessary and signed by the chair of the tribunal which heard the motion.~~

~~(4) This subrule does not apply to orders made on the record during the hearing of a proceeding on its merits or to motions in writing in accordance with rule 7.07.~~

(1) After a tribunal has disposed of a motion, the tribunal shall make an endorsement of its order on the motion record, where the motion was made on notice, or on the notice of application, where notice was not required, unless,

(a) the tribunal delivers written reasons for its order; or

(b) the circumstances make it impractical for the tribunal to make the endorsement.

(2) Where a motion is made on notice, after a tribunal has disposed of the motion, the successful party shall, and any other party or person served with a notice of motion may, submit a draft of the formal order (Form 7B).

(3) The tribunal or the chair of the part of the tribunal that hears a motion shall review all drafts submitted under subrule (2) and shall, with or without amending it, sign one of the drafts.

Costs and Adjournments

7.10 All motions shall be brought in a timely fashion having regard to all of the circumstances, and the moving party's failure to do so, may be taken into account in awarding costs on the motion and in granting any related adjournment which may be necessary.

RULE 8 ~~INTERIM ORDERS~~ INTERLOCUTORY SUSPENSION AND RESTRICTION ORDERS

~~General~~ Authority to Make Interlocutory Suspension or Restriction Order

8.01 ~~Rule 7 applies with necessary modifications to this rule~~. On motion by the Society, the Hearing Panel may make an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

~~Making the Motion~~ General

8.02 (1) ~~Subject to subrule (2), the Society may bring a motion before the Hearing Panel for an interim order.~~ Except as otherwise provided for in this rule, rule 7 applies with necessary modifications to a motion for an interlocutory suspension or restriction order.

(2) ~~Where a motion for an interim order is brought prior to the authorization of a notice of application or the Hearing Panel has not commenced a hearing to determine the merits of a proceeding, the Society shall bring the motion with the authorization of the Proceedings Authorization Committee.~~ Where an application to the Hearing Panel has not been authorized by the Proceedings Authorization Committee or the Hearing Panel has not commenced a hearing on the merits of an application, with the authorization of the Proceedings Authorization Committee, the Society may make a motion relating to the application to the Hearing Panel for an interlocutory suspension or restriction order.

~~Materials to be Served~~ Making the Motion

8.03 A motion for an interlocutory suspension or restriction order shall be made by notice of motion.

Service of Notice

~~8.03~~ 8.04 (1) ~~The Society shall serve on the~~ notice of motion shall be served on the member or student member-, at least three days before the date on which the motion is to be heard-,.

~~(a) a motion record which shall contain the notice prescribed in rule 7, all affidavits and any other material to be relied upon; and~~

~~(b) a factum, if desired by the Society, and a book containing any authorities referred to in the factum.~~

(2) ~~Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the Hearing Panel with proof of service the day before the hearing of the motion.~~

(2) Despite subrule (1), the Hearing Panel may make an order without the notice of motion having been served on the member or student member where,

(a) the circumstances render the service of the notice of motion impracticable or unnecessary; or

(b) the delay necessary to effect service might entail serious consequences.

(3) Subrule 5.01 (1) applies to the service of a notice of motion.

Filing of Notice

8.05 (1) Where the notice of motion has been served, the notice of motion shall be filed, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(2) Where service of the notice of motion is not required, the notice of motion shall be filed, with the Clerk to the Tribunal, at or before the hearing of the motion.

~~Responding to the Motion~~ Materials for Use on the Motion

~~8.04 (1) The member or student member may serve on the Society, no later than 2:00 p.m. the day before the hearing of the motion,~~

~~(a) a responding motion record containing any materials not contained in the Society's motion record; and~~

~~(b) a factum, if desired by the member or student member, and a book of those authorities referred to in the factum.~~

~~(2) Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the Hearing Panel with proof of service by 4:00 p.m. the day before the hearing of the motion.~~

8.06 (1) Where the notice of motion has been served, the Society shall serve a motion record on the member or student member, at least three days before the date on which the motion is to be heard, and shall file it, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(2) Where the notice of motion has been served, the member or student member may serve a motion record on the Society not later than 2:00 p.m. on the day before the date on which the motion is to be heard, and file it, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(3) Where the notice of motion has been served, the Society shall serve its factum and book of authorities, if any, on the member or student member, at least three days before the date on which the motion is to be heard, and shall file them, with

proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(4) Where the notice of motion has been served, the member or student member shall serve its factum and book of authorities, if any, on the Society not later than 2:00 p.m. on the day before the date on which the motion is to be heard, and shall file them, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(5) Where service of the notice of motion is not required, the Society shall file the motion record and the factum and book of authorities, if any, with the Clerk to the Tribunal, at or before the hearing of the motion.

Evidence

8.07 Despite rule 11.01, section 15 of the *Statutory Powers Procedure Act* applies in a hearing of a motion for an interlocutory suspension or restriction order.[12]

Disposition of Motion

8.08 Where it appears to the Hearing Panel that the notice of motion ought to have been served on the member or student member, the Hearing Panel shall adjourn the motion and direct that the notice of motion be served on the member or student member.

Order ~~to Specify Duration~~

~~8.05 An interim order continues in force until a further order of a tribunal sets aside or varies the interim order, or the final order on the merits of the proceeding.~~

8.09 (1) Every interlocutory suspension or restriction order shall, when it is first made, be an interim interlocutory order for 30 days and, after that, shall become a final interlocutory order unless fresh evidence or a material change in circumstances

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[12] 15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other things,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing

(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Conflicts

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

is brought by the parties to the attention of the tribunal that made the order and the tribunal varies or cancels the order.

(2) Unless the Hearing Panel provides otherwise, a final interlocutory suspension or restriction order continues in force until an order of the Appeal Panel sets aside or varies the order or the Hearing Panel makes a final order after a hearing of the application on its merits.

(3) Unless the Hearing Panel provides otherwise, where service of the notice of motion was not required, the Society shall serve on the member or student member any order or formal order made by the Hearing Panel and a copy of the notice of motion, motion record and all other documents used in the hearing of the motion.

RULE 13 ORDERS

Rule 13.04 Incapacity Orders Made in the Absence of the Member or Student Member

13.04 (1) Where the Hearing Panel has proceeded in the absence of the member or student member and has determined that there are reasonable grounds for believing that the member or student member is, or has been, incapacitated, the Hearing Panel may make an ~~interim order~~ interlocutory order suspending the rights and privileges of the member or student member or restricting the manner in which the member may practise law.

(2) ~~An interim order becomes final on the thirty-first day after the day on which notice of the interim order is served on the member or student member unless, before that day, he or she moves before the Hearing Panel to have the interim order of suspension set aside and the issue of incapacity determined.~~ An interlocutory order made under subrule (1) shall become a final order of the Hearing Panel, with respect to the application to which it relates, thirty days after the date on which the interlocutory order is made, unless the member or student member appears before the Hearing Panel for the hearing of the merits of the application.

~~(3) The member or student member named in the order may appeal a final order of suspension made under this rule.~~

RULE 15 APPEALS

General

15.01 Subject to the Act, there is no appeal from a final ~~an~~ interlocutory order of the Hearing Panel other than an ~~interim order~~ interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

PROPOSED SUMMARY HEARING PROCESS

A. BACKGROUND AND OVERVIEW

61. In examining the various investigatory and hearing procedures used in the Law Society's regulatory process, one of the gaps identified by the Director of Professional Regulation, Zeynep Onen, was the "one size fits all" investigations, discipline and hearings processes.

62. The current Law Society hearing process provides for one type of hearing and pre-hearing process for all matters. As noted earlier, this process can be lengthy and complex, to the point where on occasion, prosecution becomes ineffective in more straightforward or interim matters.

63. The Committee considered the following examples:
    a. The prosecution of a member for failure to respond to the Law Society is usually not a complex prosecution and should be expedited in order for the process to be effective. Currently, this type of prosecution requires all the same process steps as a more complex matter. Given the competing priorities, the result is that the resources and time required can create a disincentive to enforcing failure to respond, which is a significant issue for the Society;

    b. The Law Society's ability to fulfill its mandate to protect the public requires the co-operation of its members. It is for this reason that members are required to co-operate with Law Society investigations where they would not be required to do in other forums, including circumstances where the information may be self-incriminating. Members who fail to co-operate with the Society prevent the Society from taking required action. In many cases the Society is unable to investigate the underlying complaint if the member fails to co-operate.

64. Prosecution of these members must be conducted efficiently so that the Society is not delayed in its investigation of the underlying issues. In circumstances in which a member's action or inaction impedes the Society's ability to regulate the profession, the Society needs to take fast and effective action in a fair process.

65. Given this information, the Committee considered how the process could be improved to be more effective.

B. PROPOSALS FOR A SUMMARY PROCESS

66. The Committee agreed with the merits of a summary process for Law Society conduct matters which are time-sensitive, are straightforward or otherwise lend themselves to such process. In the Committee's view, the availability of a Law Society summary process would also free three bencher hearings for more serious matters.

67. The summary nature of certain types of prosecutions is already recognized in the legislation. Section 2 of O. Reg. 30/99[13] permits certain proceedings to be heard by one bencher rather than three benchers, including (but not limited to):

[13] See Appendix 5 for the text of O. Reg. 30/99.

- Failing to maintain financial records as required by the by-laws,
- Failing to respond to inquiries from the Society,
- Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.

C. THE PROPOSALS

68. The proposed summary processes would apply only in the following situations, which have been identified as critical regulatory issues:

- Members who fail to respond to inquiries from the Society,
- Members who fail to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the *Law Society Act*, and
- Members who fail to maintain financial records as required by By-Laws 18 and 19.

Particulars Of The Proposals

69. There are two aspects to this proposal. One is the investigative process culminating in the authorization of a Conduct Application by the Proceedings Authorization Committee (PAC), and the other is the process at the PAC and following.

Operational Issues

70. In the investigative phase, the focus is on responding in a timely way to a conduct issue as a matter of public protection, and this means obtaining a timely response from the member in question. As noted above, members who fail to co-operate with the Law Society prevent the Society from investigating the underlying complaint. A member's failure to respond may also signal a more widespread neglect of his or her practice that endangers members of the public.

71. The Committee agreed that the Professional Regulation Division should proceed to implement operational changes for investigations that will support a timely and consistent regulatory approach. This approach will involve the following:

a. Defining the parameters of failure to co-operate;

b. Clarifying that the investigation of the substantive issues is to proceed concurrently with the investigation and prosecution of the failure to respond/co-operate if possible;

c. Setting out timelines for communication with members to ensure that members are given fair notice and deadlines for response and that the Society follows up in a timely and consistent manner; and

d. Clarifying expectations that matters are moved quickly to the PAC once it is determined that the member is not co-operating.

72. In addition, regulatory staff will be provided with standard form letters and template Authorization Memoranda to ensure a consistent and streamlined approach.

73. These improvements to the investigative process do not require any legislative amendments.

Policy Related to the Hearing Process

74. In the process following the PAC's authorization of a conduct application, the Committee believes that a summary process is particularly important for prosecutions for the "fail to" cases (e.g. fail to respond to a complaint, fail to provide books and records), referred to above.

75. Under the current *Rules of Practice and Procedure*, these cases are treated the same as more complex cases. The Committee's view is that they can and should proceed in a simpler and quicker fashion. The facts are usually straightforward and the disclosure and evidence minimal. An adjudicator should be able to complete the hearing and reach a decision expeditiously. The Committee agreed that these "fail to" cases do not justify the time, resources and expense associated with a three-bencher panel.

76. To implement this proposal, the Committee is proposing changes to the procedural Rules. These changes include permitting these proceedings to go to a hearing after the Conduct Application is issued, rather than to the Hearings Management Tribunal (HMT) at first instance. The changes would also involve a single Bencher available for summary hearings on a regular, even weekly basis.[14]

77. The procedural route to the hearing is found in Rule 9.01, which currently reads:

Tribunal to which proceedings are first returnable

> 9.01 (1) Subject to subrules (3) and (4), a proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.
>
> (2) When the originating process is served, notice shall be given of the time and place at which the proceeding shall be returnable before the HMT.
>
> (3) A proceeding which originates by notice of application shall be first returnable before a Hearing Panel for the purpose of proceeding with a hearing on its merits where the hearing of another proceeding has already been scheduled or *the nature of the allegations in the notice of application requires that the hearing be expedited*

[14] Section 2(1)1. of O. Reg. 30/99 permits a single bencher hearing for these matters. In recent months, the PAC has authorized Conduct Applications on an average of seven to eight "fail to" cases per month. This history is consistent with the projected inventory of cases in the Professional Regulation Division. Based on staff's assessment, it is anticipated that a single bencher could hear up to four "fail to" cases per day, with the result that a bi-weekly process would adequately address these cases.

(4) A proceeding which originates by notice of motion for an interim order where a notice of application has not yet been served shall be first returnable before the Hearing Panel for the hearing the motion on its merits.

(emphasis added)

78. Noting the provisions of (3) above, the proposed amendment to this rule, shown below, creates a direct route to a hearing in the circumstances to which the summary process applies.

RULE 9 PRE-HEARING PROCEDURES

Tribunal to Which Proceeding is First Returnable

9.01 (1) ~~Subject to subrules (3) and (4)~~, A proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.

(2) ~~When the originating process is served, notice shall be given of the time and place at which the proceeding shall be returnable before the HMT~~. Despite subrule (1), a proceeding which originates by notice of application may be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where the hearing of the merits of another application involving the same parties has already been scheduled.

(3) ~~A proceeding which originates by notice of application shall be first returnable before a Hearing Panel for the purpose of proceeding with a hearing on its merits where the hearing of another proceeding has already been scheduled or the nature of the allegations in the notice of application requires that the hearing be expedited~~ Despite subrule (1), a proceeding which originates by notice of application shall be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where,

(a) the application is for a determination of whether a member has contravened section 33 of the Act by one or more of the following:

i. Failing to maintain financial records as required by the by-laws.

ii. Failing to respond to inquiries from the Society.

iii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act; or

(b) the nature of the application requires that the hearing of the merits of the application be expedited.

(4) ~~A proceeding which originates by notice of motion for an interim order where a notice of application has not yet been served shall be first returnable before the Hearing Panel for the hearing the motion on its merits.~~ When the originating process is served, notice shall be given of the time when and the place at which the proceeding shall be returnable before the HMT or the Hearing Panel.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE
MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 22, 2005

MOVED BY

SECONDED BY

THAT the rules of practice and procedure made under section 61.2 of the *Law Society Act* in force on June 22, 2005 be amended as follows:

RULE 1 [GENERAL RULES]

1. The definition of "originating process" / « acte introductif d'instance » under subrule 1.02 (2) of Rule 1 [General Rules] is deleted and the following substituted:

"originating process" means a notice of application and a notice of hearing;

« acte introductif d'instance » Avis de requête ou avis d'audience.

RULE 5 [SERVICE OF DOCUMENTS]

2. Rule 5 [Service of Documents] is amended by adding the following:

Proof of Service

5.02 (1) Service of a document may be proved by,

(a) an affidavit of the person who served it; or

(b) where a person is represented in a proceeding or on a motion and the document is served on the person's representative, the written admission or acceptance of service of the person's representative.

(2) The affidavit or written admission or acceptance of service may be printed on the back sheet or on a stamp or sticker affixed to the back sheet of the document served.

Preuve de la signification

5.02 (1) La signification d'un document peut être établie :

a) soit au moyen d'un affidavit de la personne qui l'a effectuée;

b) soit au moyen de la reconnaissance ou de l'acceptation écrite de la signification par le représentant ou la représentante de la personne dans une instance ou dans l'audition d'une motion à qui le document est signifié, le cas échéant.

(2) L'affidavit ou la reconnaissance ou l'acceptation écrite de la signification peut être imprimé sur la feuille arrière du document signifié, ou sur une estampille ou une vignette apposée sur la feuille arrière.

RULE 7 [MOTIONS]

3. Rule 7 [Motions] is deleted and the following substituted:

RULE 7 MOTIONS

Making the Motion

7.01 A motion shall be made by notice of motion (Form 7A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

Scheduling the Motion

7.02 A motion may be scheduled for hearing,

(a) on any date on which the merits of the application to which the motion relates is scheduled to be heard; or

(b) on a date obtained from the Hearings Coordinator.

Service of Notice

7.03 Where a motion is made on notice, the notice of motion shall be served on all parties and any person who will be affected by the order sought at least ten days before the date on which the motion is to be heard.

Filing of Notice

7.04 Where a motion is made on notice, the notice of motion shall be filed, with proof of service, with the Clerk to the Tribunal, at least seven days before the date the motion is to be heard.

Abandoning a Motion

7.05 (1) A party who makes a motion may abandon it by serving a notice of abandonment (Form 7C) on every party or person served with the notice of motion and filing it, with proof of service, with the Clerk to the Tribunal.

(2) A party who serves a notice of motion and does not file it or appear at the hearing of the motion shall be deemed to have abandoned the motion unless the tribunal orders otherwise.

(3) Where a motion is abandoned or is deemed to be abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith unless the tribunal orders otherwise.

Materials for Use on the Motion

7.06 (1) Where a motion is made on notice, the moving party shall serve a motion record on every party or person served with the notice of motion, and shall file it, with proof of service, with the Clerk to the Tribunal, at least seven days before the date on which the motion is to be heard.

(2) The moving party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter;

(b) a copy of the notice of motion; and

(c) all affidavits and other material to be relied upon.

(3) Where a motion is made on notice, the responding party may serve a motion record on the moving party and every party or person served with the notice of motion, and file it, with proof of service, with the Clerk to the Tribunal, at least three days before the date on which the motion is to be heard.

(4) The responding party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter; and

(b) any materials to be relied upon not contained in the moving party's motion record.

(5) Where a motion is made on notice, a party may serve on every party and person served with the notice of motion a factum and a book of the authorities referred to in the factum.

(6) The moving party shall serve its factum and book of authorities, if any, and shall file them, with proof of service, with the Clerk to the Tribunal, at least seven days before the date on which the motion is to be heard.

(7) The responding party shall serve its factum and book of authorities, if any, and shall file them, with proof of service, with the Clerk to the Tribunal, at least three days before the date on which the motion is to be heard.

(8) When filing materials with the Clerk to the Tribunal, a party shall file,

(a) two copies of the materials where the motion is to be heard by one member of the Hearing Panel, the HMT or the AMT;

(b) four copies of the materials where the motion is to be heard by three members of the Hearing Panel; and

(c) six copies of the materials where the motion is to be heard by the Appeal Panel.

Motion on Consent

7.07 (1) Despite rule 1.12, where a motion is on consent, the motion may be heard in writing without the attendance of the parties or person affected by the order unless the tribunal orders otherwise.

(2) Where the motion is on consent, the moving party shall file the consent and a draft of the formal order, with the notice of motion, with the Clerk to the Tribunal.

Disposition of Motion

7.08 After hearing a motion, a tribunal may,

(a) grant the relief sought;

(b) dismiss the motion, in whole or in part;

(c) adjourn the motion, in whole or in part; or

(d) if the motion is heard prior to the hearing of the merits of the application to which the motion relates, adjourn the motion to be disposed of by the tribunal hearing the merits of the application.

Order

7.09 (1) After a tribunal has disposed of a motion, the tribunal shall make an endorsement of its order on the motion record, where the motion was made on notice, or on the notice of application, where notice was not required, unless,

(a) the tribunal delivers written reasons for its order; or

(b) the circumstances make it impractical for the tribunal to make the endorsement.

(2) Where a motion is made on notice, after a tribunal has disposed of the motion, the successful party shall, and any other party or person served with a notice of motion may, submit a draft of the formal order (Form 7B).

(3) The tribunal or the chair of the part of the tribunal that hears a motion shall review all drafts submitted under subrule (2) and shall, with or without amending it, sign one of the drafts.

Costs and Adjournment

7.10 All motions shall be brought in a timely fashion having regard to all of the circumstances and the moving party's failure to do so may be taken into account in awarding costs on the motion and in granting any related adjournment which may be necessary.

RÈGLE 7 MOTIONS

Présentation des motions

7.01 Les motions sont présentées par voie d'avis de motion (formule 7A) sauf si la nature de la motion ou les circonstances rendent cet avis inutile.

Inscription des motions au calendrier

7.02 Une motion peut être inscrite en vue de son audition :

a) soit n'importe quel jour où la requête à laquelle elle se rapporte doit être entendue sur le fond;

b) soit à une date obtenue auprès du coordonnateur ou de la coordonnatrice des audiences.

Signification de l'avis

7.03 L'avis de motion présentée sur préavis est signifié aux parties et à quiconque est touché par l'ordonnance, au moins dix jours avant l'audition de la motion.

Dépôt de l'avis

7.04 L'avis de motion présentée sur préavis est déposé, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal, au moins sept jours avant l'audition de la motion.

Désistement

7.05 (1) La partie qui a présenté une motion peut s'en désister en signifiant un avis de désistement (formule 7C) à chaque partie ou personne à qui l'avis de motion a été signifié et en le déposant, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(2) Sauf ordonnance contraire du tribunal, la partie qui signifie un avis de motion et qui ne le dépose pas ou qui ne se présente pas à l'audience tenue sur la motion est réputée s'en être désistée.

(3) Sauf ordonnance contraire du tribunal, si la motion a fait ou est réputée avoir fait l'objet d'un désistement, la partie intimée qui a reçu signification de l'avis de motion a droit aux dépens de la motion sans délai.

Documents requis pour les motions

7.06 (1) Au moins sept jours avant l'audition d'une motion présentée sur préavis, la partie qui la présente signifie un dossier de motion aux parties et personnes à qui l'avis de motion a été signifié et le dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(2) Le dossier de motion de la partie qui la présente comprend ce qui suit, dans des pages numérotées consécutivement :

a) une table des matières énumérant chaque document, y compris les pièces, et les décrivant selon leur nature et leur date et, dans le cas d'une pièce, selon son numéro ou sa lettre;

b) une copie de l'avis de motion;

c) les affidavits et les autres documents sur lesquels s'appuie la motion.

(3) Au moins trois jours avant l'audition d'une motion présentée sur préavis, la partie intimée peut signifier un dossier de motion à la partie qui a présenté la motion et aux parties et personnes à qui l'avis de motion a été signifié et le déposer, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(4) Le dossier de motion de la partie intimée comprend ce qui suit, dans des pages numérotées consécutivement :

a) une table des matières énumérant chaque document, y compris les pièces, et les décrivant selon leur nature et leur date et, dans le cas d'une pièce, selon son numéro ou sa lettre;

b) les documents qui ne figurent pas dans le dossier de motion de l'auteur de celle-ci et sur lesquels la partie s'appuiera.

(5) Si la motion est présentée sur préavis, une partie peut signifier aux autres parties et personnes à qui l'avis de motion a été signifié un mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie.

(6) Au moins sept jours avant l'audition d'une motion, la partie qui l'a présentée signifie, si elle en a, son mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie et les dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(7) Au moins trois jours avant l'audition d'une motion, la partie intimée signifie, si elle en a, son mémoire et le dossier de la jurisprudence à

laquelle celui-ci renvoie et les dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(8) La partie qui dépose des documents auprès du greffier ou de la greffière du tribunal les lui remet :

a) en deux copies si la motion doit être entendue par un membre du Comité d'audition, par le TG ou par le TGA;

b) en quatre copies si la motion doit être entendue par trois membres du Comité d'audition;

c) en six copies si la motion doit être entendue par le Comité d'appel.

Motion sur consentement

7.07 (1) Malgré la règle 1.12, la motion qui est présentée sur consentement peut être entendue sur pièces en l'absence des parties ou de quiconque est touché par l'ordonnance, sauf ordonnance contraire du tribunal.

(2) L'auteur de la motion qui est présentée sur consentement dépose l'acte de consentement et un projet d'ordonnance avec l'avis de motion auprès du greffier ou de la greffière du tribunal.

Décision

7.08 Après avoir entendu la motion, le tribunal peut :

a) soit accorder la mesure de redressement;

b) soit rejeter la motion, en totalité ou en partie;

c) soit ajourner la motion, en totalité ou en partie;

d) soit, si elle est entendue avant l'audition sur le fond de la requête à laquelle elle se rapporte, déférer la motion au tribunal qui entend la requête sur le fond.

Ordonnance

7.09 (1) Après que la motion a fait l'objet d'une décision, le tribunal inscrit son ordonnance au dossier de motion, si celle-ci est présentée sur préavis, ou dans l'avis de requête, si le préavis n'est pas nécessaire, sauf si, selon le cas :

a) il rend des motifs écrits;

b) cela n'est pas commode dans les circonstances.

(2) Après que la motion présentée sur préavis a fait l'objet d'une décision, la partie qui a eu gain de cause doit remettre un projet d'ordonnance

(formule 7B) et toute autre partie ou personne à qui l'avis de motion a été signifié peut le faire.

(3) Le tribunal ou le président ou la présidente du comité du tribunal qui entend la motion examine les projets remis en application du paragraphe (2) et, sans le modifier ou après l'avoir modifié, en signe un.

Dépens et ajournement

7.10 Toutes les motions sont présentées dans les meilleurs délais eu égard à toutes les circonstances. Il peut être tenu compte de l'inobservation de la présente règle par la partie qui en présente une lors de l'adjudication des dépens de la motion et de tout ajournement rendu ainsi nécessaire.

RULE 8 [INTERIM ORDERS]

4. Rule 8 [Interim Orders] is deleted and the following substituted:

RULE 8 INTERLOCUTORY SUSPENSION AND RESTRICTION ORDERS

Authority to Make Interlocutory Suspension or Restriction Order

8.01 On motion by the Society, the Hearing Panel may make an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

General

8.02 (1) Except as otherwise provided for in this rule, rule 7 applies with necessary modifications to a motion for an interlocutory suspension or restriction order.

(2) Where an application to the Hearing Panel has not been authorized by the Proceedings Authorization Committee or the Hearing Panel has not commenced a hearing on the merits of an application, with the authorization of the Proceedings Authorization Committee, the Society may make a motion relating to the application to the Hearing Panel for an interlocutory suspension or restriction order.

Making the Motion

8.03 A motion for an interlocutory suspension or restriction order shall be made by notice of motion.

Service of Notice

8.04 (1) The notice of motion shall be served on the member or student member at least three days before the date on which the motion is to be heard.

(2) Despite subrule (1), the Hearing Panel may make an order without the notice of motion having been served on the member or student member where,

(a) the circumstances render the service of the notice of motion impracticable or unnecessary; or

(b) the delay necessary to effect service might entail serious consequences.

(3) Subrule 5.01 (1) applies to the service of a notice of motion.

Filing of Notice

8.05 (1) Where the notice of motion has been served, the notice of motion shall be filed, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(2) Where service of the notice of motion is not required, the notice of motion shall be filed, with the Clerk to the Tribunal, at or before the hearing of the motion.

Materials for Use on the Motion

8.06 (1) Where the notice of motion has been served, the Society shall serve a motion record on the member or student member, at least three days before the date on which the motion is to be heard, and shall file it, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(2) Where the notice of motion has been served, the member or student member may serve a motion record on the Society not later than 2:00 p.m. on the day before the date on which the motion is to be heard, and file it, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(3) Where the notice of motion has been served, the Society shall serve its factum and book of authorities, if any, on the member or student member, at least three days before the date on which the motion is to be heard, and shall file them, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(4) Where the notice of motion has been served, the member or student member shall serve its factum and book of authorities, if any, on the Society not later than 2:00 p.m. on the day before the date on which the motion is to be heard, and shall file them, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(5) Where service of the notice of motion is not required, the Society shall file the motion record and the factum and book of authorities, if any, with the Clerk to the Tribunal, at or before the hearing of the motion.

Evidence

8.07 Despite rule 11.01, section 15 of the *Statutory Powers Procedure Act* applies in a hearing of a motion for an interlocutory suspension or restriction order.

Disposition of Motion

8.08 Where it appears to the Hearing Panel that the notice of motion ought to have been served on the member or student member, the Hearing Panel shall adjourn the motion and direct that the notice of motion be served on the member or student member.

Order

8.09 (1) Every interlocutory suspension or restriction order shall, when it is first made, be an interim interlocutory order for 30 days and, after that, shall become a final interlocutory order unless fresh evidence or a material change in circumstances is brought by the parties to the attention of the tribunal that made the order and the tribunal varies or cancels the order.

(2) Unless the Hearing Panel provides otherwise, a final interlocutory suspension or restriction order continues in force until an order of the Appeal Panel sets aside or varies the order or the Hearing Panel makes a final order after a hearing of the application on its merits.

(3) Unless the Hearing Panel provides otherwise, where service of the notice of motion was not required, the Society shall serve on the member or student member any order or formal order made by the Hearing Panel and a copy of the notice of motion, motion record and all other documents used in the hearing of the motion.

RÈGLE 8 ORDONNANCES INTERLOCUTOIRES DE SUSPENSION ET DE RESTRICTION

Pouvoir de rendre des ordonnances interlocutoires de suspension et de restriction

8.01 Sur motion présentée par le Barreau, le Comité d'audition peut rendre une ordonnance interlocutoire ayant pour effet de suspendre les droits et les privilèges d'un membre ou d'un membre étudiant ou de restreindre la manière dont un membre peut exercer le droit.

Généralités

8.02 (1) Sauf disposition contraire de la présente règle, la règle 7 s'applique, avec les adaptations nécessaires, aux motions présentées en vue d'obtenir une ordonnance interlocutoire de suspension ou de restriction.

(2) Si la Comité d'autorisation des instances n'a pas autorisé la présentation d'une requête au comité d'audition ou que ce dernier n'a pas commencé l'audience sur le fond de la requête, le Barreau peut, avec l'autorisation du Comité d'autorisation des instances, présenter au Comité d'audition une motion se rapportant à cette requête en vue d'obtenir une ordonnance interlocutoire de suspension ou de restriction.

Présentation de la motion

8.03 Les motions présentées en vue d'obtenir une ordonnance interlocutoire de suspension ou de restriction le sont par voie d'avis de motion.

Signification de l'avis

8.04 (1) L'avis de motion est signifié au membre ou au membre étudiant au moins trois jours avant la date d'audition de la motion.

(2) Malgré le paragraphe (1), le Comité d'audition peut rendre une ordonnance sans que l'avis de motion ait été signifié au membre ou au membre étudiant si, selon le cas :

a) les circonstances ou la nature de la motion rendent la signification de l'avis de motion peu pratique ou inutile;

b) le délai nécessaire à la signification risque d'entraîner des conséquences graves.

(3) Le paragraphe 5.01 (1) s'applique à la signification d'un avis de motion.

Dépôt de l'avis

8.05 (1) L'avis de motion qui a été signifié est déposé, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(2) L'avis de motion dont la signification n'est pas obligatoire est déposé auprès du greffier ou de la greffière du tribunal au plus tard lors de l'audition de la motion.

Documents requis pour les motions

8.06 (1) En cas de signification de l'avis de motion, le Barreau signifie un dossier de motion au membre ou au membre étudiant au moins trois jours avant l'audition de la motion et le dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(2) En cas de signification de l'avis de motion, le membre ou le étudiant membre peut signifier au Barreau un dossier de motion au plus tard à 14 heures, la veille de l'audition de la motion, et le déposer, avec la preuve

de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(3) En cas de signification de l'avis de motion, le Barreau signifie, s'il en a, son mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie au membre ou au membre étudiant au moins trois jours avant l'audition de la motion et le dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(4) En cas de signification de l'avis de motion, le membre ou le étudiant membre signifie au Barreau, s'il en a, son mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie au plus tard à 14 heures, la veille de l'audition de la motion, et le dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(5) Si la signification de l'avis de motion n'est pas obligatoire, le Barreau dépose le dossier de motion, ainsi que le mémoire et le dossier de la jurisprudence, s'il en a, auprès du greffier ou de la greffière du tribunal au plus tard lors de l'audition de la motion.

Preuve

8.07 Malgré la règle 11.01, l'article 15 de la Loi *sur l'exercice des compétences légales* s'applique à l'audition d'une motion présentée en vue d'obtenir une ordonnance interlocutoire de suspension ou de restriction.

Décision

8.08 S'il estime que l'avis de motion aurait dû être signifié au membre ou au membre étudiant, le Comité d'audition ajourne la motion et ordonne que l'avis de motion lui soit signifié.

Ordonnance

8.09 (1) L'ordonnance interlocutoire de suspension ou de restriction est, lors de son rendu, une ordonnance interlocutoire provisoire ayant effet pour 30 jours; à la fin de ce délai, elle devient une ordonnance interlocutoire définitive, sauf si les parties portent à l'attention du tribunal qui l'a rendue de nouvelles preuves ou un changement important des circonstances et que le tribunal la modifie ou l'annule.

(2) Sauf indication contraire du Comité d'audition, l'ordonnance provisoire définitive de suspension ou de restriction reste en vigueur jusqu'à ce qu'une ordonnance du Comité d'appel l'annule ou la modifie, ou jusqu'à ce que le Comité d'audition rende une ordonnance définitive après l'audition sur le fonds de la requête.

(3) Sauf indication contraire du Comité d'audition, si la signification de l'avis de motion n'était pas obligatoire, le Barreau signifie au membre ou au

membre étudiant l'ordonnance du Comité d'audition, ainsi qu'une copie de l'avis de motion, du dossier de motion et de tous les autres documents utilisés au cours de l'audition de la motion.

RULE 9 [PRE-HEARING PROCEDURES]

5. Rule 9.01 of Rule 9 [Pre-hearing Procedures] is deleted and the following substituted:

Tribunal to Which Proceeding is First Returnable

9.01 (1) A proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.

(2) Despite subrule (1), a proceeding which originates by notice of application may be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where the hearing of the merits of another application involving the same parties has already been scheduled.

(3) Despite subrule (1), a proceeding which originates by notice of application shall be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where,

(a) the application is for a determination of whether a member has contravened section 33 of the Act by one or more of the following:

i. Failing to maintain financial records as required by the by-laws.

ii. Failing to respond to inquiries from the Society.

iii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act; or

(b) The nature of the application requires that the hearing of the merits of the application be expedited.

(4) When the originating process is served, the Society shall give notice of the time when and the place at which the proceeding shall be returnable before the HMT or the Hearing Panel.

Tribunal devant lequel l'instance est rapportable en premier lieu

9.01 (1) L'instance est rapportable en premier lieu devant le TG pour que soit fixée la date de l'audience sur le fond de l'instance.

(2) Malgré le paragraphe (1), l'instance introduite par voie d'avis de requête peut être rapportable en premier lieu devant le Comité d'audition pour que se tienne l'audience sur le fond de la requête si l'audition sur le fond d'une autre requête mettant en cause les mêmes parties a déjà été inscrite au calendrier.

(3) Malgré le paragraphe (1), l'instance introduite par voie d'avis de requête est rapportable en premier lieu devant le Comité d'audition pour que se tienne l'audience sur le fond de la requête si, selon le cas :

a) la requête est présentée en vue de faire trancher la question de savoir si le membre a enfreint l'article 33 de la Loi pour l'un ou l'autre des motifs suivants :

i. l'omission de tenir des registres financiers comme l'exigent les règlements administratifs,

ii. l'omission de donner suite aux demandes de renseignements du Barreau,

iii. l'omission de collaborer avec quiconque effectue une vérification, une enquête, une inspection, une perquisition ou une saisie en application de la partie II de la Loi;

b) la nature de la requête exige que l'audition soit accélérée.

(4) Lors de la signification de l'acte introductif d'instance, le Barreau donne avis de la date, de l'heure et du lieu où l'instance est rapportable devant le TG ou le Comité d'audition.

RULE 13 [ORDERS]

6. Rule 13.04 of Rule 13 [Orders] is deleted and the following substituted:

Incapacity Orders Made in the Absence of the Member or Student Member

13.04 (1) Where the Hearing Panel has proceeded in the absence of a member or student member and has determined that there are reasonable grounds for believing that the member or student member is, or has been, incapacitated, the Hearing Panel may make an interlocutory order suspending the rights and privileges of the member or student member or restricting the manner in which the member may practise law.

(2) An interlocutory order made under subrule (1) shall become a final order of the Hearing Panel, with respect to the application to which it relates, thirty days after the date on which the interlocutory order is made, unless the member or student member appears before the Hearing Panel for the hearing of the merits of the application.

Ordonnances relatives à l'incapacité rendues en l'absence du membre ou du membre étudiant

13.04 (1) Le Comité d'audition peut rendre une ordonnance interlocutoire ayant pour effet de suspendre les droits et les privilèges d'un membre ou d'un membre étudiant ou de restreindre la manière dont un membre peut exercer le droit s'il a instruit une instance en son absence et a des motifs raisonnables de croire qu'il est ou a été incapable.

(2) L'ordonnance interlocutoire rendue en vertu du paragraphe (1) devient une ordonnance définitive du Comité d'audition, à l'égard de la requête à laquelle elle se rapporte, 30 jours après celui où elle est rendue, sauf si le membre ou le membre étudiant comparaît devant le Comité d'audition pour l'audition sur le fond de la requête.

RULE 15 [APPEALS]

7. Rule 15.01 of Rule 15 [Appeals] is deleted and the following substituted:

General

15.01 Subject to the Act, there is no appeal from a final interlocutory order of the Hearing Panel other than an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

Généralités

15.01 Sous réserve de la Loi, il ne peut être interjeté appel d'une ordonnance interlocutoire définitive rendue par le Comité d'audition, si ce n'est une ordonnance interlocutoire ayant pour effet de suspendre les droits et les privilèges d'un membre ou d'un membre étudiant ou de restreindre la manière dont un membre peut exercer le droit.

APPENDIX 2

BY-LAW 21

Made: January 28, 1999
Amended:
February 19, 1999
March 26, 1999
May 28, 1999
January 25, 2001
May 24, 2001
October 31, 2002

PROCEEDINGS AUTHORIZATION COMMITTEE

Definitions
1. In this By-Law,

"Committee" means the Proceedings Authorization Committee;

"outside counsel" means a person appointed under section 49.53 of the Act to represent the Society in any proceeding under Part II of the Act before the Hearing Panel, the Appeal Panel or a court that concerns a bencher or employee of the Society;

"outside investigator" means a person appointed under subsection 49.5 (2) of the Act to conduct an investigation of the conduct or capacity of a bencher or employee of the Society.

"outside reviewer" means a person appointed under subsection 49.6 (2) of the Act to conduct a review of a bencher's practice.

Establishment of Proceedings Authorization Committee
2. (1) There is hereby established a committee to be known in English as the Proceedings Authorization Committee and in French as Comité d'autorisation.

Composition
(2) The Committee shall consist of four benchers appointed by Convocation.

Chairs and vice-chairs of certain standing committees
(3) The Committee must include,

(a) the chair or a vice-chair of the standing committee of Convocation responsible for discipline matters; and

(b) the chair or a vice-chair of the standing committee of Convocation responsible for professional competence matters.

Restrictions on appointments
(4) A bencher who holds office under paragraph 1 or 2 of subsection 12 (1), or under paragraph 1 of subsection 12 (2), of the Act may not be appointed to the Committee.

Term of office
(5) Subject to subsection (6), a bencher appointed to the Committee shall hold office for a term of one year and is eligible for reappointment.

Appointment at pleasure
(6) A bencher appointed to the Committee holds office as a member of the Committee at the pleasure of Convocation.

Chair
3. (1) Convocation shall appoint one member of the Committee who is an elected bencher as chair of the Committee.

Term of office
(2) Subject to subsection (3), the chair holds office for a term of one year and is eligible for reappointment.

Appointment at pleasure
(3) The chair holds office at the pleasure of Convocation.

Function of Committee
4. It is the function of the Committee,

(a) to review all matters referred to it in accordance with this By-Law or any other by-law and, in respect of each matter, to determine whether any action mentioned in subsection 9 (1) should be taken; and

(b) to determine, in any given case, whether the Society should apply to the Superior Court of Justice for an order under section 49.13 of the Act.

REVIEW OF MATTERS REFERRED TO COMMITTEE

Review of matters: quorum of Committee
5. (1) Two members of the Committee constitute a quorum for the purposes of reviewing a matter and taking action in respect of the matter.

Temporary members
(2) If no two members of the Committee are able to constitute a quorum because three or more members of the Committee are unable for any reason to act, subject to subsection (3), the chair of the Committee may appoint one or more benchers as temporary members of the Committee for the purposes of constituting a quorum, and the temporary members shall be deemed, for the purposes of subsection (1), to be members of the Committee.

Ineligible benchers
(3) The chair shall not appoint as a temporary member of the Committee a bencher who holds office under paragraph 1 or 2 of subsection 12 (1), or under paragraph 1 of subsection 12 (2), of the Act.

Review by telephone conference call, etc.
6. The Committee may meet to review a matter by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously.

No right to participate
7. (1) Subject to subsection (2), no person may participate in the review of a matter by the Committee.

Participation at request of Committee
(2) For the purposes of answering any questions that the Committee might have about a matter referred to it or about actions that may be taken by the Committee with respect to a matter referred to it, the Committee may require one or more of the following persons to participate in a review of a matter:

1. A person who has referred a matter to it.

2. An officer, employee, agent or representative of the Society who is or was involved in an audit, investigation, review, search or seizure relating to a matter.

Referral by Secretary, outside investigator, outside reviewer

8. (1) Subject to subsection (2), during or after an audit, investigation or review, the Secretary, an outside investigator or an outside reviewer, as the case may be, may refer to the Committee a matter respecting the conduct of a member, group of members or student member, the capacity of a member or student member or the professional competence of a member for one or more of the following purposes:

1. Obtaining directions with respect to the conduct of an audit, investigation or review.

2. Obtaining approval or directions for the informal resolution of the matter.

3. Obtaining authorization for the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

4. Obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether,

   i. a member or student member has contravened section 33 of the Act,

   ii. a member or student member is or has been incapacitated, or

   iii. a member is failing or has failed to meet standards of professional competence.

Restrictions on referrals by Secretary, outside investigator

(2) The Secretary, or an outside investigator, shall not refer to the Committee a matter respecting the conduct of a member or student member if the matter is a complaint that has been referred to the Complaints Resolution Commissioner for resolution or review and the Complaints Resolution Commissioner has not yet disposed of the matter.

Referral by elected bencher

(2.1) Subject to subsection (2.2), an elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may refer to the Committee a matter respecting the professional competence of the member for the purpose of obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether the member is failing or has failed to meet standards of professional competence.

Restrictions on referrals by elected bencher

(2.2) An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not refer to the Committee a matter respecting the professional competence of the member except after the bencher has,

(a) met with the member and the Secretary, as required under sections 11 and 12 of By-Law 24, in accordance with sections 13 and 14 of By-Law 24; and

(b) refused to make an order under subsection 42 (7) of the Act.

Recommendations for action

(3) A person who refers a matter to the Committee may recommend actions to be taken by the Committee in respect of the matter, and, in making his or her recommendations, the person is not restricted to recommending the actions mentioned in paragraphs 1 to 5 of subsection 9 (1).

Review of matters

9. (1) After reviewing a matter, the Committee may determine that no action should be taken in respect of the matter or, subject to subsections (2) to (4), the Committee may take one or more of the following actions:

1. Approve, or give directions for, the informal resolution of the matter.

2. Authorize the Society to apply to the Hearing Panel for a determination of whether,

   i. a member or student member has contravened section 33 of the Act,

   ii. a member or student is or has been incapacitated, or

   iii. a member is failing or has failed to meet standards of professional competence.

3. Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her conduct.

3.1 Invite a member to attend before a panel of benchers to receive advice concerning his or her professional competence.

4. Send to a member or student member a letter of advice concerning his or her conduct.

4.1 Send to a member a letter of advice concerning his or her professional competence.

5. Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

6. Any other action that the Committee considers appropriate.

Restriction on authorization of conduct proceedings

(2) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member or student member has contravened section 33 of the Act unless the Committee is satisfied that there are reasonable grounds for believing that the member or student member has contravened section 33 of the Act.

Restriction on authorization of capacity proceedings

(3) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member or student member is or has been incapacitated unless the Committee is satisfied that there are reasonable grounds for believing that the member or student member is or has been incapacitated.

Restriction on authorization of professional competence proceedings

(4) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member is failing or has failed to meet standards of professional competence unless the Committee is satisfied that there are reasonable grounds for believing that the member is failing or has failed to meet standards of professional competence.

Appointment of representative

10. (1) Where the Committee authorizes the Society to apply to the Hearing Panel for a determination of whether a member or student member is or has been incapacitated, the Committee may appoint another member to represent the member or student member in proceedings under Part II of the Act before the Hearing Panel, the Appeal Panel or a court if the Committee is satisfied that,

(a) the member or student member is unable to participate in the proceedings or is unable to instruct counsel to do so;

(b) the member or student member is not represented by counsel; and

(c) the member or student member does not have a guardian, an attorney or a similar person who has authority to represent the member or student member in the proceedings.

Costs

(2) The costs resulting from an appointment under subsection (1) shall be paid for by the Society.

Decision in writing

11. The Committee shall record in writing its decision on every matter referred to it.

Notice

12. The Committee shall give to the Secretary notice of its decision on every matter referred to it.

Reasons

13. The Committee is not required to provide at any time to any person its reasons for a decision.

Withdrawal of application to Hearing Panel

14. (1) If the Committee authorizes the Society to apply to the Hearing Panel for a determination mentioned in paragraph 2 of subsection 9 (1) but the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, the Society shall not withdraw its application to the Hearing Panel unless the Committee has first authorized the withdrawal.

Request for withdrawal: procedure

(2) A request to the Committee to withdraw an application to the Hearing Panel shall be made by the Secretary or an outside counsel, as the case may be, and sections 5, 6, 7, 11, 12 and 13 apply, with necessary modifications, to the Committee's consideration of the request.

APPLICATION FOR DISCLOSURE ORDER

Application by secretary

14.1 (1) On application by the Secretary, the Committee shall determine whether the Society should apply to the Superior Court of Justice for an order under section 49.13 of the Act.

Quorum of Committee

(2) Any two members of the Committee constitute a quorum for the purposes of making the determination under subsection (1).

Factors to be considered

(3) In making the determination under subsection (1), the Committee shall give primary consideration to the extent to which disclosure of information is necessary in order to protect the public and further the administration of justice.

Application of certain sections

(4) Sections 6, 7, 11, 12 and 13 apply, with necessary modifications, to the making of a determination under subsection (1).

Commencement

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

APPENDIX 3

INVITATION TO ATTEND (ITA) POLICY AND PROCESS
(May 26, 2005)

Legislative Authority For The ITA

Section 36 of the *Law Society Act* sets out the authority for an ITA that is conducted by a Hearing Panel in the context of a conduct application. The relevant excerpts of section 36 are as follows:

(4) If an application has been made under section 34 [conduct application], the Hearing Panel may invite the member or student member in respect of whom the application was made to attend before the Panel for the purpose of receiving advice from the Panel concerning his or her conduct.

(5) The Hearing Panel shall dismiss the application if the member or student member attends before the Panel in accordance with the invitation.

ITAs outside of the hearing context are conducted by Proceedings Authorization Committee ("the PAC") and are authorized by By-law 21 – Proceedings Authorization Committee, Section 9(1):

After reviewing a matter, the [Proceedings Authorization] Committee may determine that no action should be taken in respect of the matter or … the Committee may take one or more of the following actions:

1. Approve, or give directions for, the informal resolution of the matter.
2. Authorize the Society to apply to the Hearing Panel for a determination of whether,
   i. a member or student member has contravened section 33 of the Act
   ii. a member or student is or has been incapacitated, or
   iii. a member is failing or has failed to meet standards of professional competence.

3. Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her conduct.

3.2 Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her professional competence.

7. Send to a member or student member a letter of advice concerning his or her conduct.

4.2 Send to a member a letter of advice concerning his or her competence.

8. Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

9. Any other action that the Committee considers appropriate.
(Emphasis added)

The Role of the PAC

Pursuant to s. 4(a) of By-law 21, the PAC reviews all matters referred to it to determine whether any of the actions in subsection 9(1) should be taken, including authorizing an ITA. ITAs are generally authorized in situations where a Conduct Application is not warranted but the member has used poor judgment. The ITA is a process that is not penal or disciplinary.

Disclosure Policy with Respect to Past ITAs

In order for the PAC to fulfill its function under the By-Law and to make an informed decision about appropriate action against members, including those who repeatedly breach the *Rules of Professional Conduct,* disclosure will be made to the PAC about a member's past ITAs. The fact of a prior ITA, if relevant to a subsequent fact situation involving an issue of alleged professional misconduct, is important information for the PAC in deciding if another ITA is the appropriate disposition. The PAC will consider past ITAs, not as equivalent to past discipline, but as indicative of a pattern of behaviour of which the PAC should be aware for its decision-making. Only ITAs occurring after the date of Convocation's adoption of this disclosure policy (May 26, 2005) form part of a member's ITA history. All members who have an ITA history prior to this date are "grandparented" and their ITA history up to this date will not be disclosed to the PAC.

Confidentiality of the ITA Process

The PAC conducts the ITA *in camera* with the member. A member may appear alone or with counsel, although it is made clear to the member that the ITA is not a proceeding (a hearing). The member may also bring other individuals, at his or her discretion, to the ITA.

A complainant whose complaint results in a member's ITA is advised that the matter has been referred to the PAC for the purposes of a discussion with the member and that this will conclude the matter. No further information about the ITA (e.g. particulars of the PAC's discussion with the member, the date of the ITA) is disclosed to the complainant. The complaint file is closed after the ITA is concluded and the complainant is not eligible for complaints review.

The ITA is a final disposition of the complaint against the member, and will not appear on a member's disciplinary record that is available to the public. A member's ITA history cannot be disclosed by Law Society staff orally or in materials submitted to the Hearing Panel hearing a Conduct Application or the Hearing Panel that may conduct an ITA under s. 36 of the Act.

APPENDIX 4

LAW SOCIETY OF UPPER CANADA
RULES OF PRACTICE AND PROCEDURE

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

(MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*)

As amended, April 25, 2003

TABLE OF CONTENTS

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

(MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*)

RULE 1 GENERAL RULES

1.01 Application

Rules 1 through 15 apply to hearings before tribunals under sections 27, 28.1, 30, 31, 32, 34, 38, 43, 45, 49.1, 49.32(1), 49.32(2), 49.42, and 49.43 of the *Law Society Act*
(hereinafter "the Act").

Definitions

1.02 (1) In these Rules, unless the context requires otherwise, words that are not defined in subrule (2) have the meanings defined in the Act or the *Statutory Powers Procedure Act*.

(2) In these Rules,

"appeal" means an appeal under subsections 49.32(1) and (2) of the Act;

"Appeals Management Tribunal" or "AMT" means the bencher to whom jurisdiction is assigned in procedural matters;

"complainant" means a person who has made a complaint to the Society regarding a member or student member which is relevant to the application;

"Hearings Management Tribunal" or "HMT" means the bencher to whom jurisdiction is assigned in procedural matters;

"holiday" means a holiday as defined in the *Rules of Civil Procedure;*

"interim order" means an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practice law;

"motion" means a request for a ruling or decision by a tribunal on a particular issue at any stage in the proceeding which is subject to these Rules, other than a request for an adjournment;

"originating process" means a notice of application, a notice of hearing, or a notice of motion for an interim order where a notice of application has not yet been served;

"party" means the Society, the person who is subject to the proceeding, and any other person added as a party by the tribunal in accordance with the Act;

"person subject to a proceeding" means a member, student member, former member or non-Ontario lawyer as the context may require;

"proceeding" means a proceeding under the Act that commences with the service of an originating process;

"tribunal" means whichever of the HMT, Hearing Panel, AMT, or Appeal Panel that is or will be hearing the applicable part of a proceeding;

Interpretation of Rules

1.03 (1) These Rules shall be liberally construed to secure the just and expeditious determination of proceedings.

(2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

Substantial Compliance

1.04 (1) Substantial compliance with a form or notice required by or under these Rules is sufficient.

(2) No proceeding is invalid by reason only of a defect or other irregularity in form.

Compliance with a Rule

1.05 (1) Any provision of these Rules may be waived with the consent of the parties and leave of the tribunal.

(2) The tribunal may, where it is in the interests of justice, dispense with compliance with any Rule at any time and upon such terms as are just.

Computing Time

1.06 Subject to Rule 1.07, in computing time periods specified in these Rules or in an order of a tribunal,

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

(b) where a period of less than seven days is prescribed, holidays shall not be counted;

(c) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received or effective on the next day that is not a holiday.

Extension or Abridgment of Time Periods

1.07 (1) A tribunal by order may extend or abridge any time prescribed by these Rules on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Withdrawal of Counsel

1.08 Where counsel for a party seeks to be removed from the record of a proceeding, counsel shall bring a motion for leave to withdraw before the tribunal.

Removal of Counsel

1.09 Where a party seeks to remove a counsel from the record of a proceeding, the party shall bring a motion before the tribunal.

Communication with a Tribunal

1.10 Communication with a tribunal outside of the hearing shall be in the presence of all parties or their counsel, or in writing through the Clerk of the tribunal with a copy served on all parties.

Summons

1.11 (1) A summons to witness may be signed by the Secretary.

(2) On the request of a party, the Secretary shall provide a summons to a witness in blank form and the party may complete the summons and insert the name of the witness.

(3) Service of a summons on a witness is the responsibility of the party who obtained the summons.

(4) The party who obtained the summons shall pay attendance money to a witness in accordance with Tariff A under the *Rules of Civil Procedure.*

(5) Notwithstanding subrule (4), if a person is in attendance at the hearing, it is unnecessary to serve the person with a summons or to pay attendance money to call the person as a witness.

Form of Proceeding

1.12 (1) Subject to subrule (2), hearings shall be held orally with the parties, and their counsel if applicable, appearing in person.

(2) The tribunal on motion by any party may order that some or all of a hearing be held as an electronic hearing.

(3) On a motion under subrule (2), the tribunal may consider, on balance,

(a) the suitability of the subject matter;
(b) the nature of the evidence and whether credibility is in issue;
(c) whether the matters in dispute are questions of law;
(d) the convenience of the parties;
(e) the cost, efficiency and timeliness of the proceeding;
(f) the avoidance of delay or unnecessary length;
(g) the fairness of the process;
(h) public accessibility to the hearing;
(i) the fulfilment of the Society's statutory mandate; and
(j) any other matter which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

(4) On consent, a party may move for an order that some or all of a hearing be held as a written hearing.

Location of Hearings

1.13 (1) Subject to this rule, all hearings shall be held at the offices of the Society in Toronto.

(2) The tribunal, on motion by any party, may order that a hearing be held at a place other than the offices of the Society in Toronto.

(3) On a motion under subrule (2), the tribunal may consider, on balance,

(a) the convenience of the parties;
(b) the cost, efficiency and timeliness of the proceeding;
(c) the avoidance of delay or unnecessary length;
(d) the fairness of the process;
(e) public accessibility to the hearing;
(f) the fulfilment of the Society's statutory mandate; and
(g) any other matter which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

(4) The tribunal may set the location of a hearing in a place other than the offices of the Society in Toronto only after consultation with the Hearings Coordinator and the Secretary.

(5) The Hearings Coordinator shall be informed forthwith where there is a request for an adjournment of a hearing scheduled to be held in a location other than the offices of the Society in Toronto.

Adjournments

1.14 (1) Where the grounds for a request for an adjournment are known in advance of the date scheduled for the hearing, the adjournment request shall be made,

(a) to the HMT, where a hearing before a Hearing Panel is pending and a Hearing Panel is not seized of the proceeding; or

(b) to the AMT, where an appeal to the Appeal Panel is pending and an Appeal Panel is not seized of the proceeding,

where a sitting of the HMT or AMT is scheduled, or can be scheduled, before the date scheduled for the hearing.

(2) In circumstances to which subrule (1) does not apply, a request for adjournment shall be made to the tribunal on the date scheduled for the hearing.

RULE 2 JOINDER AND NON-PARTY PARTICIPATION

Joinder of Parties

2.01 Where permitted under the Act, the Hearing Panel may add any person as a party to a proceeding.

Non-Party Participation

2.02 (1) A tribunal may allow a person who is not a party to participate in a proceeding if the participation of the person would, in the opinion of the tribunal, be of assistance to the tribunal, or is required in the interests of justice.

(2) The tribunal shall determine the extent of such participation, when granted, and without limiting the generality of this, the tribunal may allow the person to make oral or written submissions, to lead evidence, and to cross-examine witnesses.

RULE 3 ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

Proceedings other than Capacity and Professional Competence Proceedings

3.01 Subject to rules 3.04 and 3.04.1, hearings shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed;

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any

person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(c) it is necessary to maintain the confidentiality of a privileged document or communication.

Reasons and Order of the Tribunal

3.02 (1) Subject to subrule (2), the order and reasons of a tribunal, including any written disposition, are a matter of public record.

(2) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal may order that all or part of its reasons, except for those referred to in subrule (3), are not to be made public.

(3) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal shall issue with its decision a written statement of the reasons for holding the proceeding, or applicable part of the proceeding, in the absence of the public but shall do so without disclosing any matters which, in the opinion of the tribunal, ought not to be disclosed.

Procedure Where Party Seeks *In Camera* Order

3.03 (1) A party seeking an order that any part of a proceeding be held in the absence of the public shall bring a motion in public before the tribunal in accordance with rule 7 with necessary modifications.

(2) Where a party is of the view that it will not be possible to argue the motion without disclosing specific matters which are the subject of the motion, that party may seek an order that the motion be heard in the absence of the public.

(3) Where a party requests that the motion be held in the absence of the public, the party shall state in public the general grounds upon which the motion is brought without disclosing the specific matters which the party wishes to be received in the absence of the public.

(4) Where a party requests that the motion be heard in the absence of the public, the tribunal may grant leave to a non-party to participate in the motion.

(5) In considering whether to permit a non-party to participate in the motion, the tribunal shall consider the nature of the non-party's interest, whether there is any reason for concern that the non-party may fail to maintain the confidentiality of matters which are disclosed in the absence of the public, and whether the interests of the public will otherwise be adequately represented.

(6) The tribunal shall advise a non-party who is permitted to participate in the absence of the public that, unless otherwise ordered, the non-party may not publish or otherwise communicate or disclose to anyone outside the hearing room anything that has been disclosed in the absence of the public.

7) The tribunal shall advise the non-party that if the confidentiality of the proceeding is breached, in appropriate cases, the tribunal or any party to the proceeding may state a case to the Divisional Court for an order punishing that person for contempt.

(8) In circumstances where the motion is held in the absence of the public and is dismissed, the tribunal may, in public, following the motion, order that the motion be treated as if the motion had been held in public.

Varying, Setting Aside or Suspending an *In Camera* Order

3.03.1 (1) Following the completion of a conduct or discipline hearing, a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made in that conduct or discipline hearing pursuant to rule 3.01 or section 9 of the *Statutory Powers Procedure Act* that all or part of a conduct or discipline hearing be held *in camera*, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

(2) A motion under sub-rule (1) shall be made in accordance with rule 7 except that the notice of motion shall be served on all parties and any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.

Capacity Proceedings

3.04 (1) A proceeding shall, subject to subrules (2), (5) and (6) be held in the absence of the public if it is a proceeding in respect of a determination of incapacity.

(2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.

(3) Unless the proceeding before the tribunal is open to the public as provided by subrule (2), an application for a determination of incapacity shall not be made public by the Society except as required in connection with a proceeding, except as provided for in the Act and except as provided for in subrule (3.1).

(3.1) After the member or student member is served with the application, the Society shall, where practicable, inform a complainant of the fact of the application.

(4) Where the hearing of an application for a determination of incapacity has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.

(5) Subject to subrule (6), where the hearing of an application for a determination of incapacity has been closed to the public, and where the tribunal has made an order suspending or limiting the member or student member's rights and privileges, the order is a matter of public record but the tribunal's reasons shall not be made public.

6) Where the hearing of an application for a determination of incapacity has been closed to the public, the Society shall, where practicable, inform a complainant of the tribunal's decision as to whether the application was established and the tribunal shall determine which aspects of the order shall be made available to a complainant.

Professional Competence Proceedings

3.04.1 (1) A proceeding shall, subject to subrules (2), (5) and (6) be held in the absence of the public if it is a proceeding in respect of a determination of whether a member is failing or has failed to meet standards of professional competence.

(2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.

(3) Unless the proceeding before the tribunal is open to the public as provided by subrule (2), an application for a determination of professional competence shall not be made public by the Society except as required in connection with a proceeding except as provided for in the Act, and except as provided for in subrule (3.1).

(3.1) After the member is served with the application, the Society shall, where practicable, inform a complainant of the fact of the application.

(4) Where the hearing of an application for a determination of professional competence has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.

(5) Where the hearing of an application for a determination of professional competence has been closed to the public and where the tribunal has made an order suspending or limiting the member's rights and privileges, the decision and the order are a matter of public record.

(6) Where the hearing of an application for a determination of professional competence has been closed to the public and where the decision and order of the tribunal are not otherwise a matter of public record, the Society shall, where practicable, disclose to a complainant the decision of the tribunal and the parts of the order permitted to be disclosed by the tribunal.

Application to Appeals

3.05 (1) Where an appeal arises from a decision or order of a tribunal in respect of a conduct, admission, or readmission proceeding, the provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications.

(2) Where an appeal arises from a decision or order of a tribunal in respect of a capacity proceeding or a professional competence proceeding the provisions of rules 3.04 and 3.04.1 apply, with necessary modifications.

Non-publication Orders

3.06 (1) A tribunal may order that information disclosed in the course of a proceeding open to the public is not to be published or otherwise made public by any person, provided that the tribunal is satisfied that the information discloses,

(a) matters involving public security;

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(c) matters for which it is necessary to maintain the confidentiality of a privileged document or communication.

(2) A motion for a non-publication order shall be made in accordance with rule 3.03 with necessary modifications.

Varying, Setting Aside or Suspending a Non-publication Order

3.07 (1) A motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made pursuant to rule 3.06, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

(2) A motion under sub-rule (1) shall be made in accordance with rule 3.03.1(2).

RULE 4 COMMENCEMENT OF PROCEEDINGS

Conduct, Capacity, Professional Competence and Non-Compliance Proceedings

4.01 (1) A notice of application shall be issued by the Society in Form 4A in respect of conduct, capacity, professional competence and non-compliance proceedings.

(2) A copy of the notice of application shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

Admission, Restoration, Requalification, Reinstatement, and Readmission Proceedings

4.02 (1) A notice of hearing shall be issued by the Society in Form 4B,

(a) in respect of admission and restoration applications where a hearing is required by the Society;

(b) in respect of readmission applications, in every case;

(c) in respect of requalification and reinstatement applications where the person the subject of the proceeding requests, in writing, a hearing.

(2) A copy of the notice of hearing shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

Abandonment of a Proceeding

4.03 (1) Prior to the hearing of a conduct, capacity, professional competence or non-compliance proceeding on its merits, the Society may abandon a notice of application by delivering a notice of abandonment in Form 4C.

(2) Prior to the hearing of an admission or restoration proceeding on its merits, the Society may abandon the requirement of a hearing by delivering a notice of abandonment in Form 4C.

(3) Prior to the hearing of an admission, restoration, requalification, reinstatement or readmission proceeding on its merits, the person subject to the proceeding may abandon his or her application by delivering a notice of abandonment in Form 4C.

RULE 5 SERVICE OF DOCUMENTS

Service of Documents on Parties

5.01 (1) An originating process shall be served on the person subject to the proceeding,

(a) personally;

(b) by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society; or

(c) where a person subject to a proceeding is represented by counsel prior to issuance of an originating process, on counsel where counsel endorses on the originating process or a copy of it an acceptance of service and the date of the acceptance.

(2) An originating process shall be served at least ten days before it is first returnable before a tribunal.

(3) Service of any document other than an originating process may be effected,

(a) by personal delivery to the party or the party's counsel;

(b) by regular or registered mail to the last known address of the party or the party's counsel;

(c) by facsimile transmission to the last known facsimile transmission number of the party or the party's counsel but, where the recipient is the person subject to the proceeding or his or her counsel, the consent of the recipient is required;

(d) by courier, including Priority Post, to the last known address of the party or the party's counsel; or

(e) by any other means authorized or permitted by the tribunal.

(4) Service is deemed to be effective when delivered,

(a) by personal delivery or facsimile transmission before 4 p.m., on the day of delivery or facsimile transmission, and after that time, on the next day;

(b) by regular or registered mail, on the fifth day after mailing;

(c) by courier, on the second day after the document was provided to the courier; or

(d) by any means authorized or permitted by the tribunal, on the date ordered by the tribunal.

RULE 6 DISCLOSURE

Obligations of the Society

6.01 (1) The Society shall make such disclosure as is required by law and without limiting the generality of this requirement, the Society shall provide a person subject to a proceeding with, at least ten days before the hearing,

(a) a copy of any document upon which it intends to rely and the opportunity to examine any other document;

(b) a summary of the oral evidence of all witnesses; and

(c) the list of witnesses which the Society intends to call.

(2) Subject to rule 6.05, evidence against a person subject to a proceeding is not admissible unless disclosure of that evidence has been made at least ten days before the hearing.

Obligations of the Person Subject to a Proceeding

6.02 (1) In admission, requalification, restoration, and reinstatement proceedings, evidence upon which the person subject to the proceeding intends to rely is not admissible unless the person has provided to the Society, within 60 days of receipt of the notice of hearing,

(a) a copy of any documents upon which the person intends to rely;

(b) a summary of the oral evidence of all witnesses upon which the person intends to rely; and

(c) the list of witnesses which he or she intends to call.

(2) In readmission proceedings, evidence upon which a person subject to the proceeding intends to rely is not admissible in that proceeding unless he or she has provided to the Society, with the prescribed application form, the material listed in subrule (1)(a) through (c) within 60 days of receipt of the notice of hearing.

Summaries of Evidence

6.03 Where parties are required to disclose a summary of the oral evidence of a witness, the summary shall be in writing and contain,

(a) the substance of the evidence of the witness;

(b) a list of documents or things, if any, to which the witness will refer; and

(c) the witness' name and address or, if the witness' address is not provided, the name of a person through whom the witness can be contacted.

Expert Reports

6.04 Evidence of an expert led by any party or non-party participant is not admissible unless the party or non-party participant gives all parties in the proceeding, at least ten days before the hearing, the expert's curriculum vitae, and a copy of the expert's written report or, if there is no written report, a summary of the evidence.

Discretion of Tribunal

6.05 A tribunal may, in its discretion, allow the introduction of evidence that is not admissible under rules 6.01, 6.02 and 6.04 and may make such directions as it considers necessary to ensure that no party is prejudiced.

RULE 7 MOTIONS

Scheduling the Motion

7.01 (1) The party bringing a motion to be heard on a date, other than the date scheduled for the hearing of the proceeding on its merits, shall obtain available dates and times for the hearing of the motion from the Hearings Coordinator.

(2) The party bringing a motion, on a date other than the date scheduled for the hearing of the proceeding on its merits, shall inform the Hearings Coordinator of the estimated length of time it will take to argue the motion when obtaining the available dates and times.

Making a Motion

7.02 (1) A motion shall be made by a notice of motion in accordance with Form 7A unless the nature of the motion or the circumstances make a notice of motion unnecessary.

(2) The notice of motion shall be served on all parties and, in the case of motions for disclosure, any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.

(3) The moving party shall serve on any person or party served with the notice of motion and file with the Clerk of the tribunal, at least seven days before the hearing date,

(a) a motion record containing the notice of motion and all affidavits and other material to be relied upon; and

(b) a factum, if desired by the moving party, and a book of those authorities referred to in the factum.

Responding to a Motion

7.03 The responding party may serve on the moving party and any person or party served with the notice of motion and file with the Clerk to the tribunal, at least three days before the hearing date,

(a) a responding record containing any materials not contained in the motion record to be relied upon; and

(b) a factum, if desired by the responding party, and a book of those authorities referred to in the factum.

Materials on the motion

7.04 (1) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.

(2) Where this rule requires materials to be filed with the Clerk to the tribunal, a party shall file with the Clerk,

(a) four copies of the materials where the motion is before a three member Hearing Panel;

(b) two copies of the materials where the motion is before a one member Hearing Panel, the HMT, or the AMT; or

(c) six copies of the materials where the motion is before the Appeal Panel. Evidence on the Motion

7.05 Subject to rules 11.01 (3) and 11.02, evidence on a motion shall be given by affidavit unless the tribunal orders otherwise.

Abandoning a Motion

7.06 (1) A party who makes a motion may abandon it by delivering a notice in Form 4C to that effect to any person or party served with the notice of motion and the Clerk of the tribunal.

(2) A party who serves a notice of motion and does not file it or appear at the hearing of the motion shall be deemed to have abandoned the motion unless the tribunal orders otherwise.

(3) Where a motion is abandoned or is deemed to have been abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the tribunal orders otherwise.

Motions on Consent

7.07 Where a motion is on consent, the motion may be heard in writing without the attendance of the parties or persons affected, unless the tribunal orders otherwise, and the written consent of the motion participants and a draft order shall be filed with the notice of motion.

Disposition of Motions

7.08 When a motion is heard by a tribunal prior to the hearing of the proceeding on its merits, the tribunal may grant the relief sought, dismiss or adjourn the motion, in whole or in part and with or without terms, or may adjourn the motion to be disposed of by the tribunal hearing the proceeding on its merits.

Written Order

7.09 (1) Immediately after a motion has been determined, the successful party shall and any other party or person served with the notice of motion may, deliver a draft of the formal order.

(2) An order shall be in accordance with Form 7B.

(3) An order delivered in accordance with subrule (1), or rule 7.07, shall be reviewed, amended if necessary and signed by the chair of the tribunal which heard the motion.

(4) This subrule does not apply to orders made on the record during the hearing of a proceeding on its merits or to motions in writing in accordance with rule 7.07.

Costs and Adjournments

7.10 All motions shall be brought in a timely fashion having regard to all of the circumstances, and the moving party's failure to do so, may be taken into account in awarding costs on the motion and any related adjournment which may be necessary.

RULE 8 INTERIM ORDERS

General

8.01 Rule 7 applies with necessary modifications to this rule.

Making the Motion

8.02 (1) Subject to subrule (2), the Society may bring a motion before the Hearing Panel for an interim order.

(2) Where a motion for an interim order is brought prior to the authorization of a notice of application or the Hearing Panel has not commenced a hearing to determine the merits of a proceeding, the Society shall bring the motion with the authorization of the Proceedings Authorization Committee.

Materials to be Served

8.03 (1) The Society shall serve on the member or student member, at least three days before the date on which the motion is to be heard,

(a) a motion record which shall contain the notice prescribed in rule 7, all affidavits and any other material to be relied upon; and

(b) a factum, if desired by the Society, and a book containing any authorities referred to in the factum.

(2) Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the Hearing Panel with proof of service the day before the hearing of the motion.

Responding to the Motion

8.04 (1) The member or student member may serve on the Society, no later than 2:00 p.m. the day before the hearing of the motion,

(a) a responding motion record containing any materials not contained in the Society's motion record; and

(b) a factum, if desired by the member or student member, and a book of those authorities referred to in the factum.

(2) Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the Hearing Panel with proof of service by 4:00 p.m. the day before the hearing of the motion.

Order to Specify Duration

8.05 An interim order continues in force until a further order of a tribunal sets aside or varies the interim order, or the final order on the merits of the proceeding.

RULE 9 PRE-HEARING PROCEDURES

Tribunal to which proceedings are first returnable

9.01 (1) Subject to subrules (3) and (4), a proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.

(2) When the originating process is served, notice shall be given of the time and place at which the proceeding shall be returnable before the HMT.

(3) A proceeding which originates by notice of application shall be first returnable before a Hearing Panel for the purpose of proceeding with a hearing on its merits where the hearing of another proceeding has already been scheduled or the nature of the allegations in the notice of application requires that the hearing be expedited.

(4) A proceeding which originates by notice of motion for an interim order where a notice of application has not yet been served shall be first returnable before the Hearing Panel for the hearing the motion on its merits.

Setting Hearing Dates

9.02 (1) Subject to subrule (2), a hearing into a proceeding shall be set only on regularly scheduled hearing dates obtained from the Hearings Coordinator.

(2) Where the parties estimate that the hearing will require more than one day,

(a) the parties shall request special dates for the hearing at the HMT; and

(b) the HMT, at its discretion, may direct that the parties to attend a pre-hearing conference as prescribed by Rule 10.

(3) Prior to requesting the HMT to set special dates for the hearing, the parties shall first obtain available dates from the Hearings Coordinator.

RULE 10 PRE-HEARING CONFERENCES

Party to Request

10.01 (1) Prior to the hearing of a proceeding on its merits, commenced by either a notice of application or a notice of hearing, any party may request that a pre-hearing conference take place before a bencher.

(2) There shall not be more than one pre-hearing conference in a proceeding except by order of the pre-hearing conference bencher or the HMT or on the consent of the parties.

(3) The pre-hearing conference bencher shall not sit on the tribunal at the hearing of a proceeding on its merits unless the parties consent in accordance with rule 12.01.

Attendance at Pre-Hearing

10.02 (1) Where a party refuses to attend a pre-hearing conference, an order that a pre-hearing conference be held may be obtained on motion to the HMT.

(2) Unless otherwise ordered, written notice of the time and place of a pre-hearing conference shall be given by the Hearings Coordinator to the parties and the pre-hearing conference bencher.

(3) Unless otherwise ordered or the parties consent, the parties and their counsel are required to attend in person.

Preparation for Pre-hearing Conference

10.03 Unless otherwise ordered, the parties shall exchange pre-hearing conference memoranda and any related documents and provide copies to the pre-hearing conference bencher, at least two days prior to the pre-hearing conference.

Electronic Pre-hearing Conference

10.04 A pre-hearing conference may be held by conference telephone with the consent of the parties and leave of the pre-hearing conference bencher or the HMT.

Procedure at Pre-hearing Conference

10.05 At the pre-hearing conference, the presiding bencher shall discuss with the parties, among other things,

(a) whether any of the issues can be settled;

(b) whether the issues can be simplified;

(c) whether the parties are able to enter into an agreed statement of facts concerning all or part of the subject matter of the proceeding; and

(d) the advisability, in appropriate cases, of attempting other forms of resolution.

Closed and Without Prejudice

10.06 A pre-hearing conference shall not be open to the public and all discussions at the pre-hearing conference shall be without prejudice.

Documents

10.07 Documents provided to the pre-hearing conference bencher shall,

(a) at the conclusion of the pre-hearing conference, be returned by the pre-hearing conference bencher to the party who provided them ; and

(b) not be considered to be filed in the proceedings.

Agreements and Undertakings

10.08 (1) Agreements and undertakings made at a pre-hearing conference may be recorded in a memorandum prepared by or at the direction of the pre-hearing conference bencher.

(2) Copies of the memorandum referred to in subrule (1) shall be provided to the parties.

(3) Agreements and undertakings in the memorandum referred to in subrule (1) are binding upon the parties to the proceeding unless otherwise ordered by the Hearing Panel.

RULE 11 EVIDENCE

Rules of Evidence

11.01 (1) The rules of evidence applicable in civil proceedings apply in proceedings under the Act.

(2) Notwithstanding subrule (1), with leave of the tribunal, an affidavit or statutory declaration of any person is admissible in evidence as proof, in the absence of evidence to the contrary, of the statements made therein.

(3) An affidavit for use in a proceeding may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit but where, in the opinion of the tribunal, better evidence should be adduced through direct evidence of a witness, the tribunal may require the party to file or call such direct evidence and strike out the evidence filed.

Cross-Examination before Official Examiner

11.02 (1) A tribunal may order, on its own motion or on the motion of a party, that the cross-examination of the deponent of an affidavit or statutory declaration be conducted before an official examiner.

(2) Where the cross-examination of the deponent of an affidavit or statutory declaration is conducted before an official examiner, it shall be conducted in a manner analogous to the procedure under the *Rules of Civil Procedure* and, where necessary, the parties may seek direction from the tribunal.

Documentary Evidence

11.03 In addition to providing a copy to the other party, any party tendering a document as evidence shall provide to the Clerk of the tribunal,

(a) four copies of each document where the hearing is before a three member Hearing Panel; or,

(b) two copies of each document where the hearing is before a one member Hearing Panel, the HMT, or the AMT.

Certain information not admissible

11.04 Notwithstanding subrule 11.01 (1), information obtained by the Discrimination and Harassment Counsel as a result of the performance of his or her duties under clause 4 (1) (a) of By-Law 36 shall not be used and is inadmissible in a proceeding before the tribunal.

RULE 12 CONDUCT OF HEARINGS

Consent

12.01 Where the member or student member and the Society consent to a hearing before a one member Hearing Panel, a consent in Form 12A, must be filed with the Hearing Panel prior to the commencement of the hearing.

Pre-hearing Conference

12.02 Where a pre-hearing conference has been held in relation to a proceeding, and the member or student member and the Society consent to the proceeding being heard before the pre-hearing bencher sitting as a one member Hearing Panel,

(a) the hearing shall not commence until after the conclusion of the pre-hearing conference;

(b) the hearing shall be conducted in accordance with the same rules applicable to any other proceeding before a Hearing Panel; and,

(c) consent, in Form 12B, shall be executed after the pre-hearing conference by both the member or student member and the Society and filed with the Hearing Panel prior to the commencement of the hearing. Exclusion of Witnesses in Proceedings

12.03 (1) A tribunal may order that one or more witnesses be excluded from the hearing until called to give evidence.

(2) An order under subrule (1) may not be made in respect of a party to the proceeding or a witness whose presence is essential to advise counsel for the party calling the witness, but the tribunal may require any such party or witness to give evidence before other witnesses are called to give evidence on behalf of that party.

(3) Where an order is made excluding one or more witnesses from the hearing, there shall be no communication to an excluded witness of any evidence given during the witness' absence from the hearing, except with the leave of the tribunal, until after the witness has been called and has given evidence.

Visual or Audio Recording of Proceedings

12.04 Subsections 136 (1), (2) and (3) of the *Courts of Justice Act* apply to proceedings with necessary modifications.

Transcripts

12.05 (1) All oral and electronic hearings shall be recorded to permit the production of a transcript.

(2) The first party to order a transcript shall pay the cost of transcribing and shall file a copy of the transcript as part of the record.

Interpreters

12.06 (1) Where a witness requires an interpreter, the Society shall provide the interpreter, subject to an order to the contrary by the tribunal.

(2) An interpreter shall be competent and independent and, before the witness is called, shall swear or affirm that he or she will interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and his or her answers.

Special Needs

12.07 Parties shall notify the Hearings Coordinator as early as possible of any special needs of the parties or their witnesses.

RULE 13 ORDERS

Admonitions and Reprimands

13.01 (1) Unless the right of appeal is waived by the Society and the member or student member, a reprimand or admonition shall not be administered before the time for serving a notice of appeal has expired.

(2) A reprimand or admonition may be administered by any member of the tribunal.

(3) Where an order of reprimand or admonition is appealed and where the Appeal Panel decides that a reprimand or admonition is the appropriate disposition, the reprimand or admonition may be administered by any member of the Appeal Panel.

(4) A reprimand or admonition may be administered in writing.

(5) Except where a reprimand or admonition is administered in writing, it is to be administered at a sitting of the Hearing Panel or the Appeal Panel, as the case may be, that is open to the public.

(6) An admonition shall be a matter of public of record but shall not be published in the Ontario Lawyers Gazette or in any formal media release by the Society except where the admonition is referred to in subsequent or other proceedings.

Orders issued by One Member Hearing Panel in Conduct Proceedings

13.02 A one member Hearing Panel may not make an order under subsections 35(1) 1 or 35(1) 2 of the Act.

Written Reasons

13.03 (1) Subject to subrule (2) and subrule 15.07, a tribunal is required to give reasons in writing if the request for written reasons is made within thirty days after the day on which the panel makes its final decision or order.

(2) A Hearing Panel shall issue written reasons for decisions in relation to capacity applications in every case.

Incapacity Orders made in the absence of the Member or Student Member

13.04 (1) Where the Hearing Panel has proceeded in the absence of the member or student member and has determined that there are reasonable grounds for believing that the member or student member is, or has been, incapacitated, the Hearing Panel may make an interim order.

(2) An interim order becomes final on the thirty-first day after the day on which notice of the interim order is served on the member or student member unless, before that day, he or she moves before the Hearing Panel to have the interim order of suspension set aside and the issue of incapacity determined.

(3) The member or student member named in the order may appeal a final order of suspension made under this rule.

RULE 14 COSTS

Security for Costs

14.01 (1) In admission, readmission, reinstatement, restoration or requalification proceedings, or an appeal arising from any of these proceedings, the tribunal, on motion by the Society, may make such order for security for costs as is just where it appears that,

(a) the person subject to the proceeding has an order for payment of costs made against him or her in the same or another proceeding under the Act which remains unpaid in whole or in part; and

(b) there is good reason to believe that the proceeding is unwarranted and the person subject to the proceeding has insufficient assets in Ontario to pay the costs of the Society where ordered.

(2) A person subject to a proceeding against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding except with leave of the tribunal.

(3) Where a person subject to a proceeding defaults in giving the security required by an order, the tribunal, on motion by the Society, may dismiss the proceeding and any stay obtained no longer applies.

Motions for Costs

14.02 A request for costs shall be made by motion to the tribunal which heard the proceeding on its merits or where otherwise appropriate.

Costs against the Society

14.03 In admission, conduct, capacity, professional competence or non-compliance proceedings, where it appears that the proceedings were unwarranted, the tribunal may order that such costs as it considers just be paid to the person subject to the proceeding by the Society and any other party to the proceeding.

Costs to the Society

14.04 (1) In appropriate cases, where a tribunal has made a determination in a proceeding that is adverse to a party other than the Society, the tribunal may make an order requiring that party to pay all or part of,

(a) the Society's legal costs and expenses;

(b) the Society's costs and expenses incurred in investigating the matter; and

(c) the Society's costs and expenses incurred in conducting the proceeding.

(2) In awarding costs and expenses, the tribunal shall apply any tariff which may be approved by Convocation from time to time.

Wasted or Unreasonable Costs

14.05 (1) Where a party or non-party participant has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the tribunal may make an order awarding such costs as are just.

(2) An order under subrule (1) may be made by the tribunal on its own motion or on the motion of any party in the proceeding.

RULE 15 APPEALS

General

15.01 Subject to the Act, there is no appeal from an interlocutory order of a Hearing Panel other than an interim order.

Stay Pending Appeal

15.02 A party seeking a stay of a final order of a Hearing Panel shall bring a motion to the Appeal Panel in accordance with Rule 7 with necessary modifications.

Commencement of Appeals

15.03 (1) An appeal shall be brought by a notice of appeal in accordance with Form 15A.

(2) The notice of appeal shall be served on all other parties and filed with the Clerk to the Appeal Panel:

(a) within 30 days of service of the order;

(b) after 30 days on consent of the parties, or with leave of the Appeal Panel.

Materials on the Appeal

15.04 (1) A party delivering a notice of appeal shall contemporaneously serve and file a certificate of the contents of the record book, in accordance with Form 15B, listing the contents of the record book necessary for that party's purposes.

(2) Within five days of delivery of a certificate of the contents of the record book, the other party shall serve and file a certificate of the contents of the record book in accordance with Form 15B.

(3) Subject to subrule (5), the contents of the record book shall contain the documents listed in the certificate(s), as the case may be, unless ordered otherwise by the AMT.

(4) Within thirty days of delivery of the first certificate of the contents of the record book, the party delivering a notice of appeal shall serve a record book on the opposing party or counsel for that party and shall file 6 copies of the record book with the Clerk to the Appeal Panel.

(5) Where a party fails to deliver a certificate of the contents of the record book, that party shall be deemed to accept the other party's certificate of the contents of the record book, unless the party obtains the consent of the other party or an order from the AMT.

(6) The record book shall contain, in consecutively numbered pages, the following,

(a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;

(b) a copy of each notice of appeal;

(c) a copy of each document required;

(d) all relevant transcripts or a list of all relevant transcripts together with a certificate of the court reporter confirming that such transcripts have been ordered and any deposit required for preparation of transcripts has been paid; and

(e) a copy of each certificate of the contents of the record book.

(7) The party delivering a notice of appeal shall serve a factum on all other parties within 15 days of the delivery of the record book.

(8) Within 15 days of receipt of a factum, a party shall serve a responding factum on all other parties.

(9) Each factum shall contain a concise statement, without argument, of the facts, issues to be argued, a concise statement of law, and authorities relating to each issue and the order sought.

(10) Each party shall serve with their factum, a book of authorities unless the authorities to be relied upon are contained in the standard book of authorities.

(11) Each party shall file 6 copies of that party's factum and book of authorities with the Clerk to the Appeal Panel.

(12) Where the party who files a notice of appeal fails to file a certificate of content of the record book, record book, factum or book of authorities in the time prescribed by this rule or by the AMT, the notice of appeal shall be deemed to be abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Appeal Management Tribunal (AMT)

15.05 (1) The AMT shall schedule hearings before the Appeal Panel.

(2) The AMT shall hear motions with respect to,

(a) the abridgement or extension of any time prescribed by these Rules or by a previous order of the AMT;

(b) the location of the hearing of an appeal or a motion;

(c) the form of the hearing, including a request to hold a hearing as an electronic or written hearing;

(d) the consequences of non-compliance with a previous order of the AMT;

(e) the materials to be filed with the Appeal Panel;

(f) procedural issues regarding motions before the Appeal Panel including the contents of any affidavit or the record book of further evidence, the scope or conduct of a cross-examination, and the costs of transcripts and appointments before an official examiner; and

(g) requests to strike out a notices of appeal for failure to comply with these rules or any order of the AMT or the Appeal Panel.

(3) The AMT may, on request of a party or on its own motion, transfer the hearing of a motion to the Appeal Panel hearing the proceeding on its merits.

Motion to Tender Fresh Evidence

15.06 (1) If a party seeks to tender evidence to the Appeal Panel which was not before the Hearing Panel, the party shall bring a motion before the Appeal Panel in accordance with Rule 7 with necessary modifications.

(2) Both parties shall be prepared to proceed with the Appeal Panel's consideration of the appeal on its merits following a motion to tender fresh evidence, in any event of the result of the motion.

(3) Where the party who files a notice of motion to tender fresh evidence fails to file supporting materials in the time prescribed by this rule or by the AMT or fails to attend for cross-examination if required or fails to obtain transcripts of any cross-examinations in accordance with these rules, the notice of motion to tender fresh evidence shall be deemed abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Reasons

15.07 The Appeal Panel shall give written reasons for its decision in every case.

RULE 16 SUMMARY ORDERS

Application

16.01 (1) Rule 16 applies to matters concerning sections 46, 47, 48, 49, 49.1 and 49.32(3) of the Act.

(2) Rules 1, 5, 6, 7, 10, 11, 12 and 14 apply with necessary modification to Rule 16.

Definitions

16.02 In this Rule,

"summary disposition bencher" means an elected bencher appointed by Convocation, pursuant to sections 46, 47, 48, 49 or 49.1 of the Act, to make summary orders.

"summary order" means an order prescribed by sections 46, 47, 48, 49 or 49.1 of the Act.

"summary order appeal" means an appeal prescribed by subsection 49.32(3) of the Act.

Summary Orders

16.03 A summary order issued by the summary disposition bencher shall be in accordance with Form 16A.

Service of Notice of Summary Orders

16.04 (1) Notice to a member or former member of a summary order having been made shall be served personally or by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society.

(2) Where notice is given by registered mail it shall be deemed to have been given on the fifth day after the mailing.

Appeal of a Summary Order

16.05 (1) An appeal of a summary order on any question of fact or law shall be brought by a notice of appeal in accordance with Form 16B.

(2) The notice of appeal shall be served on the Society and filed with the Clerk to the Appeal Panel:

(a) within 30 days of service of notice of the order on the member;

(b) after 30 days on consent of the Society, or with leave of the Appeal Panel.

Disclosure of Documents by Society

16.06 Where a notice of appeal is served on the Society, it shall make disclosure to the member or former member, within 10 days of receipt of the notice of appeal, of all relevant documents in its possession, power or control.

Appeal Record

16.07 (1) The member or former member shall serve on the Society within 30 days of service of the notice of appeal,

(a) an appeal record which shall contain the summary order, the notice of appeal, all affidavits, and any other material to be relied upon; and

(b) a factum, if desired by the member or former member, and a book containing any authorities referred to in the factum.

(2) The member or former member shall file six copies of the materials referred to in subrule (1) with the Clerk of the Appeal Panel with proof of service within 5 days of service of the materials on the Society.

Responding to an Appeal

16.08 (1) The Society shall serve on the member or former member, within 10 days of the receipt of an appeal record,

(a) a responding appeal record containing any materials not contained in the appeal record upon which it intends to rely; and

(b) a factum, if desired by the Society, and a book of those authorities referred to in the factum.

(2) The Society shall file six copies of the materials in subrule (1) with the Clerk of the Appeal Panel with proof of service no more than 5 days after the service of the material upon the member or former member.

Evidence on the Appeal of a Summary Order

16.09 Subject to Rules 11.01 (3) and 11.02, evidence on the appeal of a summary order shall be given by affidavit unless the Appeal Panel orders otherwise.

Scheduling the Appeal

16.10 After the member or former member has complied with Rule 16.07, the member or former member shall contact the Hearings Coordinator within 30 days to obtain available dates and times for the hearing of the appeal.

Abandoning a Summary Order Appeal

16.11 (1) The member or former member may abandon a summary order appeal by serving a notice of abandonment in Form 4C on the Society and the Clerk of the Appeal Panel.

(2) The member, or former member, who,

(a) fails to comply with the provisions of Rule 16.07;

(b) fails to comply with the provisions of Rule 16.10; or

(c) fails to appear at the hearing of the appeal,

shall be deemed to have abandoned the summary order appeal unless the Appeal Panel orders otherwise.

(3) Where an appeal is abandoned or is deemed to have been abandoned, the Society is entitled the costs of the appeal unless the Appeal Panel orders otherwise.

Appeals on Consent

16.12 Where an appeal is on consent, the appeal may be heard in writing without the attendance of the Society or the member or former member unless the Appeal Panel orders otherwise. The written consent of the parties and a draft order shall be filed with the Clerk of the Appeal Panel.

Adopted by Convocation: January 28, 1999
Amended: February 19, 1999, March 26, 1999, April 30, 1999, May 28, 1999, September 24, 1999, January 27, 2000, June 23, 2000, February 21, 2001, June 22, 2001 and April 25, 2003.

These Rules can be found at www.lsuc.on.ca

APPENDIX 5

Law Society Act

ONTARIO REGULATION 30/99

HEARINGS BEFORE THE HEARING PANEL

Proceedings to be Heard by Three Members

1. (1) Subject to section 2, the chair of the Hearing Panel shall assign three members of the Panel to a hearing to determine the merits of a proceeding. O. Reg. 30/99, s. 1 (1).

(2) If the hearing is to determine the merits of an application under section 34 or 38 of the Act,

(a) at least one of the members assigned under subsection (1) shall be an elected bencher; and

(b) at least one of the members assigned under subsection (1) shall be a lay bencher. O. Reg. 30/99, s. 1 (2).

(3) Subsection (2) does not apply if the chair of the Hearing Panel is of the opinion that compliance with subsection (2) would unduly delay the hearing. O. Reg. 30/99, s. 1 (3).

(4) The chair of the Hearing Panel may not assign more than one life bencher to a hearing before the Panel. O. Reg. 30/99, s. 1 (4).

(5) The chair of the Hearing Panel may not assign more than one bencher who holds office under section 14 of the Act to a hearing before the Panel. O. Reg. 30/99, s. 1 (5).

Proceedings to be Heard by One Member

2. (1) Subject to subsection (3), the chair of the Hearing Panel shall assign one member of the Panel to a hearing to determine the merits of any of the following applications:

1. An application under subsection 34 (1) of the Act for a determination of whether a member has contravened section 33 of the Act by one or more of the following means (but not by other means):

i. Acting as a barrister or solicitor, holding himself or herself out as or representing himself or herself to be a barrister or solicitor or practising law as a barrister or solicitor while his or her rights and privileges are suspended.

ii. Breaching an undertaking to the Society.

iii. Failing to honour a financial obligation to the Society.

iv. Failing to maintain an investment authority or a report on an investment as required by the by-laws.

v. Failing to maintain financial records as required by the by-laws.

vi. Failing to respond to inquiries from the Society.

vii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.

viii. Failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel.

2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.

3. An application under subsection 45 (1) of the Act.

4. An application under subsection 49.1 (4) of the Act.

5. An application under subsection 49.42 (1) of the Act, if the order giving rise to the application was made by one member of the Hearing Panel.

6. An application under subsection 49.42 (3) of the Act.

7. An application under subsection 49.43 (1) of the Act. O. Reg. 30/99, s. 2 (1).

(2) If the chair of the Hearing Panel is required under subsection (1) to assign one member of the Panel to a hearing, the chair shall assign an elected bencher to the hearing. O. Reg. 30/99, s. 2 (2).

(3) If one member of the Hearing Panel is assigned to a hearing under subsection (1), the member assigned to the hearing may, on motion by a party to the application or on his or her

own motion, transfer the hearing to three members of the Panel assigned by the chair of the Panel, and subsections 1 (2) to (5) apply for that purpose. O. Reg. 30/99, s. 2 (3).

(4) If a hearing is transferred under subsection (3) to three members of the Hearing Panel, the hearing shall begin anew. O. Reg. 30/99, s. 2 (4).

Motions in Proceedings to be Heard by Three Members

3. (1) This section applies to the hearing of motions in a proceeding in which the chair of the Hearing Panel is required by section 1 or subsection 2 (3) to assign three members of the Panel to the hearing to determine the merits of the proceeding. O. Reg. 30/99, s. 3 (1).

(2) The chair of the Hearing Panel shall assign the same three members of the Panel who are to determine the merits of the proceeding to the hearing of a motion in the proceeding if the motion relates to any of the following matters:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.

2. The jurisdiction of the Society to initiate the proceeding.

3. The exclusion of the public from all or part of a hearing.

4. Disclosure of particulars, documents or things from a person who is not a party to the proceeding.

5. The production of documents by a person who is a party to the proceeding, if the chair of the Hearing Panel is of the opinion that the motion will likely require the members of the Panel who hear the motion to examine some or all of the documents.

6. A stay of the proceeding.

7. The exclusion of witnesses from all or part of a hearing.

8. A constitutional issue.

9. A motion under subsection 39 (1) of the Act to require the member or student member who is the subject of the proceeding to be examined by one or more physicians or psychologists.

10. A motion made, with the consent of the parties, to deal in an application under section 34 of the Act with a matter that would otherwise have to be the subject of an application under section 38 of the Act.

11. A motion to which, in the opinion of the chair of the Hearing Panel, the *Mental Health Act* may apply.

12. A motion that is transferred under this section to the three members of the Panel who are to determine the merits of the proceeding.

13. Any matter that arises during the hearing of the merits of the proceeding. O. Reg. 30/99, s. 3 (2).

(3) Subject to paragraphs 12 and 13 of subsection (2), the chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion relates to any of the following matters:

1. The issue of whether two or more proceedings should be heard together.

2. Disclosure of particulars and things that are not documents from a party to the proceeding.

3. The production of documents by a party to the proceeding, if the chair of the Hearing Panel is of the opinion that the motion is not likely to require the members of the Panel who hear the motion to examine any of the documents.

4. Adding a party to the proceeding or authorizing a person who is not a party to participate in a hearing.

5. Withdrawal of the counsel or agent for a party to the proceeding.

6. A request for an order prohibiting a party to the proceeding from making further motions in the proceeding without leave of the Hearing Panel. O. Reg. 30/99, s. 3 (3).

(4) Subject to paragraphs 12 and 13 of subsection (2), the chair of the Hearing Panel shall assign one member of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion relates to any of the following matters:

1. The extension or abridgement of any time prescribed by the rules of practice and procedure or by a previous order of the Hearing Panel.

2. The place of hearing for the hearing of a motion or for the hearing of the merits of the proceeding.

3. The form of a hearing, including the issue of whether to hold an electronic hearing.

4. The holding of a pre-hearing conference or the terms on which a pre-hearing conference may be held.

5. The consequences of failure to comply with an interlocutory order made in the proceeding by one member of the Hearing Panel. O. Reg. 30/99, s. 3 (4).

(5) Subject to paragraphs 12 and 13 of subsection (2), the chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is not described in subsection (2), (3) or (4). O. Reg. 30/99, s. 3 (5).

(6) Despite subsection (5), if the parties to the motion agree, the chair of the Hearing Panel shall assign one member of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is not described in subsection (2), (3) or (4). O. Reg. 30/99, s. 3 (6).

(7) Despite subsection (4) and despite the agreement of the parties under subsection (6), the chair of the Hearing Panel may assign three members of the Panel to the hearing of a motion that is described in subsection (4) or to the hearing of a motion that is not described in subsection (2), (3) or (4) if the chair is of the opinion that the assignment of three members would facilitate the hearing of the motion together with another motion to which the chair is required to assign three members. O. Reg. 30/99, s. 3 (7).

(8) If three members of the Hearing Panel other than the three members who are to determine the merits of the proceeding are assigned to the hearing of a motion, the members assigned to the hearing of the hearing of the motion may, on motion by a party to the motion or on their own motion, transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding. O. Reg. 30/99, s. 3 (8).

(9) If one member of the Hearing Panel is assigned to the hearing of a motion, the member assigned to the hearing may, on motion by a party to the motion or on his or her own motion, transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding. O. Reg. 30/99, s. 3 (9).

(10) If a motion that relates to the production of documents by a party to the proceeding is not assigned to the three members of the Hearing Panel who are to determine the merits of the proceeding and the members of the Panel who are assigned to hear the motion are of the opinion that some or all of the documents should be examined, the members of the Panel who are assigned to hear the motion shall transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding. O. Reg. 30/99, s. 3 (10).

(11) If a motion is not assigned to the three members of the Hearing Panel who are to determine the merits of the proceeding and the member or members of the Panel who are assigned to hear the motion are of the opinion that the *Mental Health Act* may apply to the motion, the member or members of the Panel who are assigned to hear the motion shall transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding. O. Reg. 30/99, s. 3 (11).

(12) If a hearing is transferred under subsection (8), (9), (10) or (11), the hearing shall begin anew. O. Reg. 30/99, s. 3 (12).

(13) If three members of the Hearing Panel are assigned to the hearing of a motion under this section, subsections 1 (4) and (5) apply. O. Reg. 30/99, s. 3 (13).

Motions in Proceedings to be Heard by One Member

4. (1) This section applies to the hearing of motions in a proceeding in which the chair of the Hearing Panel is required by section 2 to assign one member of the Panel to the hearing to determine the merits of the proceeding. O. Reg. 30/99, s. 4 (1).

(2) The chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law. O. Reg. 30/99, s. 4 (2).

(3) The chair of the Hearing Panel shall assign the member of the Panel who is to determine the merits of the proceeding to the hearing of a motion in the proceeding if the motion relates to any of the following matters:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.

2. The jurisdiction of the Society to initiate the proceeding.

3. The exclusion of the public from all or part of a hearing.

4. Disclosure of particulars, documents or things from a person who is not a party to the proceeding.

5. The production of documents by a person who is a party to the proceeding, if the chair of the Hearing Panel is of the opinion that the motion will likely require the member of the Panel who hears the motion to examine some or all of the documents.

6. A stay of the proceeding.

7. The exclusion of witnesses from all or part of a hearing.

8. A constitutional issue.

9. A motion to which, in the opinion of the chair of the Hearing Panel, the *Mental Health Act* may apply.

10. A motion that is transferred under this section to the member of the Panel who is to determine the merits of the proceeding.

11. Any matter that arises during the hearing of the merits of the proceeding. O. Reg. 30/99, s. 4 (3).

(4) The chair of the Hearing Panel shall assign one member of the Panel to the hearing of a motion in the proceeding, and is not required to assign the member who is to determine the merits of the proceeding, if the motion is not described in subsection (2) or (3). O. Reg. 30/99, s. 4 (4).

(5) If a member of the Hearing Panel other than the member who is to determine the merits of the proceeding is assigned under subsection (4) to the hearing of a motion, the member assigned to the hearing may, on motion by a party to the motion or on his or her own motion, transfer the hearing to the member who is to determine the merits of the proceeding. O. Reg. 30/99, s. 4 (5).

(6) Despite subsections (3), (4) and (5), the chair of the Hearing Panel may assign three members of the Panel to the hearing of a motion if the chair is of the opinion that the assignment of three members would facilitate the hearing of the motion together with a motion to which the chair is required by subsection (2) to assign three members. O. Reg. 30/99, s. 4 (6).

(7) If a motion that relates to the production of documents by a party to the proceeding is not assigned to the member of the Hearing Panel who is to determine the merits of the proceeding

and the member of the Panel who is assigned to hear the motion is of the opinion that some or all of the documents should be examined, the member of the Panel who is assigned to hear the motion shall transfer the hearing to the member of the Panel who is to determine the merits of the proceeding. O. Reg. 30/99, s. 4 (7).

(8) If a motion is not assigned to the member of the Hearing Panel who is to determine the merits of the proceeding and the member of the Panel who is assigned to hear the motion is of the opinion that the *Mental Health Act* may apply to the motion, the member of the Panel who is assigned to hear the motion shall transfer the hearing to the member of the Panel who is to determine the merits of the proceeding. O. Reg. 30/99, s. 4 (8).

(9) If a hearing is transferred under subsection (5), (7) or (8) to the member of the Hearing Panel who is to determine the merits of the proceeding, the hearing shall begin anew. O. Reg. 30/99, s. 4 (9).

Motions in Intended Proceedings

5. Despite sections 3 and 4, the chair of the Hearing Panel shall assign three members of the Panel, and is not required to assign any of the members who are to determine the merits of the proceeding, to the hearing of all motions in an intended proceeding. O. Reg. 30/99, s. 5.

6. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 30/99, s. 6.

Re: Regulatory Meeting

It was moved by Ms. Curtis, seconded by Ms. Dickson, that Convocation approve a new process called a regulatory meeting as set out at pages 8 – 14 of the Report modeled on the Invitation to Attend as an alternative to formal discipline proceedings, which would permit informal discussion between benchers and members, but which may be publicly noted.

It was moved by Mr. Silverstein, seconded by Mr. Gottlieb, that paragraph 27d set out at page 12 of the Report be amended to read:

> "Only members who engaged in specified types of misconduct, the general criteria for which will be determined by the PAC, as approved by Convocation."

Carried

ROLL-CALL VOTE

Aaron	For	Krishna	Against
Alexander	For	Legge	For
Backhouse	Against	MacKenzie	For
Banack	Against	Martin	Against
Bourque	For	Pawlitza	Against
Campion	For	Potter	Against
Carpenter-Gunn	For	Silverstein	For
Cherniak	Against	Simpson	For
Coffey	For	Swaye	For
Crowe	For	Symes	Against

Curtis	Against	Warkentin	Against
Dickson	Against	Wright	For
Doyle	Against		
Dray	For		
Eber	For		
Filion	For		
Gotlib	Against		
Gottlieb	For		
Harris	For		

Vote: 18 For; 13 Against

It was moved by Mr. Silverstein, seconded by Mr. Gottlieb that the regulatory meeting be made public without the names of the members.

The motion was ruled out of order.

The main motion as amended was approved.

Dr. Gotlib voted against the main motion.

Re: Summary Hearing Process

It was moved by Ms. Curtis, seconded by Ms. Dickson, that Convocation approve a process for summary hearings for specific regulatory matters, by approving an amendment to Rule 9.01 of the *Rules of Practice and Procedure* to permit those proceedings to go directly to the Hearing Panel, rather than to the Hearings Management Tribunal at first instance, after the Conduct Application is issued.

It was moved by Mr. Wright, seconded by Dr. Filion, that the word "shall" in Rule 9.01 (3) on page 42 be changed to the word "may".

Lost

Re: Interlocutory Suspension Orders (formerly Interim Suspension Orders)

It was moved by Ms. Curtis, seconded by Ms. Dickson, that Convocation approve the following amendments to the *Rules of Practice and Procedure.*

a. an amendment to Rule 8 to permit a motion for an interlocutory suspension and restriction order to be heard without notice to the member,

b. an amendment to Rule 8 to permit the Hearing Panel to adjourn a motion without notice for the purpose of service if it concludes that the motion ought to have been served;

c. an amendment to Rule 8 to provide the Hearing Panel with authority to vary or cancel the order;

d. an amendment to Rule 8 to permit the introduction of a broad range of evidence on such motions by incorporating s. 15 of the Statutory Powers Procedure Act,

e. an amendment to Rule 1.02(2) (Definitions) to redefine "originating process" to ensure that Rule 5.01(2) does not conflict with the provisions of Rule 8 on service of a notice of motion for an interlocutory suspension or restriction order;

f. housekeeping and clarifying amendments to Rule 7 (Motions) and Rule 5 (Service of Documents) as described in this report, and

g. consequential amendments to Rules 13 and 15 as a result of the change in title to Rule 8 (Interlocutory Suspension and Restriction Orders).

Ms. Pawlitza proposed that the wording in Rule 8.09 (1) and (3) be clarified so that an interim interlocutory suspension order shall not become final until 30 days after the member has been served with the order.

This proposal was accepted as a friendly amendment.

Carried

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:05 P.M.

CONVOCATION RECONVENED AT 2:45 P.M.

PRESENT:

The Treasurer (George D. Hunter), Alexander, Backhouse, Banack, Bourque, Boyd, Carpenter-Gunn, Caskey, Cherniak, Crowe, Curtis, Dickson, Gottlieb, Krishna, Legge, MacKenzie, Pawlitza, Porter, Potter, Simpson, Swaye, Symes and Wright.

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IN PUBLIC

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CONTINUATION OF THE REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Amendment to the Confidentiality Requirement for Invitations to Attend

It was moved by Ms. Curtis, seconded by Ms. Dickson, that Convocation approve an amendment to the confidentiality policy for Invitations to Attend to permit the Proceedings Authorization Committee to receive information about a member's prior Invitations to Attend.

Carried

Re: Interlocutory Suspension Orders and Summary Hearing Process

It was moved by Ms. Curtis, seconded by Ms. Dickson, that the amendments to the Rules of Practice and Procedure set out at Appendix 1 of the Report with the following amendments (noted in bold) be approved.

Order

8.09 (1) Every interlocutory suspension or restriction order shall, when it is first made, be an interim interlocutory order ~~for~~ until 30 days after service of the order on the member or student member and, after that, shall become a final interlocutory order unless fresh evidence or a material change in circumstances is brought by the parties to the attention of the tribunal that made the order and the tribunal varies or cancels the order.

(2) Unless the Hearing Panel provides otherwise, a final interlocutory suspension or restriction order continues in force until an order of the Appeal Panel sets aside or varies the order or the Hearing Panel makes a final order after a hearing of the application on its merits.

(3) Unless the Hearing Panel provides otherwise, where service of the notice of motion was not required, the Society shall serve on the member or student member any order or formal order made by the Hearing Panel and a copy of the notice of motion, motion record and all other documents used in the hearing of the motion.

Ordonnance

8.09 (1) L'ordonnance interlocutoire de suspension ou de restriction est, lors de son rendu, une ordonnance interlocutoire provisoire ayant effet jusqu'à 30 jours après la signification de l'ordonnance au membre ou au membre étudiant; à la fin de ce délai, elle devient une ordonnance interlocutoire définitive, sauf si les parties portent à l'attention du tribunal qui l'a rendue de nouvelles preuves ou un changement important des circonstances et que le tribunal la modifie ou l'annule.

(2) Sauf indication contraire du Comité d'audition, l'ordonnance provisoire définitive de suspension ou de restriction reste en vigueur jusqu'à ce qu'une ordonnance du Comité d'appel l'annule ou la modifie, ou jusqu'à ce que le Comité d'audition rende une ordonnance définitive après l'audition sur le fonds de la requête.

(3) Sauf indication contraire du Comité d'audition, si la signification de l'avis de motion n'était pas obligatoire, le Barreau signifie au membre ou au membre étudiant l'ordonnance du Comité d'audition, ainsi qu'une copie de l'avis de motion, du dossier de motion et de tous les autres documents utilisés au cours de l'audition de la motion.

Carried

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REPORTS NOT REACHED

Governance Task Force Report

Governance Task Force
June 22, 2005

Final Report to Convocation

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

Purpose of Report: Decision

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

OVERVIEW OF POLICY ISSUES

RECOMMENDATIONS OF THE GOVERNANCE TASK FORCE

Request to Convocation

1. Convocation is requested to approve the recommendations appearing at paragraph 11 to improve the governance of the Law Society by Convocation.

Summary of the Issue

2. In September 2004, Convocation established the Governance Task Force ("the Task Force"), whose mandate was to undertake a study on the need for improvements to the Law Society's corporate governance.

3. The Task Force met six times and considered a range of issues related to the Society's corporate governance.

4. The recommendations in this report, in the Task Force's view, will enhance Convocation's ability to fulfill its obligations to govern the legal profession in the public interest.

THE REPORT

A. TERMS OF REFERENCE AND RECOMMENDATIONS

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

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

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

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

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

   a. The method by which members become benchers and the size of Convocation as a board;

   b. The role of the Treasurer as chair of the board (Convocation), the notion of an executive committee, priority planning, and the frequency and the procedural and substantive efficacy of Convocation;

   c. Benchers in the dual roles of directors of a corporation and representatives in forum similar to a legislature;

d. Benchers in the dual roles of policy makers and adjudicators; and

e. Electronic voting for bencher elections.

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

11. This report discusses the above-noted issues and the Task Force's conclusions, which led to a series of recommendations, as follows.

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

a. That no change be made to the process by which members become benchers (the bencher election process) or to the process for appointing lay benchers;

b. That enhancements be made to the existing communications strategy for the bencher election, through appropriate Law Society and other media, to encourage more members to vote in the bencher election;

c. That Law Society members who are candidates in the bencher election be educated through material produced by the Law Society to be sent to all candidates and published in the bencher election voters' guide on the subject of the Society's public interest mandate, the importance of a self-regulating legal profession and the role of a bencher, with a focus on the bencher's obligations as a fiduciary and as a representative of the public's, as opposed to the profession's, interests;

RECOMMENDATION 2 - *Electronic voting for bencher elections*

The Task Force recommends that

a. the Law Society begin the process to institute electronic voting for the next bencher election and future bencher elections, and

b. the Society pursue other improvements to the bencher election process that might reasonably be expected to increase voter participation.

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

a. That no change be made to reduce the size of Convocation;

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

RECOMMENDATION 4 - *The role of the Treasurer as chair of the board (Convocation), the notion of an executive committee, priority planning, and the frequency and the procedural and substantive efficacy of Convocation*

a. That no change be made to establish an executive committee or advisory committee;

b. That no change be made to limit the authority of the Treasurer;

c. That no change be made to reduce the frequency of Convocation.

RECOMMENDATION 5 - *Benchers in the dual roles of directors of a corporation and representatives in forum similar to a legislature*

With respect to the bencher's role as a fiduciary, similar to Recommendation 1 c. above, that Convocation affirm the bencher's role as a fiduciary to the Law Society as an organization, whose mandate benchers must reflect in their discussions and decision-making, in particular, that Convocation affirm that benchers cannot advocate a position in Convocation or elsewhere that places the profession's interest ahead of the public interest.

RECOMMENDATION 6 – *Increase efforts to encourage potential bencher candidates from all communities*

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

B. THE STARTING POINT: GOVERNANCE AND THE PUBLIC INTEREST

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

The Law Society's Role Statement

13. The Law Society's Role Statement, which was adopted by Convocation on October 27, 1994 reads as follows:

> The Law Society of Upper Canada exists to govern the legal profession in the public interest by:
> · ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and
> · upholding the independence, integrity and honour of the legal profession, for the purpose of advancing the cause of justice and the rule of law.

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

The 1797 Statute

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

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

Judicial Consideration of the Public Interest Mandate

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

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

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

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

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

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

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

> The Law Society and the Ontario Securities Commission both exercise public interest functions, but the public interests which they seek to protect are not the same. The Law Society has an important role to govern the legal profession in

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

the public interest, and to ensure that members of the profession do not engage in professional misconduct or conduct unbecoming a barrister and solicitor.

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

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

Applying the Public Interest Mandate in the Profession's Governance

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

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

C. THE ISSUES

I. THE BENCHER QUALIFICATION PROCESS AND THE SIZE OF CONVOCATION AS A BOARD

The Election Process

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

Some "Pros and Cons" of the Election Process

A Democratic Process

25. Forty benchers are elected by the legal profession in Ontario every four years. The eligible pool of voters is some 35,000 members of the Law Society. The bencher election provides lawyers in the province with a transparent, democratic process for electing their governors from the profession, who are required to govern the profession in the public interest.

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

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

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[4] [2001] 3 S.C.R. 562.

[5] See the chart on page 15 for data on past bencher elections.

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

The "Constituency" Issue

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

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

The Value of An Election Process

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

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

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

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

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

> 9. Every member, other than a temporary member, is qualified to be a candidate in an election of benchers if, at the time of signing a nomination form containing his or her nomination as a candidate, the member resides in Ontario and the member's rights and privileges are not suspended.

10(2). A candidate shall be nominated by at least ten members who are not temporary members and whose rights and privileges are not suspended at the time of signing the nomination form.

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

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

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

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

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

Lay Benchers

37. The Task Force considers the appointment process for lay benchers a separate issue, and is making no recommendations for changes or enhancements to that procedure. Lay benchers are appointed under s. 23 of the *Law Society Act*. Under this process, the

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[8] This is distinguished from the current process for appointing lay benchers to Convocation in accordance with the *Law Society Act*.
[9] John Carver, *Boards That Make A Difference* (Jossey-Bass Inc.: 1990 pp. 201-203)

Lieutenant Governor in Council may appoint eight lay benchers whose terms expire immediately before the first regular Convocation following the first election of benchers that takes place after the effective date of the appointment. Lay benchers are eligible for reappointment.

CONCLUSIONS AND RECOMMENDATION 1

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

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

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

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

(a) if the Elections Officer has accepted the nomination, he or she shall communicate to the candidate,
    (i) the manner in which the candidate's name will appear on the election ballot; and
    (ii) the electoral regions from which the candidate is eligible to be elected as bencher; or
(b) if the Elections Officer has rejected the nomination, he or she shall communicate to the candidate,
    (i) the reasons why the nomination was rejected; and
    (ii) the time by which the candidate, if he or she wishes to be a candidate in the election of benchers, must submit to the Elections Officer a valid nomination.

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

Law Society and other media, that would have the effect of focusing the profession's attention on the vote.

41. The second matter relates to the voting process. The Task Force believes that improvements to the election process, including the ease with which members may cast their votes, may have the effect of increasing voter participation. Such improvements should be pursued. The Task Force focused on electronic voting for the bencher election as one such improvement, discussed in the next section of this report.

42. The Task Force therefore recommends the following:

    a. That no change be made to the process by which members become benchers (the bencher election process) or to the process for appointing lay benchers;

    b. That enhancements be made to the existing communications strategy for the bencher election, through appropriate Law Society and other media, to encourage more members to vote in the bencher election;

    c. That Law Society members who are candidates in the bencher election be educated through material produced by the Law Society to be sent to all candidates and published in the bencher election voters' guide on the subject of the Society's public interest mandate, the importance of a self-regulating legal profession and the role of a bencher, with a focus on the bencher's obligations as a fiduciary and as a representative of the public's, as opposed to the profession's, interests.

Electronic Voting For Bencher Elections

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

[12] Law Society Voter Turnout

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

*Source: Law Society Archives.

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

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

The Current Election Process and the Benefits of Electronic Voting

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

a. Mail delivery to members in the regions outside of Toronto, particularly the northern regions, usually takes longer than delivery in Toronto. Members outside of Toronto must also allow more time for return of their ballots to the Law Society. Some of these members will courier their ballots to ensure delivery, incurring charges that some Toronto members can avoid, for example, by hand delivering their ballots to the Law Society on the day voting closes.

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

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

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

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

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

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

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

51. The Task Force recommends that electronic voting be instituted for the 2007 bencher election. While the hope is that such a method will improve voter participation, based on research completed after the last bencher election, there is no evidence to suggest that electronic voting increases voter participation. Reforms in other jurisdictions designed to make voting more convenient in broad based elections have had very little effect on

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

Conduct of the Referendum

1. In October 2004 Convocation approved electronic voting as the means by which the referendum would be conducted. No paper ballots were accepted during the referendum. All voting was done over the telephone or the Internet.
2. The Law Society contracted with Computershare, a company in the business of conducting corporate shareholder voting processes. Computershare already had the electronic voting systems in place to conduct the referendum. Computershare manages shareholder voting for over 7,000 corporations with more than 60 million shareholders worldwide.
3. Computershare printed and distributed the referendum packages; conducted the electronic voting process; and generated the statistical reports following the referendum.
4. Voting closed at 7:00 p.m. EST on February 28, 2005. Computershare advised the Law Society of the results at 9:00 a.m. on March 1, 2005. The results were posted on the Law Society's web site after benchers were advised of them.
5. The referendum was conducted between February 4, 2005 and February 28, 2005. A notice to the profession first appeared in the January 7, 2005 edition of the *Ontario Reports*. Six notices in total were published in the *Ontario Reports* between January 7 and February 18, 2005.
6. In addition to notifying the profession through the *Ontario Reports*, notices appeared on the Law Society's web site, in an e-bulletin distributed by the Professional Development & Competence Department to 24,942 members, and in the *Ontario Lawyers Gazette*.
7. One week prior to the close of voting, a reminder e-mail was sent to every member for whom the Law Society has an e-mail address (27,239 members).
8. Referendum packages were mailed to all eligible voters on February 4, 2005. The packages consisted of the referendum question and background information, as well as a Voting Instruction Form…
9. All referendum material and notices to the profession were distributed in French and English.
10. Three members who have visual impairments have asked the Law Society to distribute all information to them electronically. The Elections Officer communicated directly with these members, and they received the referendum package from Computershare in a format that was accessible to them.

voter participation. The studies that resulted in these conclusions suggest that information, motivation and mobilization are more powerful tools of influence than convenience.

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

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

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

CONCLUSIONS AND RECOMMENDATION 2

55. The Task Force recommends that

    a. the Law Society begin the process to institute electronic voting for the next bencher election and future bencher elections, and

    b. the Law Society pursue other improvements to the bencher election process that might reasonably be expected to increase voter participation.

Size of Convocation as a Board

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

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

58. As a subject for review, the size of Convocation is not a new issue. It was discussed in the Strategic Plan of 2000, which proposed that the size and composition of Convocation be reviewed to determine whether it could be structured to be more effective in its policy

decision-making. The Strategic Planning Committee's report of January 2001 included the following:

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

59. The Task Force agrees that there is merit to examining procedures that govern Convocation. It is aware that the Professional Regulation Committee has completed a review of proposed rules of procedure for Convocation that were before Convocation on June 2004, and will soon be reporting.

60. The issue of an Executive Committee or Treasurer's Advisory Committee is discussed later in this report.

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

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

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

CONCLUSIONS AND RECOMMENDATION 3

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

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

II. ROLE OF THE TREASURER AS THE CHAIR OF THE BOARD, THE NOTION OF AN EXECUTIVE COMMITTEE, PRIORITY SETTING, AND THE FREQUENCY AND PROCEDURAL AND SUBSTANTIVE EFFICACY OF CONVOCATION

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

The Treasurer

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

Overview of the Treasurer's Duties

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

> …when it comes to defining what the Treasurer does, it's important we understand the scope of the Treasurer's job and how it has evolved from what historically may be termed a largely ceremonial position to what is now a real integral function to the internal operations of the Law Society and to Convocation.
>
> The Treasurer, it is true, presides over Convocation, presides over our agenda to ensure that what comes before us is properly before us, and, of course, regulates the debate. The Treasurer oversees all committees, all task forces, and all working groups to ensure that they all achieve their objective.
>
> The Treasurer is responsible for coordinating. The Treasurer is an ex officio member of all of those committees, task forces, and working groups, and in our experience with our present Treasurer, attends many of these committee meetings, task force meetings, et cetera.
>
> The Treasurer, in addition to that, monitors the CEO. We have decided that now. It is clear to us that the Treasurer is going to be accountable to us to monitor the performance of the CEO. Now, this entails, just so we understand, not only defining for the CEO or translating what we have defined for the CEO what the CEO's objectives are, but also measuring the CEO against those objectives.

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

> Now, anyone who knows that responsibility knows how onerous it is, and it is not a responsibility that in our view the Treasurer can possibly discharge on his own. And then he comes to recommend to us, in a formal way, what we or how we assess the performance of the CEO.
>
> The Treasurer, in addition to that oversight and in addition to his responsibilities here at Convocation, must liaise with the public, must liaise with the profession, must liaise with the bench, liaise with the press, deal with interest groups and constantly write letters to Globe and Mail.
> …
> The Treasurer is the face of Convocation. Yes, it is a ceremonial job. It is a huge job. He represents us at a substantial number of functions, more functions than we can possibly count or comprehend."

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

Law Society Act

70. The Treasurer is part of the corporation of the Society. Section s. 2(2) says that the Society "is a corporation without share capital composed of the Treasurer, the benchers and the other members from time to time." The Treasurer is the president and head of the Society (s. 7). Benchers, not the membership, elect the Treasurer annually, who ceases to be an elected bencher (s. 25).

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

The By-Laws

72. The By-Laws include the following:

a. By-Law 1 (By-laws): the Treasurer has the authority to call a special meeting of Convocation to vote on making, amending or revoking a by-law when that vote has been deferred (s. 1(3)).

b. By-Law 5 (Election of Benchers): Generally, the Treasurer presides over the election of benchers.[16] The Treasurer can intervene to fill certain positions (e.g. assistant or scrutineer) related to the election (s. 7).

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[16] 4. (1) Subject to subsection (4), an election of benchers shall be presided over by the Treasurer.

(2) The Treasurer may appoint a member who is not a candidate in an election of benchers to assist the Treasurer in exercising the powers and performing the duties of the Treasurer under this By-Law.

c. By-Law 6 (Treasurer): Most of this by-law focuses on the election of the Treasurer. The last part of the by-law deals such things as term of office, vacancy and who acts when the Treasurer is unable to act (s. 16 and 17). For example:

- Subject to removal of a Treasurer from office, he or she remains in office until his or her successor takes office;
- If a Treasurer resigns, is removed from office or cannot continue to act, Convocation must elect an elected bencher to fill the office of Treasurer until the next Treasurer election;
- If a Treasurer is temporarily unable to act, or if there is a vacancy in the office, the chair of the standing committee of Convocation responsible for financial matters, or if he or she cannot act, the chair of the standing committee of Convocation responsible for admissions matters, acts as Treasurer until the Treasurer is able to act or another election is held.

d. By-Law 8 (Convocation) details the Treasurer's authority and responsibility in Convocation. This is the by-law which is the subject of the motion (June 2004) to adopt rules of procedure for Convocation. In particular,

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

Policy

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

D. Treasurer's Job Description

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

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

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(3) The Treasurer shall appoint a member who is not a candidate in an election of benchers to exercise the powers and perform the duties of the Treasurer under this By-Law whenever the Treasurer is unable to act.

(4) If the Treasurer is a candidate in an election of benchers, Convocation shall, as soon as practicable after the Treasurer's nomination as a candidate is accepted, appoint a member to preside over the election and to exercise the powers and perform the duties of the Treasurer under this By-Law.

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

The Treasurer's Role in Setting Convocation's Agenda and Priority Planning

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

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

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

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

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

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

The Notion of an Executive Committee

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

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

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

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

> The following questions were posed for consideration [by the Committee]:
>
> Should the Research and Planning Committee develop a statement for Convocation, defining the limits of the proper role of the Law Society, the statement to serve as a standard against which all activities of the Law Society, and all proposals for new activities, can be measured to determine their respective priorities?
>
> Should the Research and Planning Committee recommend to Convocation that the Rules of the Law Society be amended to provide for an Executive Committee which will be responsible for determining the political and financial priorities of the Law Society?
>
> Should the Research and Planning Committee prepare a proposal for Convocation setting out the respective responsibilities of the Treasurer, Convocation, the Executive Committee, Standing Committees, benchers and staff?

At its meeting on May 15, your Committee debated the first two questions at length and decided to consider, at its June meeting, proposals

- for developing a statement on the role of the Law Society and,

- for studying an appropriate structure for the determination of Law Society priorities.

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

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

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

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

> C. Treasurer's Advisory Committee
>
> 29. There is currently no formal mechanism in place to plan Convocation's agenda; to determine when issues are ready for Convocation's consideration; to advise the Treasurer between meetings of Convocation; to ensure that the Chairs of the major policy-making committees are apprised of the issues being dealt with in each committee; to consistently and effectively monitor the implementation of Convocation's policies; to review the Law Society's governance policies to ensure they meet the Law Society's current needs; and to generally assist the Treasurer in the exercise of the Treasurer's duties.
>
> 30. The Committee is of the view that a formal process must be developed to accomplish these objectives if Convocation is to become more efficient. Too often, matters are before Convocation prematurely, the consequences of a course of action have not been fully examined, financial ramifications are not detailed, or further consultation with other committees, staff, or external

organizations is required. Bringing such matters before Convocation results in time wasted on debate when the matter is eventually sent back to committee for further study, or decisions are made by Convocation on the basis of inadequate information.

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

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

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

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

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

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

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

    Recommendation to Convocation

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

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

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

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

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

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

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

- To perform the duties and exercise the powers delegated to it by the board;
- To expedite the administration and affairs of the organization between board meetings on important matters arising between board meetings that cannot be postponed until the next scheduled meeting of the board;
- To exercise all the powers delegated to it by the board when the board is not in session and, in the judgment of the committee calling an in-person or telephonic special board meeting, is impractical or unnecessary;
- To act as a sounding board for general management issues and/or matters that affect the organization as a whole;
- To conduct an annual performance evaluation of the committee;

- To report to the board on a regular basis so that the board can monitor the committee's performance and take any corrective action.

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

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

CONCLUSIONS AND RECOMMENDATION 4

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

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

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

- Committees and task forces are better at preparing the necessary information for Convocation's decision-making function, including the financial impact, the impact on stakeholders and how the decisions are to be implemented operationally;
- Through the budget planning process, a systematic review of operations includes information on the implementation status of Convocation's policies, which will also inform the need for new initiatives that Convocation should consider[18] ;

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

> Convocation, in the course of its regular business, receives regular program reports from the Society's various standing committees as well as periodic updates from the CEO on how the policy objectives of Convocation are being implemented and the relative merits and progress of the various initiatives and programs undertaken during the course of the year.

- The work of the committees is co-ordinated to a large extent through the Policy Secretariat within which regular briefings are held on committee activities; efforts are made to avoid duplicated work;
- In consultation with the Policy Secretariat, the CEO informally monitors the progress and completion of policy issues before the standing committees and task forces.

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

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

Frequency and Substantive and Procedural Efficacy of Convocation Meetings

Frequency of Convocation

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

Procedure for and Efficacy of Convocation's Decision-Making

96. The Task Force concluded earlier in this report that there is merit to adopting appropriate rules of procedure for Convocation. As the report of the Professional Regulation Committee on rules of procedure is understood to be imminent, the Task Force suggests that Convocation await that report for its consideration of recommendations to improve the process for Convocation's decision-making.

97. The Task Force repeats its recommendation above to adopt rules of procedure for Convocation as a way to increase the effectiveness of its decision-making.

II. BENCHERS IN THE DUAL ROLES OF DIRECTORS OF A CORPORATION AND REPRESENTATIVES IN A FORUM SIMILAR TO A LEGISLATURE

98. As members of a board of an organization, benchers have fiduciary duties as directors to

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A comprehensive system of program review linked to the budget is also in place. It was approved by Convocation in January 2002 and has been carried out for the last three years (the 2003, 2004 and 2005 budgets). With Convocation's concurrence, it is staff's intention to continue the review program for the 2006 budget.

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

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

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

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

Benchers as Fiduciaries

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

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

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

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

102. The question of in whose interests the Society governs (public *versus* profession) is not a new issue for the Society and has spawned a number of debates about whether the interests of the profession can be considered - and if so, to what extent - when the

Society governs in the public interest. The debates have generally been resolved by concluding that often the interests of the public and the profession meet, but when a conflict between the two interests arises, the interests of the public must take precedence.[19]

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

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

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

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

[21] The proposal is to create a single independent complaints organization, covering all the "front-line" regulatory bodies, under the general supervision of the Legal Services Board (LSB). The LSB, as a legislatively created body, would be granted regulatory powers and would have the authority to delegate day-to-day regulatory operations to the recognized front-line bodies, like the Law Society of England and Wales, where such bodies satisfy the LSB that they are competent to handle the regulatory functions and have appropriate governance arrangements to deal with such functions without conflict. The model from which the LSB came would require the separation of the Law Society's regulatory and representative functions.

In his March 21, 2005 speech to the Legal Services Reform Conference, Lord Falconer, Constitutional Affairs Secretary and Lord Chancellor said: "…I will create an Office for Legal Complaints. I reject the view that centralization will lead to a slower service for consumers….A single complaints body means consistent, fair and professional handling of cases for all complainants….As with the Legal Services Board, the Office for Legal Complaints will be led by a board with a lay Chair and lay majority, and appointments will be made on merit, by the Legal Services Board. The different responsibilities of the Legal Services Board, the Office for Legal Complaints and the various professional bodies will be clearly defined….Removing complaints

A Bencher's Duty as a Fiduciary

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

The Notion of the Bencher as Constituency Representative

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

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

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

107. In Task Force's view, benchers must understand that they are not constituency representatives or parliamentarians. It may be that the role of bencher as a fiduciary

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handling from the professional bodies will in no way reduce their responsibility to ensure that their members operate to the highest professional and ethical standards at all times. I acknowledge the serious and constant efforts the professional bodies make in this regard. The Office for Legal Complaints will help, not hinder….

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

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

does not come intuitively. In such an environment, the education discussed earlier in this report is important.

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

109. Benchers' actions in addressing a particular constituency or advocating a position for the profession instead or at the expense of the public interest may effectively operate as a challenge to the mandate. For example, if a bencher, intentionally or not, takes a position that focuses on the weakness of a decision of Convocation or flaws in a Convocation policy, this may result in reducing the effectiveness of the Society's position. Ultimately, this may amount to a conflict for the bencher.

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

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

111. The Bencher Code of Conduct is part of the Law Society's Governance Policies, and to the extent that it addresses conflicts issues, the Code should continue to be observed.[23] Initially, the Task Force identified the Bencher Code of Conduct as a topic for review. However, after considering the Code in the context of specific bencher behaviour, as noted above, the Task Force determined that a separate examination of the Code was not warranted, and that the current environment in which benchers dutifully observe the Code does not call for additional instruments for regulation of bencher conduct.[24]

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[23] With respect to compliance with the Governance Policies, the Law Society's *Rules of Professional Conduct* impose certain duties on lawyers, in whatever capacity they serve. It is possible that a serious breach by a bencher of his or her duties *qua* bencher may amount to professional misconduct or conduct unbecoming a lawyer deserving of sanction.

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

- Egregious misconduct of an elected bencher would likely amount to a breach of the *Rules of Professional Conduct* and would be dealt with through the investigations stream at the instance of the Treasurer through provisions in the *Law Society Act*, and

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

CONCLUSIONS AND RECOMMENDATION 5

113. With respect to the bencher's role as a fiduciary, the Task Force recommends, similar to an earlier recommendation in this report, that Convocation affirm the bencher's role as a fiduciary to the Law Society as an organization, whose mandate benchers must reflect in their discussions and decision-making, and in particular, that Convocation affirm that benchers cannot advocate a position in Convocation or elsewhere that places the profession's interest ahead of the public interest.

IV. BENCHERS IN THE DUAL ROLES OF POLICY MAKERS AND ADJUDICATORS

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

115. According to section 49.21(2) of the *Law Society Act*, all benchers except for members of the Proceedings Authorization Committee and *ex officio* benchers who are the Minister of Justice and Attorney General for Canada, the Solicitor General for Canada and current and former Attorneys General of Ontario are members of the Hearing Panel. The Hearing Panel adjudicates applications with respect to the conduct, competence and capacity of members of the Law Society and hears readmission and student member good character applications.

116. The question is whether there is a perception of systemic bias in the adjudicative function because of the policy role that members of the Hearing Panel also fulfill as members of standing committees, particularly those committees that deal with regulatory policy.[26]

- If the issue about the bencher's conduct relates to procedural matters in Convocation, the proposed rules of procedure for Convocation, discussed earlier in this report, should address those concerns.

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

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

117. The Task Force is unaware of any claim of bias by a party to a proceeding at the Society because of the adjudicators' policy-making role. Moreover, there is an argument that the policy-making role can enhance the adjudicators' ability to make informed decisions.

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

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

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

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

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

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

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

122. Discipline has always been a key responsibility of the benchers and is taken seriously. The Tribunals Task Force noted the importance of the Society's adjudicative responsibilities in its report to May 26, 2005 Convocation. In Part II of its report, the Task Force discussed its examination of alternatives to the current adjudicative structure and the composition of the Hearing Panel. It identified five models (and comprehensively explained the issues with respect to each model), as follows:

a. the continuation of the current Law Society model …Within this model, the decision could be made to make no changes to the process and procedures (the status quo) or to enhance them to make the tribunals composition more effective…;

b. a tribunal model made up of elected benchers, lay benchers and non-bencher lawyers, the latter either for general participation on panels or for selected cases;

c. a tribunal model with a permanent Chair and one or two permanent Vice-Chairs who occupy one seat on every panel; the remaining members of each panel to be either elected lawyer benchers and/or lawyer members, and lay benchers;

d. a model that establishes a tribunals unit within the Law Society made up entirely of non-bencher lawyers and lay people; and

e. a model that establishes a tribunal that is completely independent of the Law Society.

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

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

V. OTHER GOVERNANCE ISSUES RAISED BY MEMBERS OF CONVOCATION

EQUITY AND DIVERSITY ISSUES

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

Representation of Francophones at Convocation

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

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

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

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

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

The Task Force's Views

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

132. First, one guaranteed seat for a Francophone bencher will not resolve the issue of sufficient numbers of Francophone benchers for hearings. A larger pool is required. The current system, which draws on benchers who are capable of conducting a hearing in French and permits the selection of qualifed non-bencher Hearing Panel members, is successful in filling necessary positions on the Hearing Panel. Enhancements should be

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

made if necessary, and the Task Force understands that the Society has consulted with AJEFO as required when a Francophone hearing panel member is required. This consultation should be encouraged.

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

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

135. In the past, the Society has encouraged members of the Francophone community to run for bencher, and this will continue.[28] The Society should not only devote more effort to encouraging candidates from the Francophone community to run in the election, but expand this initiative to other communities. The diversity of communities represented in Convocation in recent years has increased substantially, and Convocation is better for it. But increased efforts should be made to encourage members from all communities to run for bencher, as the public whose interests the Society represents in its governance of the profession should be reflected in those who serve as governors.

CONCLUSIONS AND RECOMMENDATION 6

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

Equality Template

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

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

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

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

The Task Force's Views

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

The Equity Advisory Group's Membership on the Equity and Aboriginal Issues Committee

140. The Bicentennial Report Working Group suggested in its 2004 report *Bicentennial Implementation Status Report and Strategy* that the Equity Advisory Group (EAG) be permanently represented as a voting member on the Equity and Aboriginal Issues Committee. Ms. St. Lewis requested that the Task Force consider this issue.

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

- identifying and advising the Committee on issues affecting equality communities, both within the legal profession and relevant to those seeking access to the profession;
- providing input to the Committee on the planning and development of policies and practices related to equality, both within the Law Society and the profession; and
- commenting to the Committee on Law Society reports and studies relating to equality issues within the profession.

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

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

The Task Force's Views

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

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

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

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

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

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

(a) to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal peoples and French-speaking peoples; and
(b) to consult with the Treasurer's Equity Advisory Group, Roti io' ta'-kier, AJEFO, women and equity-seeking groups in the development of such policy options.

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

ENTRENCHMENT OF THE INDEPENDENCE OF THE CHIEF FINANCIAL OFFICER

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

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

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

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

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

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

155. Another section entitled "Reporting To Management And Auditors" requires a Law Society employee who has knowledge of a matter which he or she believes might adversely affect the Law Society's reputation or operations to bring such knowledge promptly to the attention of senior management. Similarly, an employee must not conceal such information from the Society's auditors.

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

APPENDIX 1

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

a. The Task Force will study specific issues related to governance, including the following:
   i. The bencher qualification process and how Convocation is constituted;
   ii. The size of Convocation as a board;
   iii. The role of the Treasurer as chair of the board (Convocation);
   iv. The notion of an executive committee;

v. The frequency and the procedural and substantive efficacy of Convocation, including the process of setting priorities for Convocation;
vi. Benchers in the dual roles of directors of a corporation and representatives in what has been characterized as a parliamentary assembly;
vii. Benchers in the dual roles of policy makers and adjudicators;
viii. A bencher code of conduct.

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

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

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

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

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

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

APPENDIX 2

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

AS AMENDED BY CONVOCATION ON FEBRUARY 24TH, 1995

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

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

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

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

I Background

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

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

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

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

II Discussion

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

In addition, your Committee recognizes that there are certain conflicts of interest which are inherent in any self-governing body. Every elected bencher is by definition also a member of the Law Society and therefore has a self-interest in the matters coming before Convocation. That self-interest is, however, essential to the effective governance of the profession. The question your Committee has focused on is, "At what point does an individual bencher's self-interest become so significant that a conflict of interest arises which interferes with that bencher's ability to make a decision in the best interest of the Law Society and the public?".

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

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

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

III Sample Issues

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

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

(a) an increase or decrease in the schedule of rates for counsel to LPIC;

(b) changes to the amount and structure of the member's deductible; or

(c) changes to the coverage provided by LPIC.

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

(a) Legal Aid service cuts in the area of law in which the bencher primarily practises;

(b) changes to the Legal Aid Tariff which would affect the bencher's practice;

(c) funding of disbursements by Legal Aid where the bencher's practice would be affected; or

(d) the introduction of a staff delivery model for services in the bencher's area of practice.

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

(a) any matters concerning the Legal Aid Plan;

(b) negotiations with the government; or

(c) proposals for amendments to the Law Society Act which would materially affect the relationship between the Law Society and the government.

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

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

Benchers must be aware of and alert to situations which require them to exercise independent judgment.

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

IV Types of Conflicts

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

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

This category includes:

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

Accordingly, your Committee suggests the following specific rules:

1. Bencher prohibited from appearing as counsel

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

2. Member of bencher firm appearing as counsel

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

3. Member of bencher firm providing evidence

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

4. Bencher participating who knows member

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

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

The bencher should:

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

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

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

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

5. Bencher as witness

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

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

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

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

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

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

(a) To ensure that the Society or LPIC is represented by counsel who will provide competent and cost effective legal services and, in particular, to ensure that the services are provided by individuals whose skills, training and experience are most appropriate to the task.

(b) To ensure that the Society's or LPIC's work is distributed as equitably as possible having regard to considerations of specific expertise, geographic location, gender, equity and resources.

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

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

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

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

C. Policy Issues Considered by Committees or Convocation

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

On a very simplistic basis, it is recognized that each bencher brings to their work at the Society a unique combination of personal and professional experience which will affect their approach to and ultimately their decisions upon the matters before Convocation. It is both understood and expected that this is the case. To require individual benchers to declare a conflict of interest by virtue of the fact that some aspect of their personal or professional experience impinges upon or

in some way relates to the issue before Convocation, would significantly impair not only the individual bencher's freedom to participate but also Convocation's ability to deal with business.

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

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

1. Solicitor-Client Relationship

A bencher ought not to participate in a matter where:

1. the bencher or the bencher's firm acts for a client whose interests will be significantly affected by Convocation's decision, or

2. the bencher or the bencher's firm is, by virtue of a solicitor-client relationship, in possession of confidential information pertaining to the issue under consideration which may tend to influence the bencher's decision on the matter.

2. Employment Relationship

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

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

V Rulings by Convocation

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

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

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

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

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

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

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

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

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

All of which is respectfully submitted

Arthur Scace, Chair

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

Carried

THE REPORT WAS ADOPTED

APPENDIX 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

different than the experience of a Muslim man victim of discrimination, and it is unlikely that the Muslim woman could categorize the discrimination as based on gender only, separately from race or religion. An intersectional analysis uses a contextual approach by taking into account the simultaneous membership in more than one group, instead of categorizing each ground separately. [32]

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

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

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

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

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

Application of template

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

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

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

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

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

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

Appendix 2

Equality Template

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

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

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

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

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

_____

_____

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

_____

_____

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

_____

_____

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

_____

_____

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

_____

_____

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

_____

_____

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

_____
_____
_____

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

_____
_____

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

_____
_____

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

Appendix 3

Glossary of Terms

· *Aboriginal Peoples of Canada* – is defined in the *Constitution Act, 1982*[36] as including the Indian, Inuit and Métis peoples of Canada. The use of the term Indian is preferably restricted to the *Indian Act* and is usually viewed as inappropriate. The names of Aboriginal organizations and associations in Canada are often a reflection of the period of incorporation. We find names such as the Indigenous Bar Association, the Assembly of First Nations and the Native Women's Association of Canada. The reader is encouraged to seek to determine the preferred terminology used by the community or organization as a fundamental component of the dignity and respect that is encompassed in an equality commitment.
  - o *Aboriginal Rights* - The *R. v. Van der Peet case*[37] is the leading case in establishing the test that must be satisfied to successfully prove the existence of an Aboriginal right. The Aboriginal claimant must prove that an activity, custom or tradition was integral to the distinctive culture of the Aboriginal community prior to European contact.

  - o *Métis Peoples* – has been defined by the Supreme Court of Canada as not encompassing all individuals with mixed Indian and European heritage. Rather it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears. A Métis community is a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life.

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

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

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

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

    - *Direct Discrimination* – involves a law, rule or practice which on its face creates harmful differential treatment on the basis of particular group characteristics.

    - *Adverse Effect Discrimination* – occurs when the application of an apparently neutral law or policy has a disproportionate and harmful impact on individuals on the basis of particular group characteristics. It is also referred to as "indirect" discrimination or "disparate impact" discrimination

    - *Systemic Discrimination* – occurs when problems of discrimination are embedded in institutional policies and practices. Although the institution's policies or practices might apply to everyone, they create a distinction between groups of individuals, which disadvantage one group based on shared personal characteristics of members of that group in a manner inconsistent with human dignity. Systemic discrimination is caused by policies and practices that are built into systems and that have the effect of excluding women and other groups and/or assigning them to subordinate roles and positions in society or organizations. Although discrimination may not exclude all members of a group, it will have a more serious effect on one group than on others.

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

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

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

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

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

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

- *Equity Programs* – are proactive, planned programs designed to remedy group-based problems of systemic discrimination. They are premised on the recognition of the need to take positive steps to redress institutionalized discrimination and persistent social inequalities. Equity initiatives are also referred to in the United States as "affirmative action" programs.

- *Gender* - is the culturally specific set of characteristics that identify the social behaviour of women and men, the relationship between them and the way it is socially constructed. Gender is an analytical tool for understanding social processes. Gender may refer to male or female.

    - *Gender Equity* – is the process of being fair to women and men. To ensure fairness, measures must often be available to compensate for historical and social disadvantages disproportionately experienced by women. Equity leads to equality.

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[39] Government of Canada, Defining Disability as a Complex Issue (Gatineau: Office for Disability Issues, Human Resources Development Canada, 2003)

[40] Adapted from Working Group on Racial Equality in the Legal Profession, *Racial Equality in the Canadian Profession* (Ottawa: Canadian Bar Association, February 1999).

- *Gender Equality* – will be achieved when women and men contribute equally to – and benefit equally from – political, economic, social and cultural development; and society equally values the different contributions they make.

- *Gender Equality Analysis* – is a process to help identify and remedy problems of gender inequality that may arise in policy, programs and legislation. It is premised on an understanding of the continuing reality of women's inequality in Canadian society; and a recognition that our legal rules have historically been founded on explicit or implicit assumptions about appropriate gender roles that restrict women's choices and actions. The object of gender equality analysis is to replace those assumptions with a consideration of the specific situations of women in the labour market, in the household and in the community, and thus shape laws, policies and programs that reflect and respond to women's needs and priorities.

· *Gender Identity* – refers to those characteristics that are linked to an individual's intrinsic sense of self that is based on attributes reflected in the person's psychological, behavioural, and/or cognitive state. Gender identity may also refer to one's intrinsic sense of being male or female. It is fundamentally different from and not determinative of, sexual orientation.[41]

· *Racialized* – refers to persons whose social experiences may be determined by their presumed membership in a race. It identifies their vulnerability to different treatment or the denial of rights or privileges by individuals and institutions who believe that race should factor into their decisions-making.[42]

- *Race* – is the idea of observable physical differences as the basis for categorizing people. This idea has been around for some time though it has lost its scientific validity. The selection of characteristics that define people into racial groups has been arbitrary. Skin colour has been seen as very significant where ear shape of the length of arms and legs have not. Once the person has these characteristics they are assumed to share certain cultural attributes.

- *Systemic Racism* – Systemic or institutional discrimination consists of patterns of behaviour that are part of the social and administrative structures of the workplace, and that create or perpetuate a position of relative disadvantage for some groups and privilege for other groups, or for individuals on account of their group identity. This definition focuses attention on patterns of behaviour, not attitudes, on the assumption that ridding the workplace of racism begins (though does not end) with changing discriminatory behaviours.[43]

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[41] This definition is a modification of that found in the Ontario Human Rights Commission *Policy on Discrimination and Harassment because of Gender Identity* (Toronto: Ontario Human Rights Commission, March 30, 2000).
[42] Working Group on Racial Equality in the Legal Profession, *Racial Equality in the Canadian Profession* (Ottawa; Canadian Bar Association, February 1999).
[43] Carol Agocs, *Surfacing Racism in the Workplace: Qualitative and Quantitative Approaches to Identifying Systemic Discrimination*, September 2004, Prepared for The Race Policy Dialogue, Association for Canadian Studies and Ontario Human Rights Commission.

- *Sexual Orientation* – is more than simply a status that an individual possesses; it is an immutable personal characteristic that forms part of an individual's core identity, including innate sexual attraction. Sexual orientation encompasses the range of human sexuality from gay and lesbian to bisexual and heterosexual orientations.[44]

- *Special Programs* - a right to equality without discrimination is not infringed by the implementation of special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of discrimination.[45] Such affirmative action programs have sometimes been referred to as "reverse discrimination". However, the Ontario *Human Rights Code* and relevant case law clearly indicate that those programs are not discriminatory, but are established to provide substantive equality for disadvantaged groups. Section 15(2) of the *Canadian Charter of Rights and Freedoms*[46] also states that the right to equality "does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Professional Development, Competence & Admissions Committee (in camera)

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[44] This definition combines elements of that used by the Ontario Human Rights Commission and that used by the National Lesbian and Gay Journalists Association.
[45] Section 14 of the Ontario *Human Rights Code*, R.S.O. 1990, chap. H.19.
[46] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

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REPORT FOR INFORMATION ONLY

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

- Equity Advisor's Background Report on the Implementation of the Bicentennial Report
- Dialogue with Lawyers : Religious and Spiritual Beliefs and the Practice of Law

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

June 22, 2005

Report to Convocation

Committee members:
Joanne St. Lewis (Chair)
Derry Millar (Vice-Chair)
Marion Boyd
Mary Louise Dickson
Dr. Sy Eber

Thomas G. Heintzman
Ronald D. Manes
Tracey O'Donnell
Mark Sandler
William J. Simpson

Purpose of Report: Information

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

THE REPORT

Terms of Reference/Committee Process

1. The Committee met on May 12, 2005. Committee members participating were Joanne St. Lewis (Chair), Mary Louise Dickson, Dr. Sy Eber, Thomas G. Heintzman and Tracey O'Donnell. The following invited members also participated: Jonathan Batty (Member of the Equity Advisory Group (EAG)), Faisal Bhabha (Member of the EAG), Kelly Burke (Member of the EAG), Andrea Horton (Member of the EAG), Sonia Ouellet (Representative of the Association d'expression française de l'Ontario (AJEFO)), David Smagata (Chair of the EAG) and Katherine Hensel (Representative of Rotiio> taties Aboriginal Advisory Group). Staff members in attendance were Josée Bouchard, Katherine Haist, Sudabeh Mashkuri, Marisha Roman and Rudy Ticzon.

2. The Committee is reporting on the following matters:

Information

- *Equity Advisor's Background Report on the Implementation of the Bicentennial Report*
- *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law*

INFORMATION

EQUITY ADVISOR'S BACKGROUND REPORT ON THE IMPLEMENTATION OF THE BICENTENNIAL REPORT

Background

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

4. On July 31, 2003, Convocation established the Bicentennial Report Working Group (the Working Group) to review and report on the implementation status of the recommendations contained in the *Bicentennial Report.* Members of the Working Group were: Joanne St. Lewis (Chair), Andrea Alexander, Constance Backhouse, Thomas G. Heintzman, W.A. Derry Millar and Beth Symes.

5. The Working Group consulted with Professor Fiona Kay of Queen's University, the author of a longitudinal study of women and men called to the Bar in Ontario from 1976 to 2002. The Working Group reviewed studies and research on the status of Aboriginal and racialized lawyers as well as lawyers with disabilities.

6. The Working Group also sought and received the views of the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG), the Association des juristes d'expression française de l'Ontario (AJEFO) and Rotiio> taties Aboriginal Advisory Group (Rotiio> taties) about the implementation status of the Bicentennial Report.

7. On January 22, 2004 the Working Group presented to Convocation an information report, the *Bicentennial Implementation Status Report and Strategy (Bicentennial Implementation Report)*. The report details the programs, services and policies created by the Law Society as a result of the recommendations of the *Bicentennial Report,* analyzes the implementation status of each recommendation and proposes strategies to be examined and further implemented.

8. The Working Group referred the report to the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) for its consideration. The report was presented to the Committee in its capacity as the standing committee of Convocation mandated to develop policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to members of equality-seeking, Aboriginal and Francophone communities.[1] The Committee has been monitoring the implementation of the proposals contained in the *Bicentennial Implementation Report* and developing policies and initiatives in response to the *Bicentennial Implementation Report.*

9. In the spring of 2005, the Equity and Aboriginal Issues Committee requested that a background report be prepared about the activities undertaken by the Law Society since January 22, 2004 to implement the proposals contained in the *Bicentennial Implementation Report*. The Equity Advisor prepared the report (*The Equity Advisor's Report*) presented at Appendix 1. The report incorporates information provided by the Senior Management Team about the implementation status in each department or unit. The report was presented to the Committee for its consideration and to assist the Committee in the development of its workplan.

DIALOGUE WITH LAWYERS: RELIGIOUS AND SPIRITUAL BELIEFS AND THE PRACTICE OF LAW

Background

[1] Section 16.1 of By-law 9 – Committees.

10. On April 22nd, 2004, Convocation passed a motion that the Law Society's Equity and Aboriginal Issues Committee and the Law Society's Government Relations Committee recommend to Convocation for Convocation's approval the role the Law Society should play and the positive steps it should take to discourage anti-Semitism and all forms of hatred or discrimination in our profession, our society and the world, and to promote religious tolerance and respect in our profession, our society and the world.

11. In May 2004, a Working Group on Anti-Semitism and other Forms of Hatred and Discrimination Based on Religion (Working Group) was created with members of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, the Government Relations Committee and other interested benchers. Joanne St. Lewis was Chair of the Working Group. The members of the Working Group were Andrea Alexander, Gary Gottlieb, Thomas Heintzman and Mark Sandler.

12. The Working Group decided that the Law Society should develop programs and initiatives to discourage anti-Semitism and all forms of hatred or discrimination based on religion, and to promote religious respect. Some of the initiatives proposed included creating a statement of principles; developing education and outreach programs; sponsoring and attending community events; recognizing lawyers who demonstrate a commitment to the issues; and publishing information on a regular basis about the importance of promoting religious and spiritual respect and discouraging hatred and discrimination based on religion.

13. On March 24, 2005, Convocation adopted the document *Anti-Semitism and Respect for Religious and Spiritual Beliefs - Statement of Principles*. The *Statement of Principles* for the legal profession promotes respect for religious belief and condemns hatred or discrimination based on religion. It not only advances the cause of justice and the rule of law, but also serves to educate the legal profession in the public interest.

14. In an attempt to understand the views of the legal profession in Ontario on how faith/spiritual belief intersects with the practice of law, the Working Group also decided that it would interview a cross-section of the profession about the relationship between their faith/spiritual belief(s) and practices, the rule of law and legal practice. It should be noted that the views of the lawyers interviewed are their personal views and not those of other members of their faith or of the legal profession or the Law Society. However, the exercise reveals the commonality in the values and respect for human dignity of each religion. The interviews also indicate that the positive interrelationship between spiritual or religious beliefs and the practice of law appears to cut across all faith and spiritual beliefs. The report entitled *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law* is presented for information at Appendix 2.

Appendix 1

Equity Advisor's Background Report on the
Implementation of the Bicentennial Report

May 12, 2005

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

Prepared by Equity Initiatives
Josée Bouchard: (416) 947-3984

IMPLEMENTATION OF BICENTENNIAL REPORT

Background

1. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report)*.[2] The *Bicentennial Report* reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians and transgender individuals and persons with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The Report made sixteen recommendations that have since guided the Law Society as it seeks to promote equality and diversity within the legal profession.

2. On July 31, 2003, Convocation established the Bicentennial Report Working Group (the Working Group) to review and report on the implementation status of the recommendations contained in the *Bicentennial Report.* Members of the Working Group were: Joanne St. Lewis (Chair), Andrea Alexander, Constance Backhouse, Thomas G. Heintzman, W.A. Derry Millar and Beth Symes.

3. The Working Group consulted with Professor Fiona Kay of Queen's University, the author of a longitudinal study of women and men called to the Bar in Ontario from 1976 to 2002. The Working Group reviewed studies and research on the status of Aboriginal and racialized lawyers as well as lawyers with disabilities.

4. The Working Group also sought and received the views of the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG), the Association des juristes

[2] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, may 1997).

d'expression française de l'Ontario (AJEFO)[3] and Rotiio> taties Aboriginal Advisory Group (Rotiio> taties)[4] about the implementation status of the *Bicentennial Report.*

5. On January 22, 2004, the Working Group presented to Convocation an information report, the *Bicentennial Implementation Status Report and Strategy (Bicentennial Implementation Report).* The report details the programs, services and policies created by the Law Society as a result of the recommendations of the *Bicentennial Report,* analyzes the implementation status of each recommendation and proposes strategies to be examined and further implemented.

6. The Working Group referred the report to the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) for its consideration. The report was presented to the Committee in its capacity as the standing committee of Convocation mandated to develop policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to members of equality-seeking, Aboriginal and Francophone communities.[5]

7. This report (the *Equity Advisor's Report*) presents background information, prepared by the Equity Advisor, about the activities undertaken by the Law Society since January 22, 2004 to implement the proposals contained in the *Bicentennial Implementation Report.* The Senior Management Team provided input to the Equity Advisor regarding activities undertaken in each department that relate to the implementation of the *Bicentennial Report*. This report was presented to the Committee for its consideration and as background information for the development of its workplan.

Executive Summary

8. In its January 2004 *Bicentennial Implementation Report*, the Working Group chose to highlight the following areas that merited particular attention:

    a. Accountability of the Law Society
    b. Career paths
    c. New and pressing areas of research
    d. Financial barriers
    e. Contract compliance

a. Accountability of the Law Society

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[3] Founded in 1980, the Association of French Speaking Jurists of Ontario (AJEFO) speaks for lawyers, judges, personnel of the administration of justice, law professors, law students and others who work at the promotion of access to justice in French and English, the official languages of the courts of Ontario. The Legislative Assembly of Ontario adopts all public statutes in both official languages, and both versions are equally valid. The AJEFO wishes to ensure equal access to justice, without penalty, delay, obstruction or hesitation to the use of either official languages by the judiciary, members of the Bar and the citizens of Ontario.

[4] Rotiio>taties is an Aboriginal non-profit volunteer organization comprised of Aboriginal lawyers, legal academics, law students and community members advising various bodies in Ontario on Aboriginal issues as they arise in law and the legal profession.

[5] Section 16.1 of By-law 9 – Committees.

9. The Working Group noted that advancing equality requires effective tools of measurement and analysis. The Working Group highlighted the need for an equality template that would include definitions of the terms "equality" and "diversity". Staff, bencher committees and Convocation would use the template to analyze the impact of policies, programs and initiatives on persons from equality-seeking, Aboriginal and Francophone communities. It was also suggested that the equality template would be used to perform audits of Law Society programs and services, as stipulated under Recommendation 3 – Equity and Diversity Audit of the Law Society Programs and Services, and to develop and effectively implement Recommendation 4 - Monitoring and Evaluation of Equity and Diversity Initiatives.

10. On March 10, 2005, the Committee adopted definitions for the terms "equality" and "diversity", recognized the unique positions of Aboriginal and Francophone communities and approved an Equality Template to be applied by staff and benchers of the Law Society to the development of policies, programs and initiatives.

11. The Working Group, in its *Bicentennial Implementation Report*, also noted that the integration of equality and diversity must reach the level of governance, as recommended in Recommendation 7 – Participation in the Governance of the Profession. In February 2005, members of the Law Society voted in favour of bencher remuneration.[6] It is anticipated that bencher remuneration will provide an incentive to run for election and increase the pool of candidates and its diversity.

b. Career paths

12. The Working Group believed that barriers to entering and establishing a practice continue to exist for individuals from equality-seeking, Francophone and Aboriginal communities, that women continue to leave the profession in significant numbers at mid-career and that there continue to be barriers to re-entry. The Working Group suggested that the Law Society conduct research into those who leave the profession to determine the barriers faced by members of equality-seeking, Aboriginal and Francophone communities
(Recommendation 2 – Study and Research).

13. Since January 2004, the Law Society published the following studies that address the issues raised by the Bicentennial Working Group:

    a. Professor Fiona Kay, *Turning Points and Transitions: Women's Careers in the Legal Profession, 2004.*

    b. Professor Fiona Kay, *Diversity and Change: The Contemporary Legal Profession In Ontario, 2004.*

    c. Professor Michael Ornstein, *The Changing Face of the Legal Profession – 1971-2002.*

    d. Report to the Task Force Examining the Ongoing Survival of Sole Practices and Small Law firms, *Sole Practitioners and Employees/Associates from Equality-*

[6] A total of 8, 802 members voted – 24.6 per cent of the 35, 787 eligible voters. The number of votes broke down as follows: Yes 5,118, No 3,684

Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practicing in the Small Firm Environment, October 6, 2004.

14. The Bicentennial Working Group also noted that the Law Society has made progress in implementing Recommendation 9 – Articling, but students from equality-seeking, Francophone and Aboriginal communities remain over represented in the group of students that have difficulty finding articles. In 2005, Convocation established a Task Force on Employment Opportunities for Articling Students with a mandate to consider whether the Law Society should provide further specific supports to students from equality-seeking, Aboriginal and Francophone communities to address concerns identified by the Task Force.

c. New and pressing areas of research

15. Recommendation 2 recognizes that research is an essential tool of policy-making. The Working Group encouraged the Law Society to undertake research about Aboriginal students and lawyers, and about students and lawyers with disabilities. Research in those two areas is underway.

d. Financial barriers to participation in the profession

16. The Working Group acknowledged the inextricable connection between financial capacity and full participation in the legal profession. It was of the view that the most significant financial barriers faced by members of equality-seeking, Francophone and Aboriginal communities include:

    a. The increasing debt load of BAC students.

    b. The reduction in the number of applications for funding and the number of BAC students receiving funds under the Repayable Loans Program.

    c. Law Society fees and LawPRO rates for those who practice part-time and have a low income (Recommendation 14: Fees).

    d. Costs of CLE programs.

17. Since January 2004, the Law Society supported the *Study of Accessibility to Ontario Law Schools* produced by the Law Deans of five Ontario law schools (all but University of Toronto). The report assists the Committee in its work, including work on issues of employment opportunities for articling students and recent calls to the bar.

18. With the adoption of the new licensing process to be implemented in 2006, it is anticipated that the fees to complete the program will decrease from approximately $4,400 to approximately $2,600. Students will also be able to enter the workforce sooner than under the present BAC. The length of the program will be shortened from 14.5 months (including articling) to 11.5 months (including articling), therefore reducing the financial burden on students.

19. Criteria requirements for the RAP have been relaxed thereby providing better access for eligibility for funding directly and promotion of the program has considerably increased.

20. The Law Society also provides reduced rates for registration to CLE programs for members who meet the Bursary Criteria and bursaries have increased overall in the past four fiscal periods.

e. Law Society as employer and contract compliance

21. The Working Group noted that, to implement Recommendation 15 – Law Society as Employer, the Law Society requires information about the demography of its workforce to assist in the development of programs that promote equality in the workplace. Human Resources and Equity Initiatives are currently working with a consultant to determine appropriate methodology to gather information about its workforce.

22. The Working Group also noted that the Law Society should implement an effective Contract Compliance program, as provided in Recommendation 16 – Law Society as a Contractor for Legal Services. The Law Society has adopted Equality Guidelines for Purchasing Agreements.

Implementation status of other recommendations

23. The Working Group was of the view that the Law Society had made substantial progress in implementing the following recommendations:

    a. Recommendation 2 – Study and Research: In 2004-2005, the Law Society continued its research activities concerning equity and diversity in the legal profession, including studies on the impact of gender in the legal profession and the demographic analysis of the legal profession.[7]

    b. Recommendation 5 – Resource to the Profession: In 2004-2005, activities to provide tools for the Law Society to function as a resource to the profession have increased as described in this report.

    c. Recommendation 6 - Institutional Resources: The department is fully staffed and works in collaboration with other departments of the Law Society.

    d. Recommendation 8 – Bar Admission: As described in this report, the Law Society has included the participation of members from equality-seeking, Francophone and Aboriginal communities within the design of the new licensing process to be implemented in 2006. The new licensing process is also developed in both official languages and members of the Francophone community have been involved in the design of the process at each stage of development.

    e. Recommendation 10 - Continuing Legal Education: The Law Society continues to make its programs affordable and more accessible to members of the profession,

[7] For example: Professor Fiona Kay, *Turning Points and Transitions: Women's Careers in the Legal Profession,* 2004; Professor Fiona Kay, *Diversity and Change: The Contemporary Legal Profession In Ontario*, 2004; Professor Michael Ornstein, *The Changing Face of the Legal Profession – 1971-2002;* Report to the Task Force Examining the Ongoing Survival of Sole Practices and Small Law firms, *Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment,* October 6, 2004.

including members from equality-seeking, Aboriginal and Francophone communities. It has increased its CLE programming in the area of equity and diversity.

f. Recommendation 11 – Rules of Professional Conduct: The Law Society has created an effective Discrimination and Harassment Counsel (DHC) program. In January 2005, the Committee evaluated the effectiveness of the DHC program and noted that it is an important and positive initiative. The Law Society also ensures that staff members with expertise to handle complaints of harassment and discrimination. In 2004-2005, the Professional Regulation Division held three equity related education programs.

g. Recommendation 12 – Accreditation of Foreign-Trained Lawyers: The Working Group was of the view that strategies should be developed to facilitate the participation of internationally educated or trained lawyers to the profession. In 2004, the Law Society of Upper Canada joined the Ontario Regulators for Access (ORA) consortium, a group comprised of senior staff from a number of regulators of self-regulated professions in Ontario. Its goal is to improve access to profession by internationally educated or trained professionals while maintaining standards in the public interest.

h. Recommendation 13 – Requalification: The Working Group noted that the Law Society has substantially implemented recommendation 13 by adopting a self-study program for those who temporarily leave the practice of law.

24. The following sections outline in further details the work accomplished by the Law Society since January 2004 to implement the *Bicentennial Report* and the proposals outlined by the Bicentennial Report Working Group.

Recommendation 1: Policy Development

The Law Society should ensure that the policies it adopts:

(a) Actively promote the achievement of equity and diversity within the profession; and

(b) Do not have a discriminatory impact.

Bicentennial Working Group Proposed Strategy

25. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 1:

a. That the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:

i. A definition of “equity and diversity” should be developed and an equity decision-making template formulated to guide the Law Society in its policy development activities.

ii. A process should be created by which all policy development activities undertaken by staff, committees (including working groups, task forces and sub-committees) and Convocation are judged against the equity template. Reports should contain a specific section to indicate how equity principles were considered.

iii. Guidelines should be developed to provide direction and a consultation framework to committees and staff on issues that require input from equality-seeking, Francophone and Aboriginal communities.

Adopted Initiatives

Equality template

26. The Equity and Aboriginal Issues Committee considered this proposal and adopted the following definitions of "equality" and "diversity" to be applied by the Law Society. The Committee also recognized the unique position of Aboriginal and Francophone communities.

"Diversity": Diversity recognizes, respects and values individual differences to enable each person to maximize his or her own potential. The Law Society acknowledges the diversity of the community of Ontario, respects the dignity and worth of all persons and promotes the right of all persons and communities to be treated equally without discrimination.

"Equality": Equality means equality of substantive access, opportunity nad result without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability.

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

The Law Society recognizes that individuals may experience discrimination due to their membership in one or more of the identified grounds, groups or communities.

27. The Committee also adopted an Equality Template (Appendix A). The questions included in the Equality Template have been integrated within the Senior Management Team's Initiatives Proposal Form and the Policy Development Template. This process ensures that the Senior Management Team and Policy Secretariat consider equality and diversity implications of policies, projects and initiatives.

28. The Equality Template assists in identifying the potential impact, positive or negative, of policies, projects and initiatives on Aboriginal, Francophone and equality-seeking communities. The instrument is also useful to determine whether there are alternative ways to proceed that would alleviate negative impacts on Aboriginal, Francophone and equality-seeking communities and promote equality. It is anticipated that the Equality Template will be used in decision-making processes, policy development activities, implementation of policies, development of programs and initiatives, and in consultations undertaken by the Law Society. The Senior Management Team will be responsible for

the implementation of this initiative and the application of the template. A glossary of terms has also been developed for the Law Society and is presented at Appendix B.

Adopted policies for the legal profession

29. The Law Society has also adopted policies that further the achievement of equity and diversity within the profession, and the work in that area is ongoing.

30. Since January 2004, adopted policies and publications include:

    a. *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment: A Model Policy for Law Firms and Other Organizations.*[8]

    b. *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada.*[9]

    c. *Frequently Asked Questions about the Tsunami as it Relates to Immigration.*[10]

    d. Update of Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices.[11]

Recommendation 2: Study and Research

To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence.

Bicentennial Working Group Proposed Strategy

31. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 2:

    a. That the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:

        i. Guidelines should be developed to ensure that an equity analysis, including an intersectionality analysis that identifies heightened vulnerabilities to discrimination, is integrated within studies.

        ii. A strategic research plan should be developed in consultation with EAG, AJEFO and Rotiio> taties. The research plan should, on a biennial basis,

[8] Available on line in English and French at: http://www.lsuc.on.ca.
[9] Available on line in English and French at: http://www.lsuc.on.ca
[10] Available on line in English, French, Tamil and Somali at: http://www.lsuc.on.ca
[11] Available on line at: http://www.lsuc.on.ca

identify issues facing members of equality-seeking, Aboriginal and Francophone communities. The plan should recommend a budget for Convocation's consideration.

iii. The following three research areas merit particular and urgent attention and should be identified as priorities:

(b) Studies on barriers faced by students and members with disabilities;

(b) Studies on barriers faced by Aboriginal students and members of the profession;

(b) Studies to identify the factors that may constitute barriers to entering, remaining and re-entering the profession for members from equality-seeking, Francophone and Aboriginal communities.

iv. The Equity Advisor should be responsible for monitoring the implementation of the research plan.

Adopted Initiatives

32. The Committee developed a strategic research plan for 2004-2005. The EAG, AJEFO and Rotiio> taties attend Committee meetings and participated in the development of the Committee's workplan.

Studies on the legal profession

33. Since January 2004, the Law Society released the following studies on issues faced by women in the legal profession, issues faced by equality-seeking communities in the legal profession and on Canada Census data:

a. Professor Fiona Kay, *Turning Points and Transitions: Women's Careers in the Legal Profession*, 2004;[12]

b. Professor Fiona Kay, *Diversity and Change: The Contemporary Legal Profession In Ontario,* 2004 ;[13]

c. Professor Michael Ornstein, *The Changing Face of the Legal Profession – 1971-2002* .[14]

34. The Law Society also created a Small Firm and Sole Practitioner Task Force (Small Firm Task Force) to examine the ongoing survival of small law firms and sole practices. The

[12] *Supra*, note 6.
[13] *Supra,* note 6.
[14] *Supra*, note 6.

Task Force studied means to assure access to legal services in small communities and to address the financial viability of small firms and sole practices. It also included specific attention to the experience of lawyers from equality seeking, Francophone and Aboriginal communities practicing in small firms. Following extensive consultations, the Sole Practitioners Task Force published two reports, including the *Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practicing in the Small Firm Environment,* October 6, 2004.[15]

Studies about students-at-law in the BAC and articling

35. In September 2004, the Law Society released two reports, the *Articling Enhancement Survey – Recently Called Members* and *Articling Enhancement Survey – Principals*. The reports present findings from a survey of members recently called to the bar about the articling experience. The companion survey was undertaken among current and past articling principals. The overall objective of the research was to explore impressions of the articling experience, and, in particular, to assess perceptions of the sufficiency of the 10 month term of articles and of a series of possible enhancements to the articling process that the Law Society is considering implementing in conjunction with the new licensure process.

36. The Law Society continued to publish reports on its programs and initiatives, such as *Articling Placement Reports*[16] , which provide placement statistics for students enrolled in the Bar Admission Course (BAC), describes programs and initiatives in place to assist students with their articling job search and includes placement rates for self-identified students (Aboriginal, Francophone, gay, lesbian, mature and racialized students and students with disabilities).

Ongoing studies and information about the membership

37. Two working groups of the Committee were created: the Disability Working Group and the Aboriginal Working Group. The Working Groups advise the Committee on issues relating respectively to disability communities and to Aboriginal communities. The following two consultations are underway:

    a. A consultation with lawyers and law students with disabilities to identify strategies to assist members with disabilities in accessing and remaining in the legal profession.

    b. A consultation with the Aboriginal law students and Aboriginal lawyers.

38. The Law Society continues to maintain a database on members in the legal profession. The information, collected through the Member's Annual Report, assists in identifying trends in the legal profession, such as the percentage of women and men, year of call, type of practice and practice area, languages spoken, age and ability to represent clients in the French language.

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[15] *Supra*, note 6.

[16] The Law Society publishes the *Articling Placement Report* annually and maintains ongoing statistical information about articling placements. The *Articling Placement Reports* are available on line at www.lsuc.on.ca.

39. In April 2005, the Committee approved support for a study undertaken by the French Common Law Program of the University of Ottawa. The study includes a survey to all French Common Law Program graduates since the inception of the program (approximately 1000 individuals) to determine to what extent lawyers who have studied the common law in French offer services in French.

Discrimination and Harassment Counsel

40. The Discrimination and Harassment Counsel (DHC) continued to publish her semi-annual reports[17] , which provide an overview of frequency and method of contact with the DHC program, the types of inquiries and complaints, and statistics relating to the complainants and respondents. Since January 2004, the DHC produced two reports for the periods of January to June 2004 and July to December 2004.

41. The Committee also conducted a review of the DHC program and released a report which provides an overview of frequency and method of contact with the DHC and types of inquiries since the inception of the program in 1999. The Committee noted that the program provides an important service and is effective.

Professional regulation

42. The Professional Regulation Division of the Law Society continues to publish its *Professional Regulation Division Quarterly Reports*, which include file management and statistical information on complaints resolution, complaints review, investigations, and discipline and trustee services. The reports outline statistical information on case types, including sexual misconduct, harassment and/or discrimination.[18]

Recommendation 3: Equity and Diversity Audit of the Law Society Programs and Services

The Law Society should evaluate its programs and services on an ongoing basis to ensure that they operate so as to promote the achievement of equity and diversity within the legal profession.

Bicentennial Working Group Proposed Strategy

43. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 3:

    a. That the Committee report annually to Convocation on whether the Law Society's programs and initiatives are promoting equity and diversity.

Adopted Initiatives

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[17] *Discrimination and Harassment Counsel Semi-Annual Reports* (Toronto: Law Society of Upper Canada). The first semi-annual report was published for the period beginning in September 1999 and ending in December 1999. Reports are available semi-annually following the first report. Reports are also available in French.

[18] *Professional Regulation Division Quarterly Reports* available on line at: www.lsuc.on.ca

Operations of the Law Society

44. Every department has the responsibility of integrating principles of equality and diversity within its goals, strategic directions and operations. The Senior Management Team uses the Equality Template when making decisions about programs and initiatives. This ensures that equality and diversity implications of programs and initiatives are considered and discussed during the approval process. The Equality Template is also used in policy development activities.

Accessibility of Law Society

45. The Law Society is committed to providing services and a working environment in which all individuals are treated with respect and dignity. A key part of this is ensuring that our building is accessible to those with disabilities. At the end of 2004, the Law Society launched extensive renovations to the North Wing of the Law Society. The renovations will:

    a. Enable most Law Society staff to be housed under one roof by maximizing usage of space throughout the building.

    b. Improve workflow and processes to make the delivery of Law Society services more effective and efficient.

    c. Enhance the professional look and feel of the building's interior while respecting the historical elements of the site. This includes renovation of the Lecture Hall and surrounding public, which is the area most accessed by members and the public.

    d. Significantly improve accessibility for those with disabilities, as recommended by the *Bicentennial Report*. For example, once completed, all areas of the Law Society will be accessible by elevator. As well, the Law Society will add a barrier-free men's washroom on the 1st floor, which currently only offers a women's washroom.

46. The Law Society also provides the following:

    a. Materials in formats that may be read by recognition/playback software;

    b. Accessible website;

    c. Information technology for distance learning and wireless communication;

    d. An AT & T language telephone line and translation services for clients of the Client Service Centre;

    e. A TTY telephone line for persons with hearing impairments;

    f. Specialized hardware and software such as:

        i. 21-inch screens for individuals with visual impairments,

ii. Special Braille keyboard,

iii. Speech to text software (Dragon),

iv. Ergonomic keyboards,

v. Special mice for individuals with hand or wrist injuries or carpal tunnel syndrome.

Recommendation 4: Monitoring and Evaluation of Equity and Diversity Initiatives

The Law Society should formally monitor and evaluate the effectiveness of current and future equity and diversity initiatives.

Bicentennial Working Group Proposed Strategy

47. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 4:

    a. That the Equity and Aboriginal Issues Committee report annually to Convocation on the effectiveness of its equity initiatives.

Adopted Initiatives

48. The Senior Management Team monitors and evaluates the effectiveness of its initiatives, including current and future equity and diversity initiatives on an ongoing basis. The Chief Executive Officer (CEO) presents semi-annual operational reports to Convocation that include a review of corporate and departmental programs in support of the Law Society's mandate to govern the profession in the public interest. The CEO's Reports to Convocation outline Law Society equity and diversity initiatives.

49. The Equity Initiatives Department also developed a process to maintain data about its programs and initiatives. The department now has the capacity to evaluate its programs based on qualitative and quantitative information.

Recommendation 5: Resource for the Profession

In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.

Bicentennial Working Group Proposed Strategy

50. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 5:

    a. That the Law Society should continue to effectively implement this recommendation.

Adopted Initiatives

Meeting of equity advisors of law societies

51. The Equity Initiatives Department strengthened its relationship with other law societies by working with provincial equity advisors in organizing the first national meeting of law society equity advisors. The objective of the meeting was to exchange information about initiatives undertaken by provincial law societies and to establish network and collaborative opportunities. Issues such as the role of law societies in promoting equality and diversity, education programs for the legal profession, mentoring programs and policy development were discussed.

Training programs

52. The Equity Advisor and other staff members, in partnership with the DHC, provide support and assistance to law firms and legal organizations in the area of policy and program development, and offers custom-designed training programs to law firms. Since January 2004, the department and the DHC delivered custom-designed training programs and presentations to more than 500 lawyers and staff of legal organizations.

53. Topics of training programs delivered since January 2004 have included:

    a. Creating an inclusive and positive workplace environment;

    b. Addressing issues of harassment and discrimination in the provision of services;

    c. Addressing harassment and discrimination in the legal workplace;

    d. Identifying harassment and discrimination issues in the context of complaints resolutions;

    e. Identifying harassment and discrimination issues in the context of investigations undertaken by the Law Society;

    f. The duty to accommodate persons with disabilities;

    g. The duty to accommodate family responsibilities;

    h. The role of lawyers in addressing domestic violence;

    i. Violence against women and international human rights law;

    j. Law as a career for Aboriginal communities;

    k. Workshops for advisors appointed to handle complaints of harassment and discrimination;

    l. Women and diversity in the legal profession;

    m. Developing programs and initiatives to promote equality and diversity in the legal profession;

n. Inclusive pedagogy; and

o. Drafting and implementing equity and diversity policies for law firms.

54. CLE, presentations and public education programs include information about the current demographics of the legal profession, barriers experienced by lawyers, impact of these barriers on organizations, the responsibilities of individuals to ensure that barriers do not exist and/or are addressed.

Public education program

55. The Law Society continues to publish information relating to Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct* in its BAC materials[19] , student handbook, articling materials[20] , training materials for new instructors of the BAC[21] , training materials for lawyers and law firms, model policies on harassment and discrimination[22] , DHC program semi-annual reports, other documentation provided to members of the profession, and on the website.

56. The Law Society continues to work in partnership with legal associations and communities to educate members of the public and the profession on equality and diversity issues. Each year, it hosts and participates in a number of public education events. The number of public education programs and the participation rate at these programs has increased considerably in the last few years. In 2004, the Equity Initiatives Department decided that it would web broadcast all public education forums. This has increased access to the information provided in public education programs.

Event	Workshop Participants – 2004	Reception Participants 2004	Workshop Participants 2005	Reception Participants 2005
Louis Riel Day	200	150	n/a	n/a
Black History Month	120	200	90	200
International Women's Day	70	110	95	130
International Day for Elimination of Racial Discrimination	n/a	n/a	n/a	300
Law Week Great				

[19] The Professional Responsibility BAC course includes materials and formal instructions on Rules 5.03 and 5.04 of the *Rules of Professional Conduct.*
[20] The *Articling Handbooks* (Toronto: Law Society of Upper Canada, 2003) include a section on harassment and discrimination and the *Rules of Professional Conduct*.
[21] New instructors receive materials on inclusive pedagogy. The materials include references to Rules 5.03 and 5,.04 of the *Rules of Professional Conduct*.
[22] All Law Society model equity policies include an analysis of Rules 5.03 and 5.04 and legal developments in the area of harassment and discrimination. Available on Law Society website at: www.lsuc.on.ca

Debate	40	40	40	40
National Holocaust Memorial Day	n/a	n/a	230	110
South Asian Heritage Month	120	180	100	140
National Access Awareness Week	60 (Ottawa)	n/a	120	100
National Aboriginal Day	135	150	140	140
Pride Week	95	200	n/a	n/a

57. The Equity Initiatives Department has broadened its network of partners. Since January 2004, partners have included: Pro Bono Law Ontario, AJEFO, Rotiio > taties, Aboriginal Legal Services of Ontario, Metis National of Ontario, Association for Native Development and the Performing and Visual Arts, City of Toronto, Sexual Orientation and Gender Identity Committee of the Ontario Bar Association (OBA), Feminist Legal Analysis Committee of the OBA, Official Languages Committee of the OBA, ARCH A Legal Resource Centre for Persons with Disabilities, South Asian Legal Clinic of Ontario, Canadian Association of Black Lawyers, B'nai Brith Canada, Women's Future Fund, the Women's Law Association of Ontario and many others.

Model policies

58. Model programs and policies are developed on an ongoing basis and are widely circulated to the legal profession. Since January 2004, the Law Society adopted the following model policies and publications:

    a. *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment: A Model Policy for Law Firms and Other Organizations.*[23]

    b. *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada.*[24]

    c. *Frequently Asked Questions about the Tsunami as it Relates to Immigration.*[25]

    d. *Update of Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices.*[26]

Mentoring program

[23] Available on line at: http://www.lsuc.on.ca.
[24] Available on line in English and in French at http://www.lsuc.on.ca.
[25] Available on line in English, French, Tamil and Somali at: http://www.lsuc.on.ca.
[26] Available on line at: http://www.lsuc.on.ca.

59. The Law Society offers a structured mentoring program for high school and university students, students-at-law and recent calls to the bar.[27] In 2004, the number of lawyers registered in the program as mentors had doubled since 2003. There were over 100 lawyers available for mentoring. Mentors come from various backgrounds, different areas of practice, and numerous firms and organizations. In 2004, 50 lawyers and students applied for a mentor. This represented a significant increase in the number of applications compared to 2003, when the program received 15 applications. The mentees were from Toronto, Ottawa, Windsor, Kitchener, Lindsay, Bancroft, Trenton, Oakville, and Hamilton.

60. In 2004, 40 mentoring relationships were established through matching. In 2004, the Equity Initiatives Department developed a new program brochure in English and French, which has been distributed broadly to Francophone, Aboriginal and equality-seeking communities. The program is also promoted through various avenues including advertising in the Ontario Reports, articles in the Ontario Lawyers Gazette, Law Society website promotion, and outreach with schools and various sections of the bar and law firms.

61. Staff members also coordinate student outreach initiatives to promote law as a career. Equity Initiatives staff work with school boards from across the province, make presentations to high school and university students and participate in career fairs and community events. Examples of events include:

    a. Presentations in high schools (Toronto District School Board, York Region District School Board, Peel Region District School Board), reaching over 200 students considering law as a career.

    b. Attended a number of student career fairs involving more than 1,500 high school Aboriginal, Francophone and equality-seeking students.

    c. Promoted the program in French and English in the context of Law Week.

    d. Promoted the program at university career fairs and in law schools.

    e. Held symposia for Aboriginal law students at which the program was promoted.

Discrimination and Harassment Counsel program

62. In June 2001, the Law Society adopted the permanent DHC Program. Funded by the Law Society, the program operates at arms-length, and is available free-of-charge to the Ontario public and lawyers.[28] Since its creation, the person who has held the position of DHC has been bilingual (French and English). In 2005, the Committee evaluated the program to determine trends since its inception. The Committee noted that the program provides an important service and functions effectively.

63. In 2004, the position of Alternate DHC was created. In 2005, the Law Society appointed two Alternate DHC. The Alternate DHC assumes the functions of the DHC when she is unable to perform the function. The Alternate DHC may also provide mediation services.

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[27] Information available on Law Society website at www.lsuc.on.ca
[28] Minutes of Convocation, June 22, 2001.

Communications resources

64. The Communications & Public Affairs Department provides comprehensive communications support to all areas of the Law Society, including the Equity Initiatives Department. This support includes the following key activities

    a. Media relations

    b. Website management

    c. Production of public materials, such as brochures and fact sheets

    d. Production of member publications, such as the Ontario Lawyers Gazette, the Quick Reference Card, Ontario Reports advertising

    e. Translation services

    f. Employee communications

65. Communications strategies encompass all of the above. Therefore, in most instances when the Law Society is developing and implementing communications strategies for initiatives that promote equity and diversity, all the tools mentioned above are used. For example, for each Law Society public education forum and reception, the event and speakers are featured in press releases (often produced in more than one language) and posted online on the public website and intranet. In addition to promoting events and initiatives in advance, the Law Society provides comprehensive coverage of such events on its website and in the Ontario Lawyers Gazette.

66. In recent years, the Law Society has focused on developing and expanding partnerships with media. For example, many equity and diversity initiatives are promoted through ethno-cultural press. The Law Society has also created good working relationships with members of the Francophone, Aboriginal, the Chinese and the gay and lesbian press, to name a few. The Law Society will host a reception in June of 2005 at which 350 ethno-cultural media contacts are invited. The purpose of the reception is to determine how best to work together and more closely.

Accessibility of website

67. Over the last few years, the Law Society has also devoted significant efforts to making the website more accessible. For example, a French site has been created to mirror the English website and a new Content Management Solution (CMS) is being implemented. The Law Society has also developed new functionalities to significantly enhance the site's accessibility. They are:

    a. The text zoom function that will allow users to choose different font sizes on the website. This function is very useful for users with vision impairments.

    b. Under the CMS, the Law Society will provide a separate text website. This service will be accessible for users with disabilities or users who rely on screen reader or text browser to access information published on the website.

c. The CMS will enable the Law Society to develop a site map, making the website more accessible. The site map provides an easy way to access web pages[29] and to easily identify topics on the site.

68. Once the new CMS is launched in 2005, the text only website will have achieved W3C Web Accessibility Conformance Ranking priority 3 (out of a total of 3). This rating system is used world wide to measure organizational accessibility conformance and is mandatory in some jurisdictions and workplaces such as government.

Communications in different languages

69. The Law Society issues most of its press releases in English and French and sometimes other languages. The Ontario Lawyers Gazette continues to feature a special section for Francophone readers entitled "Tour D'Horizon".

70. The Law Society also continues to offer a range of translation services for other departments of the Law Society. For example, in 2004, 186 documents were translated into French, many of which were large translation projects (from 12,000 words to 80,000 words each). Items translated include explanatory notes for annual fee materials, invoices, pre-authorized payment forms, the Member Annual Report, charts, committee reports, mobility forms, the self-assessment tool for members, notices to members and by-laws, museum exhibitions, documents for the access to justice symposium, portions of speeches and various correspondence.

71. To explain the Law Society's wide variety of services to the public, and thus make them more accessible, the Communications & Public Affairs Department continues to regularly develop and distribute public brochures in English and French. In 2004 the Law Society also made the following brochures available in Chinese: *Looking for a Lawyer?; Lawyer Referral Service; What the Law Society Can Do for You; The Lawyers Fund for Client Compensation; Making a Complaint; and Stopping Discrimination and Harassment.*

72. The Law Society has developed close relationships with local organizations such as the Toronto Chinese Community Services Association, the Centre for Information and Community Services and Chinese Bereavement Services.

73. Several years ago, the Law Society launched its Member Reference Card. It has become very popular with lawyers and is an opportunity to promote the services offered by the Equity Initiatives Department. In 2004, it was distributed to 45,000 lawyers and stakeholders in the province. The Law Society includes a half page dedicated to promoting the Equity Initiatives Department and its programs and services.

74. The Ontario Lawyers Gazette continues to be a forum in which the Law Society promotes equity and diversity programs, services and events. Every issue features some articles that promote equity and diversity and the popular "Just Cause" feature has often profiled lawyers dedicated to promoting equity and diversity.

75. The Law Society's Annual Report Performance Highlights describes how the Law Society is promoting equity and diversity. The document is available in English and

[29] Not including PDF pages.

French and is distributed to numerous key stakeholders including many community and equality-seeking partners.

The Client Service Centre and Membership Services

76. The Client Service Centre is the front line, one-stop access point to the Law Society. Staff members effectively deal with a range of requests from both the public and the legal profession. In 2004, the Centre handled approximately 500,000 contacts from members and the public, via letters, e-mails, faxes, calls and in-person inquiries.

77. The Call Centre of the Client Service Centre functions in French and English and offers services in a number of other languages.

Lawyer Referral Service

78. The Lawyer Referral Service is a service that has been offered for more than 30 years. The program supports the Law Society's role in governing in the public interest by promoting greater access to legal services. In December 2004, 1,820 lawyers were subscribers to the Lawyer Referral Service. Clients may request the Law Society to refer them to a lawyer that speaks a language other than English.

79. Callers who are in a crisis, such as domestic abuse situations, those who are incarcerated or those who are under the age of 18 may use the toll-free crisis line.

80. In 2004, the Lawyer Referral Service received 67,125 calls, of which 32% (or 21,446) were calls to the crisis line.

Recommendation 6: Institutional Resources

In order to facilitate and further the advancement of equity and diversity goals, the Law Society must dedicate appropriate human and financial resources specifically to those goals.

Bicentennial Working Group Proposed Strategy

81. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 6:

    a. The Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:

        i. The effectiveness of the current structure of the Equity Initiatives Department should be re-evaluated in December 2006. At a minimum, an effective equity initiatives unit should be maintained, and fully staffed, with the following elements:

            (b) The Equity Advisor's direct reporting relationship to the CEO;

            (b) The Equity Advisor's membership on the senior management team;

(b) Current staffing level and budget.

ii. The Law Society services should be delivered to French and English speaking members and the public in a manner consistent with the intent of the *French Language Services Act.*

Adopted Initiatives

82. Since 1997, the Law Society has established the Equity Initiatives Department, a department that has grown from a unit of 2 employees (the Equity Advisor and the Program Administrator) to 5 permanent full-time positions. In 2003, the Equity Department became part of the Policy and Tribunal Department, increasing its influence within the organization and the legal profession. It is now fully included within the operations of the Law Society and is part of an influential department.

83. The Equity Advisor is responsible for ensuring that policies and initiatives of the Law Society promote equity and diversity principles. The position of the Equity Advisor has direct access and a reporting relationship to the CEO and is a full member of the Senior Management Team.

84. All positions in the Equity Initiatives Department are staffed and the budget for the department has been maintained.

85. As shown in this report, the CEO and the Senior Management Team have the responsibility, and are committed to, promoting equality and diversity within all operations of the Law Society. All departments and divisions have developed and implemented policies, programs and initiatives that promote equality and diversity.

Example of promotion of equity and diversity within a department other then Equity

86. The Communications and Public Affairs Department is an example of a department, other than the Equity Initiatives Department, that promotes equality and diversity in its daily operations. Every staff person in that department is involved in promoting equity and diversity.

87. Each Communications Advisor is responsible for promoting equity and diversity when developing story ideas, writing for the website, the Ontario Lawyers Gazette, the intranet and the media. The Director and Advisors work closely with members of the ethno-cultural media.

88. The majority of work done by the French Language Services (FLS) Advisor is translating materials, developing partnerships with Francophone stakeholders and providing FLS advice to others in the organization.

89. The Senior Web Master has provided Chinese translation services and has developed strong working relationships with the Chinese media. The Web Developer and the Web Master are responsible for posting all information on the website, much of which promotes equity and diversity.

90. The Creative Services Specialist is involved in designing all member and public print materials includes those aimed at promoting equity and diversity and providing creative advice to the Equity Initiatives Department.

91. The Executive Assistant in Communications and Public creates distribution plans that include equity stakeholders.

92. The Media Relations Coordinator is responsible for tracking all media stories that involve the Law Society, many of which are in the ethno-cultural press. She is also involved in developing stakeholder contact lists for events like our tsunami relief efforts.

Recommendation 7: Participation in the Governance of the Profession

In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession:

> (a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28 [now Rule 5.04]; and
>
> (b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession.

Bicentennial Working Group Proposed Strategy

93. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 7:

a. That the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:

i. An equity analysis should be undertaken to determine whether there are any barriers within the current electoral process that limit the full participation and election of women and members from equality-seeking, Francophone and Aboriginal communities.

ii. A report and strategic plan should be presented to Convocation by June 2006 to address the following:

- The burden of committee time placed on benchers which may be a barrier to suitable candidates standing for bencher election.
- Non-bencher participation in bencher committees.

i. By-law 9, Committees, should be amended so that EAG, AJEFO and Rotiio> taties each have a voting representative on the Equity and Aboriginal Issues Committee.

Adopted Initiatives

94. It was noted in the *Bicentennial Implementation Report* that a number of initiatives were adopted by the Law Society to increase the representation of equality-seeking, Francophone and Aboriginal members in the governance of the profession. For example, EAG advises the Law Society's Equity and Aboriginal Issues Committee, and other committees, on issues affecting Aboriginal peoples, Francophones and equality-seeking communities. EAG is composed of lawyers from across Ontario with expertise in various areas of law and legal analysis. Effective January 2005, EAG implemented its new terms of reference to ensure equal representation of individual and organizational members, therefore diversifying the representation of EAG's membership.

95. Members of EAG, AJEFO and Rotiio> taties are also invited to participate in the work of the Committee and of its working groups.

96. Since January 2004, some initiatives have been undertaken to alleviate demands on benchers. In February 2005, the Law Society conducted a referendum on a proposal for bencher remuneration. Lawyers in Ontario voted 58.14 per cent in favour of – and 41.85 per cent against – a proposal for bencher remuneration in a referendum concluded on February 28.[30] In each calendar year, days on which benchers perform Law Society business above and beyond the first 26 days on which a bencher works will be remunerated. It is anticipated that bencher remuneration will provide an incentive to run for election for members who could otherwise not afford to perform the work of benchers.

97. The Equity and Aboriginal Issues Committee is also considering other strategies to encourage members from equality-seeking, Francophone and Aboriginal communities to run for election.

Recommendation 8: Bar Admission

The Law Society should continue to ensure that Bar Admission:

(a) Includes material designed to increase the profession's understanding of diversity/equity issues;

(b) Encourages the participation of equality-seeking groups in its design, development, and presentation;

(c) Uses material that is gender neutral;

(d) Uses audio visual material that includes the faces and voices of equality-seeking groups;

(e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

[30] A total of 8,802 members voted – 24.6 per cent of the 35,787 eligible voters. The number of votes broke down as follows: Yes 5,118, No 3,684.

Bicentennial Working Group Proposed Strategy

98. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 8:

    a. That the Equity and Aboriginal Issues Committee examine, with the Professional Development, Competence and Admission Committee and/or the Task Force on the Continuum of Legal Education, the following strategies, and if required, make recommendations to Convocation:

        i. Members from equality-seeking, Francophone and Aboriginal communities should be involved in the design and delivery of the BAC program, including the licensing model adopted by Convocation on December 5, 2003.

        ii. BAC students should be informed of the role of the Discrimination and Harassment Counsel (DHC) and options available to students and lawyers who experience harassment and/or discrimination.

        iii. The new BAC should continue to be offered in both official languages.

        iv. The effectiveness of the Repayable Allowance Program should be assessed and improved if required.

Adopted Initiatives

Current BAC and equity

99. Since the adoption of the *Bicentennial Report,* the Law Society has enhanced its initiatives to promote equality for students.[31] The following provides an overview of programs, initiatives and products that focus on the promotion of equity and diversity in the BAC.

BAC materials

100. The BAC materials include information designed to increase the profession's understanding of equity and diversity issues. The Equity Initiatives Department participates in the review process to update the BAC materials. BAC topics include Aboriginal law, addressing harassment and discrimination, the duty to accommodate and providing legal services to clients with disabilities. The materials, exams and other resources have been revised to ensure the use of gender-neutral language and audiovisual materials include the faces and voices of equality-seeking communities. Students provide input on materials through student course evaluations.[32]

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[31] One indicator of the success of the BAC is the diversity of the student population in the BAC. The 46th BAC class (2003) had the following representation of students: 54.4% of students were women, 18.54% were racialized, 6.13% were Francophone, 1.2% were Aboriginal, 1.35% were gay or lesbian and 1.2% were students with disabilities.

[32] The BAC maintains statistical data on student numbers and success rates for some of the student equity groups such as Aboriginal students, Francophone students and students with disabilities or those requiring accommodations. During the delivery of the BAC, students at large

Training for new instructors

101. All new instructors attend a workshop on effective teaching methodologies, including inclusive pedagogy. The workshop includes a discussion on the meaning of harassment and discrimination, methods of inclusive teaching methodologies and resources available to instructors and students.

BAC in French and English

102. The BAC is offered in both official languages, including reference materials, instruction and exams.

E-Learning website

103. In 2002, the Law Society created its e-learning website. The website provides students with a flexible, accessible and user-friendly learning support system. Recognizing the realities of student schedules and life demands, this system allows students to access the reference materials on-line, some lectures, supplemental video presentations, supplemental material to support study efforts, including checklists, legislative summaries and fact situations. In 2004, 67,496 visits were recorded on the e-learning website, an increase from the number of visits in 2003 when 55,660 visits were recorded.

Education Support Service

104. The Education Support Service offers students a range of supports and services to improve the learning environment for all students and offers accommodation for students in the BAC.[33] Accommodations include exams in alternative forms such as audiotape, Braille and text-to-speech and special equipment for persons with visual and auditory impairments. In 2004, 94 students received accommodations through the Education

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provide evaluations on the course, the course materials, instructors and skills assessments. The evaluations are not specifically based on equity issues or concerns. They focus on evaluation of the content, the teaching and the value of attendance.

[33] The Law Society adopted a *Policy and Procedures for Accommodations for Students-at-Law in the Bar Admission Course* (Toronto: Law Society of Upper Canada, updated for the 2005 BAC course). Ongoing accommodations provided to BAC students include:

- For students with a visual impairment: Optical Character Recognition software for scanning documents; Information made available in alternate formats and alternate fonts; software such as ZoomXtra 7.0 and Dragon Speaking Software.
- For students with a hearing impairment: real time captioning and sign language assistants.
- For students with learning disabilities: extra time to hand in assignments and read materials and tutors for assistance and additional access to faculty.
- For French students: access to a bilingual assessor when doing assessments; pairing of French students to do the presentations in French; French markers provided to mark exams.

Additional examinations accommodations include invigilation services for distance learners, computers with adaptive technology, extra time for writing the examinations, tape-recording of exam answers, height adjustable desks, ergonomic chairs and supervised breaks.

Support Service. Such accommodations are for bereavement, pregnancy, time conflicts, disabilities including medical conditions, dyslexia and hearing and vision impairment.

105. Accommodation practices include laptops, special software to assist the visibly and hearing impaired, private rooms, additional exam time, one-on-one American Sign Language interpretation and real-time captioning during exams.

106. The Education Support Service also offers tutoring. Upon request, the Education Support Centre provides assistance to students that have difficulties with exams or assessments. There is no cost to the student for the first five hours of tutoring and where financial difficulty exists further tutoring is arranged at no cost. In 2004, 47 students received tutoring assistance.

Mentoring program

107. The Mentoring Program is available to students in the BAC. The program provides matches for students-at-law with members of the bar, and offers a range of supports, from academic and career advice to job shadowing opportunities. The Mentoring Program is provided free of charge.

Elders' Program

108. The Elders' Program provides Aboriginal and non-Aboriginal students in the BAC with various teachings and counseling services. The program provides opening prayers, cleansing ceremonies, traditional teachings, talking circles, meditations and pipe ceremonies, and is also available for one-on-one time with students in need of assistance. The program was launched in the fall of 2000 and is offered every two weeks during the BAC.

Partnerships with Aboriginal Bar

109. The Law Society works with members of the Aboriginal Bar to support Aboriginal students in their legal education, foster a sense of community among the students and the Aboriginal Bar, and develop mentoring relationships, professional development and articling opportunities. In 2004-2005, the Law Society organized three symposia for Aboriginal students (two in Toronto and one in Ottawa). Aboriginal students from every law faculty participated in the symposia. The objective of the symposia was to provide networking opportunities between Aboriginal students and members of the bar.

Information about the DHC

110. BAC students are informed of the role of the DHC and options available to students in the following manner:

    a. Through the law school tours when the Registrar, Associate Registrar and the Aboriginal Issues Coordinator visit third year law students;

    b. Admission Course, including the Academic Phase and/or the Articling Phase;

    c. Brochures are provided to the students and the law schools' Career Development Officers;

d. Information on the DHC appears on the BAC website, in the Student's BAC Admissions Handbook and in a number of the BAC policies;

e. BAC staff may also make direct referrals.

Success of the BAC initiatives

111. With membership of the legal profession growing at a rate of approximately 1,200 annually, the increasing diversity of the profession is evident. More women, persons of colour, Aboriginal peoples, gays, lesbians, persons with disabilities and Francophones are entering the profession. For example:

a. 54.5% of students who entered the BAC in 2004 were women compared to 48.7% in 1998.

b. 15.8% of students in the 2004 BAC self-identified as racialized compared to 14.9% in 1998. In comparison, 19.03% of the Ontario population is made up of persons from racialized communities, according to the 2001 Canadian Census.

c. 1.26% of students in the 2004 BAC were Aboriginal compared to 1.3% in 1998. In comparison, 1.61% of the Ontario population is Aboriginal (2001 Canadian Census).

Repayable Allowance Program

112. Since January 2004, criteria requirement to apply for a Repayable Allowance Program loan (RAP) where students must first apply to a bank for a line of credit has been relaxed thereby providing better access for eligibility for RAP funding directly.

a. Promotion of the program is widely spread. The program is discussed with law school students who attend the BAC staff tour of the law schools. Also, information about RAP appears on the BAC website, in the Student Admissions Handbook, and is given out to BAC students on the first day of classes during the introductory session

b. During individual sessions with BAC students who come to the BAC administrative offices because they are experiencing financial difficulty but have not heard or read about RAP. This occurs during the Academic Phase and/or the Articling Phase where an articling position pays poorly or is the student is working for the firm pro bono.

113. In 2004, 87 applications to the Repayable Allowance Program were approved (compared to 37 applications in 2003, 57 applications in 2002 and 47 applications in 2001). In 2004, $290,295 was awarded to applicants, compared with $117,167 in 2003, $213,395 in 2002 and $170,700 in 2001.

New licensing program 2006

114. Francophone, Aboriginal and equality-seeking lawyers were involved in each stage of development of the new licensing process and statistics related to this involvement is

included in Professional Development, Competence and Admission Committee's report to Convocation in the months of September 2004 and November 2004. The reports relate to the development of the competencies for the new process, the development of blueprints for the new system and the survey of members on articling term issues. For each component of the development, the PD&C Department specifically encouraged members of Francophone, Aboriginal and equality-seeking communities to participate and provide input. In the case of focus groups and face-to-face interactions, the incidence of equality-seeking participation is high relative to the percentage of the legal and general population. In the case of random survey work, for which the Law Society has no control over the final response rates, the Aboriginal, Francophone and equality-seeking representation is relative to the general population or better. In addition, the advisory groups that have been established to continue to assist the Society in the evaluation and quality assurance functions of the ongoing process include representatives from the Aboriginal, Francophone and equality-seeking communities.

115. With the adoption of the new licensing process to be implemented in 2006, it is anticipated that the fees to complete the program will decrease from approximately $4,400 to approximately $2,600. Students will also be able to enter the workforce sooner than under the present BAC. The length of the program will be shortened from 14.5 months (including articling) to 11.5 months (including articling), therefore reducing the financial burden on students.

New licensing program in French

116. All components of the Licensing Process will be provided in the French language. This includes all written materials used for instruction, examination preparation, examinations and assessments, the e-Learning Site supports and resources, all policies, applications and forms, all communications with candidates in any format or medium and all candidate education support services including special needs supports.

Recommendation 9: Articling

The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

Bicentennial Working Group Proposed Strategy

117. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 9:

    a. That the Equity and Aboriginal Issues Committee and the Professional Development, Competence and Admission Committee and/or the Task Force on the Continuum of Legal Education examine the following strategies and, if required, make recommendations to Convocation:

        i. The current articling structure should be assessed to determine whether equality-seeking, Aboriginal and Francophone students face systemic barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers.

ii. Research should be undertaken to determine why some students who have successfully completed the BAC do not seek or cease to seek articling positions. Strategies should be developed to address this issue.

iii. The CEO or delegate should provide annual reports to the Equity and Aboriginal Issues Committee about strategies and progress on addressing the needs of equality-seeking, Aboriginal and Francophone students for suitable articles.

iv. Services and learning supports to assist students and principals throughout the articling process should be maintained and enhanced based on needs.

Adopted Initiatives

Initiatives in place

118. The Law Society has created the position of Associate Registrar to coordinate the articling program and provide support to students, and the position of Aboriginal Issues Coordinator to provide support to Aboriginal students in the BAC and during the articling process. As a consequence, the Law Society has increased its efforts to provide support to students during the articling term. Students have options and flexibility in competing all the necessary requirements of articling. Placement initiatives provide assistance to students-at-law by offering job search skills workshops and counselling services. The job search skills workshops include topics such as how to do electronic job searches, winning interviews, creating impressive resumes, writing compelling covering letters, building useful contact lists and finding opportunities.

119. Articling position postings are advertised on the Law Society's website, workshops are held on job search skills and the mentoring program matches students with lawyers for career mentoring.

120. The Registrar and Associate Registrar attend annually at all law schools to provide students with information about the BAC and the articling program and opportunities.

New licensing process

121. Candidates in the new licensing process will have access to a wide range of educational resources to support them in their learning, including written materials, professional development programs and online practical guides.

122. In addition to comprehensive reference materials, the Law Society will provide candidates with tutorials on how to study for and write the competency-based licensing examinations. These tutorials will be held in the first week of the Skills and Professional Responsibility Program and will also be available on the Law Society's e-Learning site.

123. In addition to an online bulletin board of program updates, reminders, announcements and FAQ's about the Licensing Process, the Law Society's e-Learning site will also feature a variety of substantive, procedural and skills resources to assist candidates in their articles and in their first year of practice.

124. A series of online "How-To Briefs" will give candidates quick and easy access to information on how to perform entry-level tasks in the following areas: Business Law, Civil Litigation, Criminal Law, Wills & Estates, Family Law, Real Estate and Public Law, and how to meet their professional responsibility obligations. Each How-To Brief will be designed as an efficient, practical resource for candidates, with a step-by-step outline of the task, and links to rules, forms, checklists, precedents, and video demonstrations or illustrative vignettes.

125. These online resources will be particularly useful for the candidates with articling experiences that do not include a full rotation, and who wish to expand their options for future practice.

126. For example, a candidate articling at the Crown Law Office - Criminal, can learn the techniques involved in conducting an effective civil motion and watch an online demonstration. A candidate articling for a family law practitioner can learn how to draft an agreement of purchase and sale and obtain relevant checklists and precedents.

127. It is anticipated that in the first year of the program, candidates will have access to How-To Briefs on approximately 30 topics. In addition to information on substantive, procedural and skills subjects, students will also be able to obtain valuable online help on such "Articling survival" topics as establishing and keeping an effective time-docketing system, eliciting constructive feedback and dealing with difficult people.

128. The Law Society's Education Support Services department will continue to serve and support Articling candidates and Principals by providing resources such as education plans, Articling assignment checklists, information on stress management, and placement support. Placement support includes job search skills workshops, one-on-one career counseling and résumé consultation, the Articling Mentor Program and online job postings.

129. The Law Society is committed to providing candidates with the professional development resources and support they require to be successful in the Licensing Process and in their future careers in law.

130. In 2005, the Task Force on Employment Opportunities for Articling Students was established and has presented its Terms of Reference to Convocation in March of 2005. Membership on the Task Force includes the Chair of the Equity and Aboriginal Issues Committee, and the Equity Advisor along with the Director of PD&C all of whom take an active role in monitoring and evaluating statistical information related to equality-seeking, Aboriginal and Francophone candidates. The Task Force will specifically be addressing the issue of systemic barriers in finding quality articling positions as part of its mandate.

Recommendation 10: Continuing Legal Education

The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:

(a) Includes material designed to increase the profession's understanding of diversity/equity issues;

(b) Encourages the participation of equality-seeking groups in its design, development, presentation, and attendance;

(c) Uses material that is gender neutral;

(d) Uses audio visual material that includes the faces and voices of equality-seeking groups;

(e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

Bicentennial Working Group Proposed Strategy

131. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 10:

A. That the Professional Development, Competence and Admission Committee examine the following strategies and, if required, make recommendations to Convocation:

I. The bursary program for CLE should be expanded and aggressively advertised to those who cannot afford CLE.

II. Education programs should be tailored to meet the needs of:

O Foreign-trained lawyers.

O Members re-entering the profession.

O Members from equality-seeking, Aboriginal and Francophone communities.

III. There should be representation of members from equality-seeking, Aboriginal and Francophone communities within the CLE Faculty, including “core” CLE programs.

Adopted Initiatives

Equity Initiatives Department programs

132. The Law Society has developed affordable, accessible and relevant continuing legal education programs through various Equity Initiatives Department programs that include its Public Education Program, Equity and Diversity Training Program and CLE programs on human rights and harassment and discrimination. Public education events are usually open to the public and are free of charge. Other CLE programs are offered on a cost recovery basis and are affordable.

133. Each year, the Law Society hosts and participates in 10 to 15 public education events. A number of those events include a continuing legal education component.[34]

134. The Equity Initiatives Department and the DHC Program offer equity and diversity custom-designed training programs to assist lawyers in meeting their obligations under the Ontario Human Rights Code and in integrating equity and diversity within legal practice and organizations. Each session is tailored to meet the specific needs of the law firm and/or practitioner and offers the programs in many formats, such as seminars, workshops, informal education sessions, continuing legal education and train-the-trainer sessions.

Development and Competence CLE programs

135. The Professional Development and Competence Department also offers CLE programs to meet the needs of lawyers. CLE programs are offered in a variety of formats and delivery methods to improve accessibility and assist lawyers in meeting their professional development goals.

136. The Interactive Learning Network, launched in 2003, enables lawyers to attend live programs without incurring the costs associated with absence from the office and long distance travel. CLE programs are transmitted in real time to between 10 and 20 sites across the province. The sites have been chosen to allow members to travel no more than one and a half hours to attend.

137. Current Law Society CLE programs with content tailored to the needs of members from equality-seeking communities include the following:

    a. Case File Series in Immigration Law (February 22, 2005)

    b. Employment Law Case Files Series, Part III: Human Rights in the Workplace (April 12, 2005)

    c. Human Rights Update 2005 (March 9, 2005)

    d. 8th Annual Six-Minute Employment Lawyer (June 2, 2005)

138. The Law Society provides administrative and other support for a series of Colloquia initiated by the Chief Justice of Ontario's Advisory Committee on Professionalism and sponsored by a variety of law associations. The goal of the joint venture is to produce over a period of years a collection of high quality papers about legal professionalism in its broadest sense. Colloquia topics covered in the 4th Colloquium (March 3, 2005) included "Understanding Cultural Competence", "The Implications of 'Bleached-out'

[34] Such as: Louis Riel Day panel discussion on the role of public inquiries; Black History Month event on a comparative analysis of equality rights in Canada and South Africa, International Women's Day event on the role of lawyers in domestic violence cases, National Holocaust Memorial Day panel discussion on the impact of Holocaust denial, the International Day for the Elimination of Racial Discrimination on the history of racism in Canada, the South Asian Heritage Month panel discussion on immigration and refugee law in the aftermath of tsunami, the National Access Awareness Week panel discussion about disability and abuse.

Professionalism for Racialized Lawyers and Communities" and "Public Interest Lawyering."

139. The Law Society offers CLE programs specifically designed for junior lawyers, including lawyers who have just entered the profession, and those who are transferring from one practice area to another. These "essential level" programs include the Case Files Series in a variety of practice areas, as well as the new Practice Gems series (e.g. Title and Off-Title Searching for Lawyers (January 19, 2005) and Family Law Issues for Estates Practitioners (June 15, 2005)).

140. Law Society counsel and staff in both the Equity and Professional Development & Competence departments contributed to the development of content and provided administrative support for the Spring Symposium of the l'Association des juristes d'expression française de l'Ontario ("AJEFO") in June 2004.

Reduced rates for CLE

141. The Law Society also provides reduced rates for registration to CLE programs, in any format or medium, for members who meet the Bursary Criteria. The number of members who receive bursaries is reported quarterly to Convocation in the PD&C Department Quarterly Benchmarks Report. Bursaries have increased overall in the past 4 fiscal periods, with between 140 and 243 bursaries provided per annum between 2001 and 2004. On average over the past 4 years, the Society has provided 187 bursaries per year.

142. The Bursary Program allows lawyers with annual incomes below $35,000 to qualify for a 50% reduction off the regular price of Law Society CLE programs and Law Society CLE publications. To be eligible for a reduction in price, applications must be submitted a minimum of 10 days before the date of any live or video replay program for which a bursary is sought. Application information is held in strict confidence. Students at law and lawyers employed by legal clinics are also entitled to the 50% discount on fees for most Law Society CLE programs and CLE publications.

Recommendation 11: Rules of Professional Conduct

The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession.

Bicentennial Working Group Proposed Strategy

143. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 11:

    a. That the Equity and Aboriginal Issues Committee consider working with the CEO, or delegate, and the Discrimination and Harassment Counsel where appropriate, to determine the effectiveness of programs aimed at eliminating harassment and discrimination within the legal profession and discuss strategies for improvement if appropriate.

Adopted Initiatives

Discrimination and Harassment Counsel Program

144. The Discrimination and Harassment Counsel Program (DHC) was established in 1999 as a pilot project, and in 2001 as a permanent program, to confidentially assist anyone who may have experienced discrimination or harassment by a lawyer or within a law firm. This service, funded by the Law Society, operates at arms-length, and is available free-of-charge to the Ontario public and lawyers. Between November 2002 and June 2004, 297 new contacts were made to the DHC Program, with 60% relating to matters within the mandate of the DHC Program.

145. Approximately one third of the complaints reported to the DHC Program involved sexual harassment (including two complaints of sexual assault). The second most voluminous categories of complaints are of racial discrimination and discrimination based on disability. Additional grounds of discrimination and harassment were raised such as sexual orientation, religion, age, sex and family status.

146. During the reporting period outlined above, 80 individuals with discrimination and harassment complaints completed surveys. The 80 participants had the following characteristics:

    a. Participants were more likely women than men and there was 1 transgender individual.

    b. Participants were represented in all age categories. However, most participants were between the ages of 35 and 49.

    c. Most identified themselves as White/Caucasian.

    d. Participants who were members of the public were more ethno-racially diverse than participants who were members of the profession.

    e. Other than White/Caucasian, participants indicated that that they were members of the following racial or ethnic community: Black, Chinese, South Asian, Aboriginal, Arab, Filipino, Southeast Asian, Korean, Latin American and Iranian.

    f. One participant identified as bisexual, 5 identified as lesbian/gay and the remaining 74 identified as heterosexual.

    g. Twenty-six participants indicated that they had a disability.

    h. Both members of the public and members of the profession were most likely from the Greater Toronto Area. Members of the profession were second most likely to be from the National Capital Region while members of the public were second most likely to be from South-western Ontario.

Professional Regulation Division

147. Since January 2004, the Professional Regulation Division delivered training programs on equality and diversity issues to its employees. A custom-designed half-day program was offered to the Division as a whole and 2 sessions were custom-designed for the Investigations Department and the Complaints Resolution Department respectively. The

objective of each program was to build the capacity of staff to handle complaints of harassment and discrimination and to increase awareness of issues affecting Francophone, Aboriginal and equality-seeking communities.

Recommendation 12: Accreditation of Foreign-Trained Lawyers

The Law Society should facilitate the participation of minority groups in the legal profession by liaising with other groups to ensure that the accreditation requirements for foreign-trained lawyers or Quebec non-common law trained lawyers to practise in Ontario do not represent an unreasonable barrier.

Bicentennial Report Working Group Proposed Strategy

148. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 12:

    a. Further to the *MacKenzie Accreditation Report*, the Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:

        i. A joint initiative should be developed with the Professional Development, Competence and Admission Committee and the Access to Justice Committee to develop strategies to assist foreign-trained lawyers to qualify as lawyers in Ontario.

        ii. Information should be gathered about the success rate of NCA candidates in the BAC and in articling placements and strategies should be developed to address unfair elements, if any.

        iii. NCA students or recently called foreign-trained lawyers should be invited to provide input into the development and implementation process of the new BAC.

Adopted Initiatives

149. In 2004, the Law Society of Upper Canada joined the Ontario Regulators for Access (ORA). The ORA is comprised of senior staff from a number of regulators of self-regulated professions in Ontario. Its goal is to improve access to professions by internationally educated or trained professionals while maintaining standards in the public interest. Over the past few years, ORA has become a leader within the regulatory community, serving as a catalyst to encourage regulatory bodies to share information and learn from each other to increase access for internationally educated and trained professionals. The Law Society works with other regulators to develop strategies to enhance access to internationally educated professionals.

150. The Law Society also participates in focus groups and consultations undertaken by the government.

Recommendation 13: Requalification

In implementing its requalification policy the Law Society should continue to develop a process that is fair and equitable to all members of the profession.

Bicentennial Working Group Proposed Strategy

151. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 13:

    a. That the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:

        i. The effectiveness of the Private Practice Refresher Program and its impact on members of equality-seeking, Francophone and Aboriginal communities should be examined after five years of implementation.

        ii. Strategies should be developed to ensure truly equal opportunities for women returning to the practice of law and for members of equality-seeking, Francophone and Aboriginal communities.

Adopted Initiatives

152. The Law Society's Private Practice Refresher Program was designed to ensure that lawyers who have not been in private practice for five years or more undergo a refresher program prior to re-entry into the profession. The Program came into effect in early 2002, but will not be mandated for lawyers until 2007. Lawyers will be required to take only the program modules and related assessments that reflect gaps in their experience during the absence from private practice: file management, financial management, client relationships and communication, technology and equipment, professional management, personal management and professional responsibility.

Recommendation 14: Fees

The Law Society should examine the impact of and the barriers presented by its current annual fee structure and consider options for revising its fee structure, if warranted.

Bicentennial Working Group Proposed Strategy

153. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 14:

    a. That the Equity and Aboriginal Issues Committee consider the following strategy and, if required, make recommendations to Convocation:

        i. To establish a working group and/or task force composed of members of the Equity and Aboriginal Issues Committee, the Finance Committee and other members as determined by Convocation, to review the impact of the fee structure on members who practice part-time or have a low income, or who work in public interest areas.

Adopted Initiatives

154. The Law Society has not created a task force to address this issue.

Recommendation 15: Law Society as Employer

The Law Society should continue to set and monitor equity standards for its own staff that will make it a model for the profession as an employer.

Bicentennial Working Group Proposed Strategy

155. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 15:

a. The Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:

i. The CEO should compile data on the diversity of the workforce of the Law Society and develop strategies to promote equality in the workplace.

ii. The CEO or designate should provide an in person annual report to the Equity and Aboriginal Issues Committee regarding the implementation status of equality in the workplace initiatives.

Adopted Initiatives

Recruiting

156. Since January 2004, the Law Society has continued to include a notice in job postings encouraging applications from persons from equality-seeking communities, Francophone and Aboriginal peoples. Recruitment interviews include questions that relate to the candidates awareness of equity and diversity principles.

Workforce

157. The Law Society's workforce of approximately 400 employees is comprised of more than 70% women, with more than 60% in managerial positions. Currently, eight out of ten members on the Senior Management Team are women. In 2004, the Law Society was ranked 7th on the *Maclean's* list of top 10 employers for promoting women. More than 30 filled positions are designated bilingual in French and English. In addition, a significant number of Law Society employees can communicate in a wide range of languages.

Workplace policies

158. The Equity Initiatives Department continues to work with the Human Resources department to ensure that all internal workplace policies are regularly updated. For example, the Accommodation Policy of the Law Society was recently updated to reflect recent case law development.

Advisors appointed under the Harassment and Discrimination Policy

159. New advisors were appointed under the policy on preventing and responding to harassment and discrimination to assist employees by answering questions about harassment and discrimination, explaining the harassment and discrimination policy, outlining options available to employees, helping employees with the implementation of a remedy and helping employees document a complaint for investigation. The new advisors are all fully trained to provide advice to employees.

160. As part of the commitment to promoting diversity and equity, all employees attend training sessions to assist them in being more culturally sensitive in dealing with each other and with persons from diverse backgrounds. For example, all new employees attend training on the prevention of harassment and discrimination. All managers attend extensive training on those issues. The Equity Initiatives Department now delivers the education programs on harassment and discrimination to new employees and managers.

161. All new employees attend an orientation session, which includes information regarding the Law Society's equity initiatives and programs and contact information from the advisors appointed under the harassment and discrimination policy.

162. In 2004, all managers of the Law Society attended a training program on the duty to accommodate under the Law Society's accommodation policy.

Demographic information on the Law Society workforce

163. The Working Group proposed that the Law Society collect more information on the demography of its workforce to assist in the development of programs that promote equality in the workplace. Human Resources and Equity Initiatives are currently working with a consultant to determine appropriate methodology to gather information about its workforce.

Recommendation 16: Law Society as a Contractor for Legal Services

The Law Society should:

(a) Develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession; and

(b) Examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.

Bicentennial Working Group Proposed Strategy

164. In January 2004, the Bicentennial Working Group proposed that the following steps be taken to further implement recommendation 16:

a. That the Equity and Aboriginal Issues Committee should examine the following strategies and, if required, make recommendations to Convocation:

   i. The CEO should report to Convocation by the end of 2004 with respect to:

      - The implementation of a contract compliance program for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession.

      - A provision by which law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession.

      - A provision by which suppliers wishing to do business with the Law Society file data indicate whether their workforce is representative of the Ontario population.

Adopted Initiatives

165. In April 2005, the Committee approved Equality Guidelines to be applied to purchasing agreements between the Law Society and suppliers or organizations providing legal services to the Law Society. The Equality Guidelines are drafted in a way that will allow staff to efficiently implement the guidelines within the existing purchasing practices of the Law Society. The Guidelines also promote equality and diversity practices by suppliers retained to provide services to the Law Society.

166. The Guidelines apply to law firms located in Ontario with more than 50 lawyers and to suppliers with a workforce of more than 50 employees, other than law firms, for contracts above $100,000.

167. The Equality Guidelines make it a condition of agreements that suppliers or law firms comply with all relevant Law Society policies and procedures, including the Law Society's Harassment Policy. A breach of this condition may result in cancellation of the agreement. This clause will ensure that suppliers and law firms bound by the Guidelines follow practices that promote equality and diversity and ensure that there is an enforcement mechanism of the policy.

Appendix A

Equality Template

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix B

Glossary of Terms

- *Aboriginal Peoples of Canada* – is defined in the *Constitution Act, 1982*[1] as including the Indian, Inuit and Métis peoples of Canada. The use of the term Indian is preferably restricted to the *Indian Act* and is usually viewed as inappropriate. The names of Aboriginal organizations and associations in Canada are often a reflection of the period of incorporation. We find names such as the Indigenous Bar Association, the Assembly of First Nations and the Native Women's Association of Canada. The reader is encouraged to seek to determine the preferred terminology used by the community or organization as a fundamental component of the dignity and respect that is encompassed in an equality commitment.

    - *Aboriginal Rights* - The *R. v. Van der Peet* case[2] is the leading case in establishing the test that must be satisfied to successfully prove the existence of an Aboriginal right. The Aboriginal claimant must prove that an activity, custom or tradition was integral to the distinctive culture of the Aboriginal community prior to European contact.

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

- *Métis Peoples* – has been defined by the Supreme Court of Canada as not encompassing all individuals with mixed Indian and European heritage. Rather it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears. A Métis community is a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life.

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

- *Creed or Religion* – means a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single Supreme Being or deity is not a requisite. The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed. The Supreme Court of Canada defined "freedom of religion" in *Syndicat Northcrest v. Amselem*[3] as "the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials. But, at the same time, this freedom encompasses objective as well as personal notions of religious belief, "obligation", precept, "commandment", custom or ritual. Consequently, both obligatory as well as voluntary expressions of faith should be protected under the Quebec (and the Canadian) *Charter*. It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection"

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

    - *Direct Discrimination* – involves a law, rule or practice which on its face creates harmful differential treatment on the basis of particular group characteristics.

    - *Adverse Effect Discrimination* – occurs when the application of an apparently neutral law or policy has a disproportionate and harmful impact on individuals on the basis of particular group characteristics. It is

[3] [2004] S.C.J. No. 46.

also referred to as “indirect” discrimination or “disparate impact” discrimination

- *Systemic Discrimination* – occurs when problems of discrimination are embedded in institutional policies and practices. Although the institution’s policies or practices might apply to everyone, they create a distinction between groups of individuals, which disadvantage one group based on shared personal characteristics of members of that group in a manner inconsistent with human dignity. Systemic discrimination is caused by policies and practices that are built into systems and that have the effect of excluding women and other groups and/or assigning them to subordinate roles and positions in society or organizations. Although discrimination may not exclude all members of a group, it will have a more serious effect on one group than on others.

- *Disability* – The definition of disability is not fixed, static or universal. Disability is a multi-dimensional concept with both objective and subjective characteristics. When it is interpreted as an illness or impairment, disability is seen to be located in an individual’s mind or body. When it is interpreted as a social construct, disability is seen in terms of the socio-economic, cultural and political disadvantages resulting from an individual’s exclusion.[4] Disability is a functional limitation that is experienced by individuals because of the economic and social environment (or because of society's reaction to the limitation)

- *Diversity*: The presence of members from Ontario’s communities at all levels of the social, economic and political structures which includes their meaningful participation at the decision and policy making levels.[5]

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

  - *Formal Equality* – prescribes identical treatment of all individuals regardless of their actual circumstances

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

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

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[4] Government of Canada, Defining Disability as a Complex Issue (Gatineau: Office for Disability Issues, Human Resources Development Canada, 2003)

[5] Adapted from Working Group on Racial Equality in the Legal Profession, *Racial Equality in the Canadian Profession* (Ottawa: Canadian Bar Association, February 1999).

- *Equity Programs* – are proactive, planned programs designed to remedy group-based problems of systemic discrimination. They are premised on the recognition of the need to take positive steps to redress institutionalized discrimination and persistent social inequalities. Equity initiatives are also referred to in the United States as "affirmative action" programs.

- *Gender* - is the culturally specific set of characteristics that identify the social behaviour of women and men, the relationship between them and the way it is socially constructed. Gender is an analytical tool for understanding social processes. Gender may refer to male or female.

    - *Gender Equity* – is the process of being fair to women and men. To ensure fairness, measures must often be available to compensate for historical and social disadvantages disproportionately experienced by women. Equity leads to equality.

    - *Gender Equality* – will be achieved when women and men contribute equally to – and benefit equally from – political, economic, social and cultural development; and society equally values the different contributions they make.

    - *Gender Equality Analysis* – is a process to help identify and remedy problems of gender inequality that may arise in policy, programs and legislation. It is premised on an understanding of the continuing reality of women's inequality in Canadian society; and a recognition that our legal rules have historically been founded on explicit or implicit assumptions about appropriate gender roles that restrict women's choices and actions. The object of gender equality analysis is to replace those assumptions with a consideration of the specific situations of women in the labour market, in the household and in the community, and thus shape laws, policies and programs that reflect and respond to women's needs and priorities.

- *Gender Identity* – refers to those characteristics that are linked to an individual's intrinsic sense of self that is based on attributes reflected in the person's psychological, behavioural, and/or cognitive state. Gender identity may also refer to one's intrinsic sense of being male or female. It is fundamentally different from and not determinative of, sexual orientation.[6]

- *Racialized* – refers to persons whose social experiences may be determined by their presumed membership in a race. It identifies their vulnerability to different treatment or the denial of rights or privileges by individuals and institutions who believe that race should factor into their decisions-making.[7]

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[6] This definition is a modification of that found in the Ontario Human Rights Commission *Policy on Discrimination and Harassment because of Gender Identity* (Toronto: Ontario Human Rights Commission, March 30, 2000).

[7] Working Group on Racial Equality in the Legal Profession, *Racial Equality in the Canadian Profession* (Ottawa; Canadian Bar Association, February 1999).

- *Race* – is the idea of observable physical differences as the basis for categorizing people. This idea has been around for some time though it has lost its scientific validity. The selection of characteristics that define people into racial groups has been arbitrary. Skin colour has been seen as very significant where ear shape of the length of arms and legs have not. Once the person has these characteristics they are assumed to share certain cultural attributes.

- *Systemic Racism* – Systemic or institutional discrimination consists of patterns of behaviour that are part of the social and administrative structures of the workplace, and that create or perpetuate a position of relative disadvantage for some groups and privilege for other groups, or for individuals on account of their group identity. This definition focuses attention on patterns of behaviour, not attitudes, on the assumption that ridding the workplace of racism begins (though does not end) with changing discriminatory behaviours.[8]

- *Sexual Orientation* – is more than simply a status that an individual possesses; it is an immutable personal characteristic that forms part of an individual's core identity, including innate sexual attraction. Sexual orientation encompasses the range of human sexuality from gay and lesbian to bisexual and heterosexual orientations.[9]

- *Special Programs* - a right to equality without discrimination is not infringed by the implementation of special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of discrimination.[10] Such affirmative action programs have sometimes been referred to as "reverse discrimination". However, the Ontario *Human Rights Code* and relevant case law clearly indicate that those programs are not discriminatory, but are established to provide substantive equality for disadvantaged groups. Section 15(2) of the *Canadian Charter of Rights and Freedoms*[11] also states that the right to equality "does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Appendix 2

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[8] Carol Agocs, *Surfacing Racism in the Workplace: Qualitative and Quantitative Approaches to Identifying Systemic Discrimination,* September 2004, Prepared for The Race Policy Dialogue, Association for Canadian Studies and Ontario Human Rights Commission.

[9] This definition combines elements of that used by the Ontario Human Rights Commission and that used by the National lesbian and Gay Journalists Association.

[10] Section 14 of the Ontario *Human Rights Code*, R.S.O. 1990, chap. H.19.

[11] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

DIALOGUE WITH LAWYERS: RELIGIOUS AND SPIRITUAL BELIEFS AND THE PRACTICE OF LAW

Article 18 of the Universal Declaration of Human Rights
Photo taken from the United Nations website at http://www.un.org/av/photo/
UN/DPI Photo

The Law Society of Upper Canada
April 14, 2005

Norman Rockwell
Photo taken from the United Nations website at http://www.un.org/av/photo/subjects/30.htm
UN/DPI Photo

INTRODUCTION

In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report*)[12] and recognized its commitment to the promotion of equality and diversity in the legal profession and its responsibility to regulate and provide services to an increasingly diverse legal profession[13] and population. Recommendation 1 of the *Bicentennial Report* provides "The Law Society should ensure that the policies it adopts actively promote the achievement of equality and diversity within the profession and do not have a discriminatory impact."

There is great diversity in the religious[14] and spiritual beliefs and practices of people in Ontario and in Canada. This diversity, together with the values and spirituality that are shared in Ontario, in Canada and throughout the world, should be celebrated.

The Law Society of Upper Canada recognizes the importance of promoting religious diversity and respect for religious beliefs. On April 22nd, 2004, Convocation passed a motion that the Law Society's Equity and Aboriginal Issues Committee and the Law Society's Government Relations Committee recommend to Convocation for Convocation's approval the role the Law Society should play and the positive steps it should take to discourage anti-Semitism and all forms of hatred or discrimination based on religion in our profession, our society and the world, and to promote religious respect in our profession, our society and the world.

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[12] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997).
[13] For information about the demographics of the legal profession, see Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001* (Toronto, October 2004).
[14] In this report, the term "religious" belief includes "spiritual" belief. The terms "religion" and "creed" are used interchangeably.

In May 2004, a Working Group on Anti-Semitism and other Forms of Hatred and Discrimination Based on Religion (Working Group) was created with members of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, the Government Relations Committee and other interested benchers. Joanne St. Lewis is Chair of the Working Group. The members of the Working Group are: Andrea Alexander, Gary Gottlieb, Thomas Heintzman and Mark Sandler.

The Working Group decided that the Law Society should develop programs and initiatives to discourage anti-Semitism and all forms of hatred or discrimination based on religion, and to promote religious respect. Some of the initiatives proposed include creating a statement of principles; developing education and outreach programs; sponsoring and attending community events; recognizing lawyers who demonstrate a commitment to the issues; and publishing information on a regular basis about the importance of promoting religious and spiritual respect and discouraging hatred and discrimination based on religion.

On March 24, 2005, Convocation adopted the document *Anti-Semitism and Respect for Religious and Spiritual Beliefs - Statement of Principles*. The *Statement of Principles* is well within the mandate of the Law Society "to govern the legal profession in the public interest by […] upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law". The *Statement of Principles* for the legal profession promotes respect for religious belief and condemns hatred or discrimination based on religion. It not only advances the cause of justice and the rule of law, but also serves to educate the legal profession in the public interest.

In an attempt to understand the views of the legal profession in Ontario on how faith/spiritual belief intersects with the practice of law, the Working Group also decided that a cross-section of the profession should be interviewed about the relationship between their faith/spiritual belief(s) and practices, the rule of law and legal practice. It should be noted that the views of the lawyers interviewed are their personal views and not those of other members of their faith or of the legal profession or the Law Society. However, the exercise reveals the commonality in the values and respect for human dignity of each religion. The interviews also indicate that the positive interrelationship between spiritual or religious beliefs and the practice of law appears to cut across all faith and spiritual beliefs. The following individuals were interviewed: Kiran Kaur Bhinder (Sikh), Judith Holzman (Jewish), Douglas Elliott (Christian), Vinay Jain (Jain), John Borrows (Aboriginal), Amina Sherazee (Muslim), Anita Balakrishna (Hindu) and Eric Nguyen (Buddhist).

DIALOGUE WITH LAWYERS

The following pages present the lawyers perspectives on various topics. The views of the lawyers interviewed are their personal views and not those of other members of their faith or of the legal profession or the Law Society. The lawyers interviewed have consented to the publication of their responses by the Law Society.

Question 1: How would you explain the relationship between your faith/spiritual belief(s) and practices and the rule of law?

Anita Balakrishna - Hindu

I find that Hinduism, by its very nature, is extremely open and accepting of different kinds of systems and views. I do not see contradictions in the values that are taught by my religion and those that are carried out in the rule of law. I think that the difference is not spiritual in nature, but cultural. Generally Hinduism is very open to other practices and views.

Kiran Bhinder - Sikh

Sikhism strongly believes in the principles of democracy, individual freedoms, due process, and fairness. Also our fundamental beliefs and our fundamental practices are based on certain inalienable rights and universal principles of equality, freedom of conscience and religion, equality between genders, castes, religion, and all other aspects. Individual freedom is a cornerstone of our faith and we believe in due process and all aspects of fairness and justice.

John Borrows – Aboriginal

My spiritual beliefs reinforce my respect for the rule of law. I have been taught that respect for another is respect for the Creator, and the rule of law (in my view) attempts to structure our relationships to foster respect.

Doug Elliott – Christian

As a Christian, I believe that justice is one of the things that is expected of human beings by God. And in fact, Christianity is about an unjust conviction by an oppressive state against an unpopular minority. And when you reflect on that as being the foundation of the Christian faith, then I think you appreciate that the rule of law, incorporating fair process and respect for human rights, is central to Christian belief as well.

Judith Holzman – Jewish

Practicing as a lawyer, my religion requires a code of ethics, and commands to do good deeds. People of my religion are commanded to help others. In fact, the best way to illustrate this is to consider that the word for "charity" and the word for "piousness" are the same word in the Jewish religion. To be pious, one has to do charity. One has to help one's fellow man, and the highest level of charity is to help others to help themselves, in effect enabling them to help themselves move forward in their lives. There are over five hundred prescribed good deeds in the Jewish religion.

One is supposed to feel an absolute obligation to one's fellow man. That may be a way to see yourself as a lawyer. In my religion, we are obligated to obey the laws of the government and of the country. Not in a dictatorship, but in a democratic country which allows for religious freedom. One gives thanks to God for our democratic government in prayers on each holiday and on the Sabbath, and one prays for the good of the country. One is allowed to protest peaceably. One is allowed to run for government or do what is suitable to help change the laws of the country in a favourable fashion, and to move along ethical and moral grounds. But one is not allowed to disobey the laws, and one is not allowed civil insurrection.

The different Jewish sects all believe in the same religion and laws. There are differences in observance. Very traditional Jews, Orthodox Jews, do not drive on the Sabbath because if you follow the traditional views, you should not be operating machinery on the Sabbath. There are various interpretations of religious rules by various sects as opposed to differences in view of the world at large. There are different views in the Jewish faith, but we interact similarly with the extended world. The basic laws are the Ten Commandments and the Jewish written code of law called the Halacha. Halacha obliges us to act in a certain moral fashion. For all Jews, whether Conservative, Reform, Orthodox, Hassidic, or other, the interaction with the world at large would be the same.

Vinay Jain – Jain

The basic tenet of Jainism is that of non-violence to all living things. And so you can extrapolate that in terms of social justice issues. I think that the work that I do is social justice. So to me, that's how I would relate the two. I'm not sure which came first, the desire to work in the social justice field or the influence of my faith in choosing social justice work. But to me, those ideas go hand in hand. So that makes me comfortable when I am doing the work that I do, but also calling myself a Jain.

Eric Nguyen - Buddhist

My faith goes hand in hand with my law practice. In terms of my own practices, my faith leads and guides me in being honest and truthful to my clients and in trying to steer them in a direction that I feel would be most appropriate for them. In family law, I often act as the mediator. In Buddhism, what you do has consequences in the future. Buddhism teaches you to look at the future and to anticipate events that may happen. When dealing with clients, I often tell them to be aware that if they take a certain action, these are the consequences. In relation to the rule of law, in the Buddhist faith, everyone is equal before the law.

Amina Sherazee - Muslim

The rule of law, in my view, is premised on the positivist theory. The main proposition of the rule of law is that one law applies to everyone equally therefore no one is above the law, not even the king. My religious beliefs are based on some of the main premises of Shia Islam. One of the main pillars of Shiaism is justice. My religious beliefs inform how I perceive the rule of law, and how it should be implemented and respected. The rule of law is important to me because of the idea of one law for everyone, without discrimination and misapplication of the law.

Question 2 - How does your faith or spiritual beliefs affect your practice of law?

Anita Balakrishna - Hindu

In my Hindu practice, the kinds of things that I have learned and the kind of experiences relate to being very open and viewing everyone around me as an equal. It makes it easier to accept people, clients and other lawyers, as they are and to respect other laws

that might exist out there in other jurisdictions or regions. Hinduism has made me much more open in my acceptance of people and their views.

Kiran Bhinder - Sikh

My faith informs my practice of law and helps me to approach my duties with balance and a broad perspective. My faith does not conflict with the practice of law whatsoever in regards to the views and perspectives. Our perspectives are very much uniform with the rule of law. Throughout Sikh history there are very strong teachings on principles of justice and fundamental rights issues. We believe in representing all individuals, and the right for everyone to have their day in court. So the practice of law not only is in complete accordance with our own personal views and practices in Sikhism, but also professionally. Sikh principles are based on the belief that every individual is capable of being the worst or the best example of the human condition. Thus, we strongly believe that any system that attempts to regulate a person's actions and enforce law must be fair, consistent and constantly evolving.

John Borrows – Aboriginal

My spiritual beliefs affect my teaching and scholarship because I try to measure and evaluate what I do by reference to broader principles of peace, friendship and respect.

Doug Elliott– Christian

It does, first of all, affect my practice of law. And that is something that is not necessarily well received in today's secular society. I think that religious faith often tends to be viewed with some skepticism or cynicism. However, it does influence the way I do things. I think that I'm very sensitive to living my faith to the extent that I can in my practice, and reflecting Christian values in my life. It is important for me to reflect in my practice a commitment to working for social justice. This is in keeping with other great human rights and advocates who have been inspired by the faith, people like Martin Luther King, and Desmond Tutu, and closer to home, Tommy Douglas, who are all people of faith, who had a commitment to social justice. I put a high priority on reflecting my Christianity in the way I treat other people, which is one of the fundamental tenets of the Christian faith, and respect for those who have different opinions. I am very conscious of the fact that one of the bad traditions of Christianity has been intolerance of other points of views, even within Christianity, but also of other faiths like Judaism and Islam. In my view, good Christians always have to be sensitive to that history of intolerance and work hard to try and overcome it. There is nothing exclusionary about Christianity. Jesus Christ was in fact very critical of the religious authorities of his day for their discrimination against non-Jews, and for their clinging to religious rules instead of treating people with humanity.

Judith Holzman – Jewish

You are supposed to act in a morally correct fashion. Underhanded or sharp practice is forbidden. You are supposed to help other human beings. Judaism fits into the precept of treating your colleagues with respect and understanding. You're supposed to act in a morally upright fashion and to treat others, as you would wish to be treated. The Judeo-Christian precepts are very similar.

Vinay Jain – Jain

I don't think it affects it, specifically. I think it supports it. And to what extent it's specifically the Jain faith, or to what extent it's my own belief, that I can't say.

Eric Nguyen - Buddhist

My faith affects my practice of law. I do pro bono work with clients that are less fortunate. One of the tenets of Buddhism is that everyone is equal and one should try to help those who are less fortunate. My faith affects my practice of law. In terms of my criminal practice, I tend to be selective in the cases I take on. Buddhists try to resolve things peacefully. We don't believe in violence at all.

Amina Sherazee - Muslim

It dictates to some extent the kind of cases I take on. The kind of cases I take influences the amount of commitment I have to those cases. Because one of the main pillars of Islam is charity to the poor, I try to assist my clients who have little money in anyway I can. For example, if a client has little or no money for an immigration application, I try to assist them to the best of my abilities. I try to be a lawyer and a humanitarian at the same time, but it has its challenges. It also teaches me to stand up for what is right and to defend my beliefs even if they are unpopular.

Question 3 - What are some of the challenges you face in the legal system/profession with respect to your faith or spiritual beliefs?

Anita Balakrishna - Hindu

I think spiritual beliefs should be kept separate from the rule of law and the practice of law. Of course, my spiritual beliefs might impact the way I handle a case or accept certain cases. In any event, I believe the two systems should be kept separate. My challenge is in accepting that other religions want to impose their own legal rules, because of my strong belief in the separation between religion and the state. In terms of my personal challenges, most of the challenges are culturally related, such as not being served vegetarian food, others making remarks about the fact that I am a vegetarian or others questioning me about why I eat certain foods or why I don't eat certain foods. Other than that, I cannot think of other real challenges that I face in the legal profession.

Kiran Bhinder - Sikh

We do not face challenges with respect to our spiritual beliefs. The practical challenges we face, for example, might be the wearing of articles of faith. The Sikhs who have been confirmed or initiated wear five articles of faith, and among these articles, which are most visible, are the turban and the kirpan. The kirpan is like a small dirk, and it is our right to wear the kirpan into the courtroom. However, there have been instances where I know of Sikh lawyers who have been stopped and had to explain that this is allowed. There are issues of awareness about the right to wear the kirpan. All security guards and court officials should know about the Sikh articles of faith and our right to carry these articles of faith. Sikhs' right to wear the articles of faith includes the right in the House of Commons and throughout all government buildings.

Multani v. Commission scolaire Marguerite-Bourgeois et. Al. was recently heard by the Supreme Court of Canada. This case is with regards to a young student's right to wear the kirpan in school. As this case demonstrates, even in the wearing of our articles of faith, Sikhs have attempted to satisfy the competing needs of safety and personal freedom by achieving a balance that meets both. All articles of faith are worn by initiated Sikhs at all times. And we believe in respecting the rule of law and fairness, but one of our inalienable rights is the right to freedom of religion. We believe that a person cannot fulfill herself, spiritually or otherwise, unless she is free to believe and practice as she chooses. However, we do recognize the need to carry out our practices in a way that is not disruptive in a secular society and have been doing that for many years in many countries around the world. This does not mean compromising on our principles, but taking all steps necessary to achieve a balance among our right and need to adhere to our faith with recognizing legitimate interests of others.

The initiation ceremony is completely equal for men and women. In fact, when a Sikh is initiated, one is thereafter known as a “Khalsa”, which has no gender distinction. There are five articles of faith. One of the articles of faith is the turban, which covers the unshorn hair of the person. Men wear turbans and women wear turbans or scarves. The turban and kirpan as with the other Sikh articles of faith, are within our history, within our faith practice, and fundamental to our belief system. The kirpan for us is our connection to the fundamental belief of personal sovereignty and the right and responsibility of each individual to be an example of, and defend at all times, the right of all people to live a fair, free and just life. We have a Sikh member of parliament who wears his kirpan in the House of Commons.

John Borrows – Aboriginal

A difficult challenge is when the focus on money and acquisitiveness inappropriately takes precedence over what I consider to be more primary spiritual ideas and beliefs. For example, when land is taken and used for profit without respect for other users (plants, animals, people) this is hard to reconcile with what I have been taught.

Doug Elliott – Christian

Dealing with the last point first, when I started saying that I was going to observe the Christian Sabbath, I was met with a lot of skepticism and cynicism and disbelief by some of my colleagues. Others find it hard to believe that people in this day and age would do that. It is very difficult to resist that kind of criticism in a way that does not make you seem like you're trying to be holier than thou. You want to do what you think is right, but you also don't want to try and suggest that you think you are better than others because you follow this practice. The kind of Christianity that one sees reflected in American media is very pervasive, aggressive and intolerant. People have a negative image of Christians.

Because I happen to be a gay Christian, a lot of people think that I must have psychological problems because you couldn't possibly be a real Christian and a self-respecting gay man at the same time. But I am both. And I am not the least bit ashamed of my homosexuality, and I'm also not ashamed of being a Christian. I've come to reconcile the two and I think they can be reconciled.

Judith Holzman – Jewish

I had an interesting incident quite a few years ago. I was actually assessing an account, and I appeared before an assessment officer, and I wasn't comfortable with the Bible they presented to me to swear my oath on, because it was a New Testament. So I asked for an Old Testament. I opened it to make sure that it was strictly Old Testament. And I opened it the way we do our prayer books, which is right to left. And we read literally what some call backwards. And the assessment officer got very angry with me and said, "Don't you know how to open a prayer book?" I waited until the end of the day to say to him, "We read in the Hebrew language. We open our prayer books differently, and we do read what you would term backwards. But this is part of our faith. We have been doing this for 5,000 years, and it is not going to change. I feel uncomfortable with the way you treated me." And I left it at that. I now affirm instead because it's easier than explaining our practice regarding the prayer books. I affirm as if I was an agnostic, and that is how most Jews would behave in a court situation.

We also sometimes face challenges, for example on Jewish holidays, but the profession as a whole is, more and more, trying to respect other religious precepts. If someone needs a break because it's Eid or it's Diwali, or it's a Christian holiday or Jewish holiday, people tend to give each other a break.

Vinay Jain – Jain

The work that we do at a legal clinic is all related to social justice issues. So I don't question what I do and whether it is in line with my faith. It is related to the idea of non-violence. If you want to speak in a general sense, the confrontational adversarial nature of law, strictly speaking, goes against the idea of, non-violence. The confrontational nature of law is not my favourite thing, but I think that is because I am not a confrontational person generally. So I don't think that's related to the Jain religion specifically. If you ask me about how I would manage in the general legal profession if I weren't working in a legal clinic, it would be more difficult to answer. To me social justice is very important, and, I relate that to the Jain faith. Consequently, it would be more difficult to practice if I questioned what I did. I do not think I would enjoy my legal work, if it was not related to poverty law.

Eric Nguyen - Buddhist

Out of respect for my clients and those who do not share the same belief system as I do, I do not display symbols of my faith at my office. In terms of the challenges in the legal profession, one issue that is difficult is that there are not many Buddhist lawyers. I think this may be related to the tenets of Buddhism, which teach you to not be materialistic and to try to help people as much as you can. And it is an altruistic religion. Many Buddhist people are poor and it is often a challenge for Buddhist people to get into law school and to become lawyers.

Amina Sherazee - Muslim

I think one of the biggest challenges is that others make my difference invisible. As a successful lawyer, people often do not want to acknowledge that I am also Muslim, and they pretend that I am not. When I bring up the fact that I am Muslim, others will often change the subject matter resulting in making my identity as a Muslim invisible. I am

also marginalized because of the types of cases I tend to take on. Sometimes I think I may be marginalized in the professional setting because I do not drink alcohol. Even when I participate in social activities, I am often marginalized.

Question 4 - Can you explain how your faith/spiritual belief(s) promote principles of equality including gender equality?

Anita Balakrishna - Hindu

Hinduism is a very open religion and the main teachings, if you follow the ancient Scriptures and texts - which is what I believe in - is about, treating everyone as equal and how everyone is made the same. In terms of women, there are in our history, in our books and in our mythology, very prominent and strong women who are treated as equals. Of course, there are contradictory mythologies as well. But I think if you go to the ancient Scriptures and texts you see that they promote gender equality and the equality of treatment for everyone.

Kiran Bhinder - Sikh

The practice of Sikhism is a testament to the remarkable and rousing past of the brave daughters of Punjab. Sikhism has not only preached, but more importantly practised women's entitlement to equal consideration, respect and justice. Sikhism took revolutionary steps to enshrine the rights of women in scripture, and challenged patriarchal oppression well over 500 years ago, despite overwhelming cultural influences that supported misogyny. The fact that more than half the manjis (similar to bishops) appointed by Guru Amar Das Ji (Third Guru- 1552-1574) were to women is significant when you consider that these exceptional women were put in charge of the proliferation of Sikhism, with full responsibility for the content of the preaching. Women were also charged with the responsibility of collecting revenues and making decisions for the welfare of each diocese. This was especially considerable at a time when there were practices of sati (burning wives alive along with the bodies of their deceased husbands), female infanticide, and purdah (covering of a woman's face) that the Gurus vigorously condemned.

There are also historical examples of Sikh women in leadership roles in the political and military sphere. Guru Gobind Singh Ji's (Tenth Guru) bodyguard was a woman, Mayee Bhag Kaur, and she also led a battle against oppressors of that time. The reign of the Khalsa Kingdom of Punjab was founded on the statesmanship of a woman, Sardarni Sada Kaur. There is no limitation or distinction made in the practice of Sikhism for a woman. Through leading congregations, community service, distinguished military service, and leadership roles, Sikh women have always stood equally to Sikh men in all Sikh practices and during vital events. It is the countless Sikh women throughout our history who have planted the seed and inspired love for Sikhism in our children and communities. We believe the teachings and practices of our Gurus, starting more than 500 years ago, were exemplary of what feminism stands for today- the equality of genders. This is evident in the work of Sikh women today.

John Borrows – Aboriginal

I would not describe equality as being a motivation or outcome of my spiritual beliefs. Living by principles of harmony, reciprocity, sharing and mutuality would come closer to my view of things. I believe this promotes a higher goal than gender equality.

Doug Elliott– Christian

I'm very committed to equality. There are some people who think that being a Christian means that you are against equal rights, that -- as I put it, some people seem to think that God is against human rights. I don't believe that. There has always been a school of thought that has embraced the principle of equality as not just consistent with Christianity but emerging from Christianity. One of the messages that Christ gave to his fellow Jews, who were fairly intolerant of non-Jews in his day, is that he never turned anyone away. He had Mary Magdalene famously as one of his companions. And he welcomed children to come to him who were not Jews as full human beings. He insisted that people were all equal and that, we're all God's children. Later the view that somewhere in the enlightenment there was this contest between faith and reason, and some people saw faith as the enemy of reason and sought to repress religious faith because they thought it was the enemy of democracy and human rights. Given the history of intolerance of religious faith up until that time in Europe there was some historical justification for that concern. But there were others. John Adams, for example, said that he believed that the doctrine of equality was entirely based on the Christian doctrine that we are all children of the same father, all created equal in dignity by him and all entitled to equal respect for our self-love. I think John Adams had it absolutely right. He has been followed in later years by people like William Wilberforce who, based on his religious principles, decided that slavery was wrong and fought hard to eliminate slavery, based on his religious beliefs. And then, of course, Desmond Tutu and Martin Luther King, who fought for equal rights.

I am very conscious of the issue of gender equality. I don't believe in the notion that, even today, women are supposed to be subservient to men in a marriage, or the notion that women have to be confined to a lesser role because of their gender. I always look at how Christ himself lived his life and what he had to say. And he never once suggested that women should have second-class status. In fact, there is the famous scene where a woman was going to be stoned for committing adultery and he stepped in and stopped them, because he felt it was unjust. And he took Mary Magdalene in as one of his closest companions, and she was the first one to see him after he was resurrected. She was the first one who had the revelation. As Reverend Hawks said, "She's really the first Christian." So to me, I think that Christianity is absolutely not only consistent with equality but for me it's very much integral to my belief in equality of all persons regardless of gender or sexual orientation or race.

Not once did Jesus Christ in his lifetime ever say to someone, "Go away, you're the wrong colour, you're the wrong faith, you're the wrong..." something. He always welcomed people. He always treated them with love and respect. When he was asked about the law (Halacha), he said there are only two rules. "Love God, and love your fellow man as yourself." Christ never said anyone was less than him.

Judith Holzman – Jewish

In our religion, when we divorce, the man must grant to the woman a Get. The concept of Get is not particularly equal. It gives a certain leg up to men. On the other hand, our religion is based on the mother. To be a Jew, you have to be the child of a Jewish mother, in effect the religion goes through the mother. However, the man controls the divorce process. Given that the religion goes through the mother to a certain extent, it is a matriarchal religion. A Jewish household works through the woman, and in fact the man has strictly the obligation for 500 some odd good deeds. A woman has only a handful, to keep a Jewish home and light the Sabbath candles. Her obligations are summed up so neatly and so clearly; it is an important obligation to maintain a Jewish household. This is considered so overwhelming in importance that a handful of obligations are more than a man's 500 obligations.

It is written in the Halacha, the written code of law, that a man must treat his wife well. A man has an obligation to return home as much as his profession allows. He is supposed to recognize and appreciate his wife and children. A man must treasure his wife. If she is to bear his children, he must make the bearing of them sweet. In relations between men and women, a man is supposed to treat the woman with respect.

We are supposed to respect all other religions. We are supposed to treat them with the same respect we'd want to be accorded. We are supposed to promote that if we have a day off due to religion, they have a day off. In my office, because others work on my Jewish holidays, I work their Christian holidays, and we actually set up extra time off around and surrounding Christian holidays, so that everyone enjoys their holidays. And again, it would be the same thing if I had a Muslim employee who practices Ramadan or celebrates the Eid holiday, or if a Hindu employee had Diwali celebrations.

Vinay Jain – Jain

I believe that gender equality is of course a social justice issue. Therefore, it's related to the work that I do. I interpret non-violence very broadly. That includes a lack of commercialism and consumerism, and non-violence to include a lack of racism and sexism. I think it promotes the idea of equality, but I think most religions would generally say they promote equality. Jainism also supports the idea of equality of all living things. It is pure vegetarianism and respect for the most living part of the plant. It promotes equality quite broadly. Jain families do not look or appear different than any other families and we often see, like in other families, the classic division of labour at home and the classic inequalities.

Eric Nguyen - Buddhist

In Buddhism we believe that everyone is equal. Of course, the goal of Buddhism is self-enlightenment, but the faith does recognize that there are differences and that not everyone is at the same level of enlightenment. However, everyone can reach the same goals, should they choose to. In my office, most of my staff members are female. Because of the fact that we believe in equality, we incorporate that concept into our practice, in the way that we treat our clients, our staff, other members in the profession, and also, judges.

Amina Sherazee - Muslim

In Canada, the Charter reinforces values that are consistent with most religions. Everyone is equal before God because God created us all equally. For me, that is not contradictory to my religion. However, I think religious institutions, not my faith or spiritual belief, are still grappling with the issue of gender equality in all spheres of existence, especially, the political sphere. Women are respected and held in high regard if they conform to the socially constructed image of a "good Muslim woman". To the extent that women deviate from this highly prescribed construction, they are often marginalized both within mainstream society and the traditional Muslim community. I think however, as a feminist who has studied gender equality in world religions, this is not restricted only to women in Muslim communities. When I say mainstream, I refer to the larger Canadian multicultural state and society that tends to essentialize "Muslims". The idea of a representative Muslim according to the Canadian state and institutions depends heavily on stereotypes. So, typically if the Canadian state or an institution wants Muslim representation, they generally seek out a person or organization that is very conservative and conforms to stereotypes. For example if they want a Muslim woman they will ask a woman who wears the hijab instead of one who does not because that is their idea of a "representative Muslim". In this way there is inequality between Muslims being perpetuated by the State, institutions and organizations.

Question 5 - Do you think there are heightened challenges for women or other members of your faith or spiritual community?

Anita Balakrishna - Hindu

I think there are. One problem is that we are often placed in social situations where we are not understood. We are asked where we are from or what religion we belong to. It is a problem to be identified because you are a member of a minority religion or a specific ethnic community or from a different cultural background, instead of being seen as a woman. I have often been asked to define myself because of my visibility.

I think Hindu practices are very individualistic and people practice in very different ways. Within, my Hindu community women are respected for being in the legal profession and for doing this kind of work. Hinduism is also a religion that values equality, justice and service to others. Since more and more women are getting involved in the legal profession, it is becoming a very respected profession for women in my community. The only challenge that I see is the expectations that women of my faith should be successful in their careers but also in looking after their families and being involved in the community.

Kiran Bhinder - Sikh

I don't think the challenges are any more particular or severe than the challenges that women face generally within the Western community itself, whether in the legal profession or any profession. I was speaking to other Sikh women friends and we feel that, at times, we are more disadvantaged because of our gender than our faith. So within the community itself, the Sikh faith very strongly teaches and practices equality of women, and we don't have any restrictions on our profession whatsoever.

John Borrows – Aboriginal

There are heightened challenges for Indigenous women in the legal profession. Many Aboriginal women lawyers are single mothers and they lack child-care support, appropriate mentorship and other support, and they experience a higher rate of poverty than others.

Doug Elliott– Christian

I think that the two groups that have the biggest challenge in Christianity are women and gay and lesbian people. Historically, there is a contradictory trend in Christianity. On the one hand, in the historic Catholic Church, the Virgin Mary was venerated as a very important figure, of equal and some might even say greater importance than Jesus Christ. The cult of Mary has historically been very important in the Catholic Church. On the other hand, the official veneration of this holy woman is contrasted with the very negative approach to the rights of women. In general they have been excluded from an important role in the Catholic Church, have had a very limited role, and had been told that in family life they are also supposed to have a very limited role. Although that remains a problem, it has improved in various denominations of Christianity. There is a historic legacy of gender inequality that I think all Christian churches have to overcome. Even for those who are more progressive Christians, we have to be conscious of the fact that that history is there in terms of how it can invisibly influence our own thinking which we have to overcome.

Historically, racism has not been a big issue within the Christian Church with the exception of those two strange exceptions, the Apartheid situation, where one branch of the Christian Church supported racism and the Southern United States Christians and segregation in the South. I was always taught that race was irrelevant to being a Christian. But the other aspect is the historic anti-Semitism that is a horrible legacy of Christianity. There was an appalling persecution of the Jews over the centuries. And I think as Christians we always have to work to overcome that stain on our faith and to reach out to our Jewish brothers and sisters, and -- because I have some Jewish ancestry myself, of which I'm very proud, I think it specially resonates with me.

Gays and lesbians have always been weak in the church, and historically, if they were gay and lesbians they were killed. That was the response of the church historically. What gays and lesbians historically were told, and are still told by some Christian churches, is that "You deserve to die," and that is the worst possible sin imaginable, and burning at the stake is the best way of dealing with it. In more modern times, now, the Catholic church, for example, no longer advocates burning at the stake for homosexuality, but it does say that we're inherently immoral, that the recognition of our relationship, the legal recognition of our relationships, is the legalization of evil, and that we are to be pitied. But not hated. And while violence is not to be encouraged against us, it's understandable that we are victims of violence, when we demand rights to which we have no right. Those kinds of statements I know are deeply offensive to many people including gay and lesbian Catholics.

Judith Holzman – Jewish

It is difficult for women. My class at law school was 23 per cent women. They didn't even have washrooms for us, they didn't know what to do with us. The associate dean

told us we were of no use on his football team. So that doesn't have to do with religion that has to do with gender. I think gender equality has come a long way since then. Based on religious precepts, we're taught to have pride in ourselves, so that we are obligated to make sure that others treat us with respect. So in a way, the religion is helpful in promoting gender equality. Because if you're told constantly that you have self-worth, you believe in your self-worth.

I think that there are heightened challenges for newcomers based on language difficulties and the fact that different religions may be less known here and therefore people are less respectful. For example, I can remember as a parent dealing with other parents when my children were small, little things that would make other people comfortable such as reassuring them that the meat was Halal that was going to be served at a party or a get- together. And you just quietly deal with peoples' needs.

Vinay Jain – Jain

Because it is predominantly an Indian religion, there are heightened challenges because we are a minority, not because of Jainism specifically. I think that there are the same challenges as any other group in our community. The challenges are the same as for any other minority groups in our community. For example, women still face the same difficulties within our religion as they do elsewhere notwithstanding the fact that Jainism is about non-violence. Gay or lesbian couples face the same challenges with the Jain faith as they would elsewhere. The writings and the practices are one thing, but the cultural institutions go back many centuries and are difficult to change.

Eric Nguyen - Buddhist

Not so much as far as gender issues are concerned because we believe in equality based on gender. The thing that I think is a challenge is the fact that most Buddhists, or at least people who practise Buddhism, tend to be poor because they believe in helping others, donating what they earn, looking out for other people. Because of their altruistic nature, they can't compete or at least get into law school where it's very demanding financially. I think that is one of the challenges to entering the profession. Actually, equity seeking groups all face different challenges. For example, because I am gay, one of the challenges is not so much financial. It is harder to get into law school if you belong to a minority group, such as being gay and being a member of a minority religious faith. I am a visible minority, I was not born in Canada, I was born in Viet Nam, I am gay and I am Buddhist. When I went to law school it was extremely difficult. There are challenges in being a lawyer. Being a sole practitioner is difficult, because I have to maintain a level of income to support my staff, everybody that is affiliated with me and myself. My religion, sexual orientation and ethnicity affect my practice. My Buddhist nature affects it in that I try to help people. I often offer pro bono services because I feel there is injustice and especially within the Vietnamese community, there is very few of us. There is more demand for services in the community than is available.

Amina Sherazee - Muslim

Yes, of course there are challenges and barriers, such as overcoming the patriarchal vestiges of white Canadian culture. There are challenges for same sex couples and gays and lesbians in the Muslim community. I think there remains inequality within the Muslim community between men and women and between rich and poor, which is no different

then our general society in Canada. For example, I feel that if I do not conform to a traditional, socially constructed, religiously sanctioned idea of "woman", I am a misfit or I am marginalized. So women who forge their own religious identity face the risk of rejection by mainstream society. Again this is also not uncommon for women in other religions. The challenge is not just for women but also for men to also break the mould that has been formed for them. It is a larger question of gender relations, not just women's equality. When we talk about women being equal to men – which men do we want them to be equal to, because no all men are equal. Therefore I think we need to frame the discussion of gender equality in Muslim communities as one of respect for the human rights and dignity of both sexes.

Question 6 - How can the legal system/profession assist members of your faith/spiritual community?

Anita Balakrishna - Hindu

The legal profession may assist members of my faith by accommodating and being aware of our differences. I mean by accommodating, respecting peoples' needs or beliefs and accommodating them in whatever way possible. For example, if someone is hosting a legal forum, there should be vegetarian or non-beef options available for people who are Hindu. Also, in terms of the legal system as a whole, it is important to be aware of our visibility, the problems associated with that, the fact that we are targeted or racially profiled or looked upon differently or judged because of our differences. Respecting the fact that members of the Hindu faith might see things differently than others, while being questioned in court and that our religion may have an impact on our answers.

Kiran Bhinder - Sikh

One of the concerns we have is the right for confirmed/initiated Sikhs to wear their articles of faith throughout Canadian society, not only in the courtrooms, but also when they are at schools or within the community. This is our freedom of religion. Also, other issues that I believe would be the same as any minority communities would be issues of access to justice, being part of the dialogue of the larger mainstream community toward initiating new policies. Increasing awareness and education for members of the community would be valuable.

John Borrows – Aboriginal

Aboriginal specific equity initiatives and support are of great assistance. For example, the establishment of the Aboriginal Issues Coordinator position at the Law Society has lead to tremendous increase in success and confidence among Aboriginal lawyers in Ontario. It has created an excellent, welcoming space and environment for Aboriginal peoples to overcome their struggles within the legal profession. There needs to be specific, targeted initiatives and space for Aboriginal peoples at law schools, law firms, the law society, etc.

Doug Elliott – Christian

There are structures that are there to help protect members of my faith community. I was involved in the same-sex marriage litigation, and the Ontario Court of Appeal ruled in our favour. That was a very physical example of the legal system protecting the members of my faith community. I think it's very encouraging that we have independent judges, and a Charter of Rights to protect people in my faith community.

In terms of the legal profession, the one thing that the legal profession could do is to encourage members of the legal profession to be respectful of various religious beliefs. Because the two dominant religious faiths in the legal profession historically have been Christianity and Judaism. A number of people in the legal profession are secular. Because of that, I think there is a perception that if you are a Jew or a Christian and a lawyer, then you are not religious. It would be nice if the profession tried to encourage more respectful and open-minded attitude. If somebody says, "Look, I can't work on or have a meeting with you on Sunday because I'm a Christian," don't cross-examine that person about it, or laugh at him or her.

Judith Holzman – Jewish

I think there has to be recognition that we're different. There are enough lawyers and judges, and senior people who don't practice my faith but are sensitive to the issues of my faith. We are established as a group. But there are other religions that are not as established and would benefit from assistance, for instance, the Aboriginal community. It's so hard for young lawyers in the Aboriginal community to break into the profession. I've listened to lectures by Aboriginal lawyers who were talking about how difficult it was to get accepted, to get jobs, to find jobs.

Vinay Jain – Jain

Respect for our dietary practices, such as providing more vegetarian food at functions. Otherwise, the legal profession has been accessible to me. There could be more accommodation to religious practices, such as when lawyers are fasting. In the Jain religion, we fast towards the end of the summer, and, sometimes people fast for up to seven days. I think more accommodation for those who fast and those who take time off for religious holidays would be appropriate. I think in Toronto people generally do accommodate different religions, but awareness of various religious practices is not as high in rural communities.

Eric Nguyen - Buddhist

One way to assist would be to do outreach with individuals from the Buddhist faith to consider the legal profession as a career. But maybe we could identify Buddhist lawyers and create networking opportunities. Perhaps we could create a scholarship to assist Buddhist students.

Amina Sherazee - Muslim

Accommodation and recognition of religious practices, such as significant days and prayer times is a basic equal entitlement, which Muslims are not afforded. On a more systemic and long-term level, the appointment of Muslim judges would give Muslims an opportunity to be included in the decision-making process. Currently, there are very few non-white judges within the judiciary of this country. It is understandable that Muslims are not treated equally within the judicial system. For example, Muslims often receive indefinite detentions and are often denied due process. The lack of racial representation in the judiciary is a real failure in the part of a multi-cultural state such as Canada. Having a representative bench would be extremely valuable for the community and for Canadian society as a whole.

Question 7 Are there any other observations you would like to make?

Anita Balakrishna - Hindu

Being a Hindu is not difficult because I do not have to wear specific clothing to identify myself to my religion. Only my beliefs, the fact that I am brown skinned and the fact that I am a vegetarian may affect how others perceive me. It is more about having my opinion respected and not looked down upon or treated as irrelevant.

Kiran Bhinder - Sikh

Because our community today is more global in the sense that we are a community of diversity, it would be very useful for legal professionals to be more aware and attuned to global issues, different community perspectives and different community values. This would enable lawyers to increase communication with their clients, understanding of their clients' perspectives and views, and especially issues concerning articles of faith. When you see a Sikh, you immediately see that the person is a Sikh because of that person's articles of faith. It is important to really understand beyond what these articles mean, and this incorporates the views of respect, and the dialogue and relationship between a client and a lawyer.

John Borrows – Aboriginal

Aboriginal legal traditions are a part of the law of Canada. They have been recognized by the courts and given contemporary force. These laws often have a spiritual basis. There needs to be greater recognition for these laws and a stronger affirmation of the spirit and intent of the treaties that give expression to these beliefs. Treaties are constitutional agreements that paved the way for the creation of Canada. More acknowledgement and education to the public and profession would assist in developing this respect. How many non-Aboriginal peoples know the rights they received from treaties in Ontario, and how promises to share land and resources are linked to the deeper spiritual beliefs of the land’s first inhabitants?

Doug Elliott – Christian

This initiative is very important, particularly with respect to anti-Semitism. I think there are two primary sources of anti-Semitism in our society, and we have to constantly struggle against them. One is the historical Christian anti-Semitism, which used to be awful. I've heard stories of Jewish friends who -- not in my generation, but my parents' generation, would hide inside on Good Friday because people would come out of church and they would be looking for Jewish people to beat up because they killed Jesus. And I think Christians have to be conscious of that history, and work hard to overcome it and be very sensitive to anti-Semitism. One of the things we did at our church after the recent anti-Semitic attacks in the cemeteries, was to put up a big sign encouraging people to buy Israel bonds. It was a small gesture. And the other more troubling source of anti-Semitism and one that is more recent is the anti-Semitism that arises out of the Middle-Eastern conflict and the tensions between Muslims and Jews. Which of course in the Middle East is just rife with violence by one side against the other. I think that's going to be an ongoing challenge for us in Canada. I was mortified about what happened with the burning of the Jewish school in Montreal, and the defacing of Jewish gravestones, and so on. It's just absolutely appalling. I like the famous saying from a pastor in Germany: "First they came for the communists and I didn't worry about it because I wasn't a communist. And then they came for the gypsies, and I wasn't worried because I wasn't a gypsy, and then they came for the Jews, and I didn't worry because I wasn't a Jew. And then they came for me, and there was nobody who cared about me." I think if we are going be, as the legal profession, committed to a rule of law and respect for minorities, we have to be vigilant about protecting all minorities and the rights of every single person. If for no other reason than in the long run, it's in our own self-interest. We all depend on the rule of law to protect the rights of every single person in this country.

Judith Holzman – Jewish

I think, as a group, lawyers have to be at the forefront of recognizing the rights of minority groups. And people of any particular minority group have to be sensitive to the needs of other minority groups. Since 9/11, there have been all kinds of issues relating to racial hatred. There are horrible stories about Muslim people being treated inappropriately because they are Muslim, or because they appear to be Muslim. Today, the hatred is against Semites, including Jews and Muslims. We are all Semites. We are cousin religions. Muslims and Jews are actually first cousins. You either have Abraham or Ibrahim, it's the same name.

Vinay Jain – Jain

I like the general principle of non-violence because I think there can be a lot of social justice analysis around that. Beyond that, the way people behave, the way Jains behave, I don't think is radically different than anyone else. We are vegetarian, but beyond that, the opposition to consumerism is not really followed. If people knew more about various religions and practices, they would respect people's beliefs and/or what they're doing. For example, during Ramadan, when Muslims fast, if people knew more about fasting, maybe they'd be a little bit more informed and try to accommodate it. Another example is the availability of a place to pray during Ramadan and sensitivity for

those who are fasting. Jainism is also concerned with lack of ego and that maybe difficult to reconcile with the practice of law.

Eric Nguyen - Buddhist

It would be very helpful to encourage those of the Buddhist faith to consider law as a career. I think it would help the profession as a whole to see an increase in the number of Buddhist lawyers.

Amina Sherazee - Muslim

There is still systemic racism within the institutions in this country. In addition to this, to be a Muslim in the post 9/11 climate is a challenge and the current laws make living as a Muslim immigrant or refugee very difficult. The invisibility of lawyers who work on social justice issues and deal with human rights and minority and religious rights is also an issue that needs to be addressed.

Biographies of Interviewees

Anita Balakrishna

Anita Balakrishna is Hindu and she is currently the lawyer at the South Asian Legal Clinic of Ontario, a legal clinic providing free legal services to low-income South Asians in the GTA. Ms Balakrishna completed her legal studies at Osgoode Hall Law School in Toronto, Ontario and went on to complete her articles with the Ontario Human Rights Commission. She was called to the Ontario Bar in July 2004. Ms Balakrishna's interests lie primarily in the area of immigration and refugee law, human rights law, welfare and income security issues, and improving access to justice.

Kiran Kaur Bhinder

Kiran Kaur Bhinder is a Sikh lawyer and works for Department of Justice Canada. She is currently providing litigation support as a member of the Government Counsel team for the Commission of Inquiry into the actions of Canadian officials in relation to Maher Arar. Ms. Bhinder completed her legal studies at the University of Ottawa Law School and went on to complete her articles with Department of Justice Canada in Ottawa, Ontario. She was called to the Ontario Bar in July 2003. She also writes in a weekly column in the Ottawa Citizen on the Sikh faith perspective on a variety of issues. Her current focus lies in criminal law, national security confidentiality claims, and legal policy work.

John Borrows

Professor Borrows is Anishinabe and a member of the Chippewa of the Nawash First Nation. He was appointed to the Faculty of Law at University of Victoria as Professor and Law Foundation Chair of Aboriginal Justice and Governance in 2001. Prior to joining the Faculty he taught at: the University of Toronto; the University of British Columbia as the Director of the First Nations Law Program; Osgoode Hall Law School as the Director of the Intensive Program in Lands, Resources and First Nations Governments; and, was a visiting professor at Arizona State University and Executive Director of the Indian Legal

Program. His research interests are in Aboriginal law, constitutional law, and natural resources/environmental law.

Doug Elliott

Doug Elliott is a Christian lawyer who graduated from the University of Toronto in 1982, and was called to the Bar of Ontario in 1984. He is certified as a Specialist in Civil Litigation. He is a partner with the firm of Roy Elliott Kim O'Connor LLP. Mr. Elliott is well known for his advocacy, writing and lecturing on equality rights and class actions. He is one of Canada's leading legal experts on HIV / AIDS. He has been honoured with the Lawyer of the Year Award from ARCH and the Canadian AIDS Society's Leadership award. Mr. Elliott has been before the Supreme Court of Canada on a number of occasions, where he represented the Canadian AIDS Society in *Canada v. Krever, Vriend v. Albert, Little Sisters Bookstore v. Canada* and *Regina v. Latimer*. Mr. Elliott was part of the counsel team in *Parsons v. Canada*, which secured a $1.5 billion settlement for persons contracting Hepatitis C through the blood supply. He represented the Metropolitan Community Church of Toronto in its successful equal marriage litigation for same-sex couples.

Judith Holzman

Judith Holzman is a Jewish lawyer called to the Bar in 1978. She has practiced in the area of family law since that time and has also taken mediation and collaborative law training. She has worked on the amendments to the *Family Law Act* and the *Divorce Act* to do with the right to religious divorce (removing the bars to re-marriage). She has also been involved extensively in the community with legal education, involving organizations as diverse as New Directions (now Family Services Association) and Council Fire. She has also been involved in legal education on radio, television and in print.

Vinay Jain

Vinay Jain is a Jain lawyer. He has been the staff lawyer at Dundurn Community Legal Services in Hamilton Ontario, since 2000. Mr. Jain attended the University of Ottawa and was called to the Bar of Ontario in 1996. From 1996 to 1997 he volunteered with the Hamilton Mountain Community and Legal Services and at ARCH. From 1997 to 2000, Mr. Jain offered free legal services to low income Ontarians as the staff lawyer at Renfrew County Legal Clinic. Mr. Jain has experience representing low income clients in areas of social assistance, housing, CPP, Workers Compensation, Criminal Injuries Board, Employment, and Human Rights.

Eric Nguyen

Eric Nguyen is a Buddhist lawyer who is in private practice in Mississauga. Mr. Nguyen attended Osgoode Hall Law School in Toronto and was called to the Bar in 2002. He completed his articles with Miller, Maki in Sudbury and is Currently the Chair of the Metro Chinese and Southeast Asian Legal Clinic, a legal clinic providing free legal services to low-income people of the Laoasian, Cambodian, Chinese and Vietnamese communities in the GTA. Although his areas of practice include Family, Real Estate and Corporate/Commercial, his interest and pro-bono work revolves around with Mental Health Law.

Amina Sherazee

Amina Sherazee is a Muslim lawyer who was called to the Bar in 2000, and practiced as a civil litigator until joining Downtown Legal Services at the University of Toronto, Faculty of Law in September of 2001. Her experience includes appearing before the federal and provincial courts and various administrative tribunals, including the IRB, the OLRB, Governing Council of University of Toronto and the Criminal Injuries Compensation Board. She also has a wide range of experience with community organizations and social justice groups including women's groups. She has acted as counsel for a number of organizations including CAF, CCMW and MCC. She supervises students handling immigration and refugee, employment, academic appeals and administrative law.

A man praying in a mosque in Kabul, Afghanistan.
UN Photo# 156490C

Photo taken from the United Nations website at http://www.un.org/av/photo/
UN/DPI Photo

CONVOCATION ROSE AT 4:25 P.M.

Confirmed in Convocation this 22nd day of September, 2005.

Treasurer