MINUTES OF CONVOCATION

Thursday, 25th January, 2007
9:00 a.m.

PRESENT:

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

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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REPORTS OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence presents the following candidates for Call to the Bar of Ontario:

(a) Bar Admission Course:

The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 25th, 2007:

| | |
|---|---|
| Pedro Martin Abadi | Bar Admission Course |
| Anita Abraham | Bar Admission Course |
| Sarah Adler | Bar Admission Course |
| Elizabeth Anne Allen | Bar Admission Course |
| Kari Dawn Allen | Bar Admission Course |
| Basil Clive Andrews | Bar Admission Course |
| Rania Ayoub | Bar Admission Course |

| | |
|---|---|
| Sang Joon Bae | Bar Admission Course |
| Devinder Singh Bath | Bar Admission Course |
| Talia Shahira Czapran Beauchamp | Bar Admission Course |
| Christina Lakshmi Beharry | Bar Admission Course |
| Kavita Vaidyanathan Bhagat | Bar Admission Course |
| Christa Dawn Big Canoe | Bar Admission Course |
| Nicole Amelia Blake-Matthews | Bar Admission Course |
| Todd Richard Branch | Bar Admission Course |
| Alana Susan Brooker | Bar Admission Course |
| Jeremy Steven Budd | Bar Admission Course |
| Sheldon James Cardinal | Bar Admission Course |
| Simmy Chauhan | Bar Admission Course |
| Rose Sagine Chéry | Bar Admission Course |
| Aimee Kathleen Colyer | Bar Admission Course |
| Jason James Conlin | Bar Admission Course |
| Michael Barry Dacks | Bar Admission Course |
| Deepesh Daya | Bar Admission Course |
| Marilyn Ramos De Guzman-Castro | Bar Admission Course |
| Philippa Joan Del Mar | Bar Admission Course |
| Prabir Kumar Dhar | Bar Admission Course |
| Gurbachan Singh Dhir | Bar Admission Course |
| Olivia Joan Eckersley | Bar Admission Course |
| Gholamreza Esmaili | Bar Admission Course |
| Verna Lynn George | Bar Admission Course |
| Timothy Joseph Girard | Bar Admission Course |
| Antonio Goduti | Bar Admission Course |
| Siok Yian Goh-Manzur | Bar Admission Course |
| Romain Valery M Gola | Bar Admission Course |
| Camille Patricia Gooden | Bar Admission Course |
| Adil Majid Goraya | Bar Admission Course |
| Alan William Gordon | Bar Admission Course |
| Dorota Irena Hagel | Bar Admission Course |
| Amanda Coralynn Heerschop | Bar Admission Course |
| Caryn Joanna Hirshhorn | Bar Admission Course |
| Christopher Brian Hynes | Bar Admission Course |
| Celia Helen Johnson | Bar Admission Course |
| Marie Sandra Joseph | Bar Admission Course |
| Henry Juroviesky | Bar Admission Course |
| Balvinder Kumar | Bar Admission Course |
| Lesa Monique Lawrence | Bar Admission Course |
| Paul Michael Lawson | Bar Admission Course |
| Young Dong Lee | Bar Admission Course |
| Darcy Nicole Legros | Bar Admission Course |
| Florendo Pascua Llameg | Bar Admission Course |
| Robert Daniel Lyons | Bar Admission Course |
| Charlie Xiao Tian Ma | Bar Admission Course |
| Kiran Ram Mathur | Bar Admission Course |
| Honor Elizabeth McAdam | Bar Admission Course |
| Thomas Scott McLorie | Bar Admission Course |
| Christine Sarah Mills | Bar Admission Course |
| Kimberly Dawn Muio | Bar Admission Course |

| | |
|---|---|
| Vayia Papanicolaou | Bar Admission Course |
| Saidaltaf Ibrah Patel | Bar Admission Course |
| Alison Elizabeth Payne | Bar Admission Course |
| Suzanne Marie Porter | Bar Admission Course |
| Pouneh Vossoughi Rahimi | Bar Admission Course |
| Martinus Raphael Maharaja | Bar Admission Course |
| Ryan Robert Rattray | Bar Admission Course |
| Maria Deanna Pa Santos | Bar Admission Course |
| Rajinder Singh | Bar Admission Course |
| Deborah Eliza Miriam Starkman | Bar Admission Course |
| Zoran Susak | Bar Admission Course |
| Steven Adam Szilagyi | Bar Admission Course |
| Robert Joseph Arthur Taillefer | Bar Admission Course |
| Sandeep Taneja | Bar Admission Course |
| Anita Taylor | Bar Admission Course |
| Andre Scheffler Thorsen | Bar Admission Course |
| Safiyya Vankalwala | Bar Admission Course |
| Usha Vasudevan | Bar Admission Course |
| Khanh Vu Duc | Bar Admission Course |
| Mark Emil Walli | Bar Admission Course |
| Sarah Gray Williams | Bar Admission Course |
| Claudine Natacha Wilson | Bar Admission Course |
| David Thomas Harold Wilson | Bar Admission Course |
| usan Gillian Wooles | Bar Admission Course |
| Anyuan Yuan | Bar Admission Course |
| Farah Zafar | Bar Admission Course |

(b) Transfer from another Province - Section 4

The following candidate has filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday January 25th 2007:

| | |
|---|---|
| Arthur Alan Hargrove | Province of British Columbia |

(c) Transfer from another Province - Section 4.1

The following candidate has filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday January 25th 2007:

| | |
|---|---|
| Christopher Kalee Assie | Province of Quebec |

(d) Full-Time Member of Faculty of Approved Ontario Law School

The following member of an approved law faculty, who has filed the necessary documents and complied with the requirements of the Law Society, asks to be Called to the Bar and admitted as a solicitor without examination, under sec. 5 of By-Law 11 made under the Law Society Act on Thursday January 25th 2007:

| | |
|---|---|
| Sébastien Grammond | University of Ottawa |

ALL OF WHICH is respectfully submitted

DATED this the 25th day of January 2007

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

The Director of Professional Development and Competence presents the following candidates for Call to the Bar of Ontario pursuant to By-Law 11, section 7:

(a) Transfer from another Province

The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 25th, 2007:

| | |
|---|---|
| James Alexander Angus | Province of British Columbia |
| Rhoda Ann Aylward | Province of Newfoundland |
| Ronald Dean Bell | Province of Alberta |
| Andrew James Burton | Province of British Columbia |
| Tanit Loraine Gilliam | Province of Manitoba |
| Meg Ellison Green | Province of Nova Scotia |
| Parvez Taher Khan | Province of Alberta |
| Anastasia Makrigiannis | Province of Nova Scotia |
| Jason Paul Joseph Miller | Province of Manitoba |
| Talman William Rodocker | Province of British Columbia |
| Andrew Charles White | Province of Nova Scotia |
| Angela Rachelle Woo | Province of British Columbia |
| Nicole Catherine Woodward | Province of British Columbia |
| Katherine Xilinas | Province of British Columbia |

(b) Transfer from another Province

The following candidates have successfully completed the transfer examinations, filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 25th, 2007:

| | |
|---|---|
| Catherine Marie Helen Lemay | Province of Quebec |
| Michael David Stern | Province of Quebec |

ALL OF WHICH is respectfully submitted

DATED this the 25th day of January 2007

It was moved by Ms. Pawlitza, seconded by Ms. Ross, that the Reports of the Director of Professional Development and Competence listing the names of the candidates for Call to the Bar be adopted.

Carried

CALL TO THE BAR (Convocation Hall)

The candidates listed in the Reports of the Director of Professional Development and Competence with the exception of Paul Michael Lawson were presented to the Treasurer and called to the Bar.

The Treasurer adjourned Convocation. [Mr. Swaye then presented the candidates to Justice Susan G. Himel to sign the rolls and take the necessary oaths.]

Convocation reconvened.

TREASURER'S REMARKS

The Treasurer announced that Marion Boyd has been named an appointed bencher to fill the vacancy created by the appointment of Paul Dray as a paralegal bencher.

The Treasurer extended condolences on behalf of Convocation to the families of The Honourable Michel Proulx who passed away on January 14th, and former Justice W. E. C. Colter who passed away on January 2nd.

The Treasurer reported on his activities since last Convocation.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Special Convocation of December 8, 2006 were confirmed.

MOTIONS – APPOINTMENTS

It was moved by Judith Potter, seconded by Paul Henderson,

THAT Marion Boyd be appointed to the Paralegal Standing Committee.

THAT Larry Banack be reappointed Chair of the Hearing Panel.

Carried

EQUITY AND ABORIGINAL ISSUES COMMITTEE/Comité sur léquité et les affaires autochtones Report

Mr. Copeland presented the Report of the Equity and Aboriginal Issues Committee.

Re: Bencher Election

Report to Convocation
January 25, 2007

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

Committee Members
Joanne St. Lewis, Chair
Paul Copeland, Vice-Chair
Marion Boyd
Richard Filion
Avvy Go
Holly Harris
Tracey O'Donnell
Mark Sandler

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on January 11, 2007. Committee members Joanne St. Lewis, Chair, Paul Copeland, Vice-Chair, Marion Boyd, Avvy Go, Holly Harris, Tracey O'Donnell and Mark Sandler participated. Bencher Carole Curtis and Milé Komlen, Chair of the Equity Advisory Group/Groupe consultatif en matière d'équité, participated in the discussion on the 2007 Bencher Election. Staff members Josée Bouchard, Katherine Corrick, Kevin Davies, John Matos, Marisha Roman, Rudy Ticzon and Sybila Valdivieso also participated.

FOR DECISION
BENCHER ELECTION 2007

MOTION

2. That Convocation

   a. impose campaign spending limits commencing in the 2011 bencher election.

   b. request that the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones develop a scheme to implement campaign spending limits and make recommendations to Convocation in 2007, for implementation in the 2011 bencher election.

   c. amend By-Law 5 – *Election of Benchers* to provide that, in the 2007 bencher election, the Law Society require candidates to report,

      i) campaign spending, including an estimate of campaign spending by any individual, law firm or organization acting on their behalf;
      ii) the value or their best estimate of goods and services provided in relation to their campaign; and
      iii) a list of endorsements and support received from organizations including non-solicited contributions where known.

   d. decide that the Law Society not provide the email addresses of members to candidates in the 2007 bencher election.
   e. decide that, beginning with the 2007 Member's Annual Report (the "MAR"), members be given the option to expressly permit the Law Society to allow the use of their email addresses for bencher election campaigning purposes.
   f. decide that the Law Society not provide candidates the option of using the mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region.

BACKGROUND

3. On October 26, 2006, a report was presented to Convocation recommending,

   a. that the Law Society not provide the email addresses of members to candidates in the 2007 bencher election; and

b. that the Law Society continue to provide candidates the option of using the mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. The cost of the labels and shipping ought to be borne by the candidates.

4. A number of benchers voiced their concern about the recommendation that the Law Society not provide email addresses of members to candidates in the 2007 bencher election. Some benchers were of the view that the matter is an equity issue, as the cost of sending campaign materials by mail is prohibitive and has a disproportionate impact on candidates who cannot afford it. Convocation did not vote on the recommendations, and the matter was referred to the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) for its consideration.

5. The Equity Advisor, in collaboration with the directors of the Policy and Tribunals, Information Systems and Communications and Public Affairs departments, spent a considerable amount of time and resources to identify ways to assist candidates in the 2007 bencher election. On November 27, 2006, the Committee considered a number of options and concluded that the status quo, which is to provide access to address labels but not to email addresses of electors, should be maintained for the 2007 bencher election. In addition, the Committee decided to recommend that, beginning with the 2009 Members Annual Report (the "MAR") and continuing every fourth year thereafter, the MAR provide members the option to expressly permit the Law Society to allow the use their email addresses for campaigning purposes. The 2009 MAR is filed in 2010, the year preceding the next bencher election in 2011. The Committee was of the view that providing access to campaign emailing would reduce the barriers faced by those who cannot afford the exorbitant costs of mailing campaign materials and would provide greater access to electors.

6. On December 8, 2006, Convocation considered the Committee's recommendations and referred the matter back to the Committee for further consideration. More specifically, benchers were of the view that,

   a. every reasonable effort should be made to level the playing field;
   b. candidates from rural areas of Ontario and small firms, and those who do not have high incomes cannot afford the cost of campaign promotion materials and mass mailing;
   c. the Committee should consider whether it is fair for the Law Society to make mailing lists and labels available to candidates;
   d. the Committee should consider whether campaign spending limits should be imposed;
   e. the Committee should consider how to address the issue of name recognition while increasing fairness in bencher election.

7. On January 11, 2007, the Committee considered a number of options to increase fairness in the bencher election process. This report provides a brief overview of factors that affect chances of success in bencher election, discusses the notion of fairness in the electoral process, outlines the assistance provided by the Law Society to attempt to level the playing field in bencher election, and presents the options considered by the Committee and the reasons in support of its motion to Convocation.

FACTORS THAT AFFECT CHANCES OF SUCCESS

8. This section provides a brief overview of factors that have influenced campaigning strategies and the likelihood of success in bencher election. It is clear that a number of candidates enter the election process with some advantage because they are incumbent benchers or because of factors such as name recognition or resources. Convocation is asked to take these factors into account when considering the Committee's motion.

9. In 2006, the Equity Initiatives Department interviewed elected benchers who represent a broad cross-section of the legal profession to identify factors that affect chances of success in bencher election.[1] The findings of the study indicated that name recognition, profile and visibility in the profession are important, but not the only factors, that assist in getting elected. A number of candidates already have a high profile in the legal profession and enter the election process with some name recognition advantage. Some candidates also have greater access to resources, financial or otherwise.

10. Our study also showed that it is important to campaigning to get the support of law firms, colleagues and law associations. Participants indicated that the most common method of communication was through mailing and emailing, followed by advertising in the Ontario Reports, Law Times and Lawyers Weekly. Mailing and emailing was done mostly with the assistance of law firms and law associations. Mailing letters and promotional materials was seen as an important component of campaigning, but also as the most costly.

11. Another factor that strongly influences the bencher election process is the increased likelihood of success of incumbent benchers. Of those elected in the 2003 bencher election, 73% were incumbents. Of those not elected in the 2003 bencher election, 9% were incumbents. There were 34 incumbent benchers who ran in the 2003 bencher election. Of the 34 incumbents, 29 (85%) were elected. Options that provide non-incumbents equal access to electors would likely enhance the fairness of the election process by allowing them to campaign and providing them with an opportunity to increase their name recognition. This is not as critical for incumbent benchers who are likely to benefit from name recognition and a profile because of their role as benchers.

12. Finally, Convocation should also take into account the fact that a number of candidates are lawyers in large law firms and are more likely to have access to large networks of lawyers and to resources, financial or otherwise. In the 2003 bencher election, ten of the

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[1] Half of the participants were elected inside Toronto and half were elected outside Toronto. Almost one-third of the participants were first elected in 2003, and slightly over one-third of the participants were first elected in the 1995 election. The rest of the group included benchers who were first elected in the 1987 or 1991 elections, and mid-term between 1999 and 2003. The interview group was comprised of almost sixty percent men and slightly over forty percent were women. Almost all participants were called to the Bar at least 20 years ago.

Sole practitioners and members of small firms (5 lawyers of less) made up two-thirds of the interview group. Participants who are partners in law firms (large and medium size firms) represented one-quarter of the group. Other participants were employed in government or in education.

102 (10%) candidates came from large firms (more than 100 lawyers). Of the 10 candidates from large firms, 8 were elected.

13. The Committee took these factors into account and its motion is designed to reconfigure the election process so that candidates with fewer advantages have equal campaigning opportunities.

14. This report is based on the current number of voters (34,616 voters).

FAIRNESS IN ELECTION PROCESS

15. Convocation is asked to adopt a scheme that would best enhance fairness in the bencher election. The issue of regulating election processes to increase fairness has been the topic of much debate in Canadian politics in the past 50 years, largely because of the advent of mass advertising and increasingly expensive political campaigning. Andrew Geddis, in an article in which he discusses third party election spending in the context of the federal electoral process, summarizes what is meant by fairness in electoral process:

> […] the ground rules for an election should be structured so as to prevent inequalities in wider society from overwhelming or distorting the presumptively egalitarian structure of the democratic process. In particular, the disparate spread of resources amongst the members of society at large may translate into vastly unequal abilities to participate come election time. The very possibility of such unequal participation undermines one of the key tenants of democracy – that the views and desires of each participant ought to count for as much, and only for as much, as those of any other. In order to prevent the electoral process from becoming skewed in this fashion, the ground rules that govern it should be designed to "level the playing field" between electoral participants.[2]

16. The objective of fairness in the political arena has been described as follows:

> Elections are fair and equitable only if all citizens are reasonably informed of all possible choices and if parties and candidates are given a reasonable opportunity to present their positions so that election discourse is not dominated by those with access to greater financial resources.[3]

17. Convocation is asked to refer to the concept of fairness as defined in the context of Canadian politics as a guiding principle in developing strategies to enhance fairness in the bencher election process. More specifically, when considering the motion brought forward by the Committee, Convocation may wish to consider whether the proposed scheme is likely to,

    a. create political equality in light of the fact that some candidates enter the bencher election process with some advantages, financial or otherwise;

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[2] Andrew Geddis, "Liberté, Égalité, Argent : Third Party Election Spending and the Charter" (2004) 42 Alta. L. Rev. 429.

[3] Colin Feasby, "*Libman v. Quebec (A.G.)* and the Administration of the Process of Democracy under the Charter: the Emerging Egalitarian Model" (1999) 44 McGill L .J. 5.

b. increase the chances that the legal profession as a whole will be informed of all possible choices;
c. provide reasonable opportunities to candidates to present their positions so that the election discourse is not dominated by those with access to greater financial resources.

LAW SOCIETY ASSISTANCE AND OTHER AVAILABLE ASSISTANCE

18. In an attempt to level the playing field for candidates in the bencher election, the Law Society provides assistance to candidates by publishing a *Voters' Guide* that contains a photograph of the candidate, biographical information and an election statement.[4] The Law Society sends out the *Voters' Guide* to all eligible members, posts the election statements and photographs on its website, and informs all eligible voters that the information is readily available on the website. Candidates may, in their election statement, make reference to their own website and provide the website address to access their website. Therefore, the *Voters' Guide* is one campaigning method that is not costly for candidates, may increase name recognition and provides a way for candidates to communicate their electoral platforms and provide information about their involvement and achievements in the legal profession.

19. Other than the election materials referred to in By-Law 5, there are no further rules relating to campaigning. Candidates may, in addition to the information provided by the Law Society about candidates, develop his or her own campaign materials and disseminate the materials by any means available to the candidate, including posting the material on his or her website and including the website address in the electoral statement. Candidates also have access, generally for a fee, to assistance provided by external organizations, as described in the Committee report to Convocation of December 8, 2006.

OPTIONS CONSIDERED BY THE COMMITTEE

20. In November, 2006, the Committee considered the following options to assist candidates in the 2007 bencher election: that the Law Society provide members' email addresses to candidates, that the Law Society send candidates' email campaign messages to eligible voters, that the Law Society continue to provide mail house services, that the Law Society contract a third party service provider to send emails to electors and that campaign rules be reformed.

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[4] The bencher election process is described in By-Law 5 – *Election of Benchers*. Section 12 of By-Law 5 provides as follows:

12. Candidates may submit the following materials along with his or her nomination form:
a. A photograph of the candidate that meets all specifications established by the Elections Officer;
b. A biographical note of not more than 120 words, including headings, titles and other similar parts of the statement, containing biographical information about the candidate;
c. A typed election statement of not more than 700 words, including headings, titles and other similar parts of the statement.

21. As mentioned above, the Committee decided to recommend to Convocation that the practice adopted in the 2003 bencher election (to provide mailing addresses but not email addresses of electors) should be maintained. Convocation did not vote on the recommendations but referred the matter back to the Committee for further consideration.

22. On January 11, 2007, the Committee considered the following options and brings forward the motion presented at paragraph 2 to Convocation for its approval:
    a. Set spending limits;
    b. Report campaign spending;
    c. Not provide access to emailing services for campaigning purposes, but provide members the option in the MAR to expressly permit the Law Society to allow the use their email addresses for bencher election campaigning purposes;
    d. Not provide access to address labels of electors;
    e. Prohibit campaigning.

23. The following outlines the Committee's arguments in favour of the motion to Convocation.

Set spending Limits

24. Benchers asked that the Committee consider whether the Law Society should impose spending limits on campaigning activities in an attempt to equalize the bencher election process.

25. A brief overview of the purpose behind regulating campaign spending limits in the Canadian electoral process is presented below, followed by some information about practices adopted by other law societies and regulatory bodies, arguments in favour and against the options considered by the Committee and the Committee's recommendations.

*Overview of spending limits in Canadian politics*

26. Although the electoral process in Canadian politics is quite different from the bencher election process, an overview of the regulation of campaign spending limits in Canadian politics shows that spending limits have been imposed in that context as an effective way of increasing fairness in the election process.

27. For example, in the 1974 *Election Expenses Act*, the federal government established a regime for the financing of federal elections in Canada, as a response to a growing concern over the political fundraising and the financing of parties and election campaigns. The main purpose of the legislation was to control election spending by parties and candidates in order to introduce some financial equivalency among candidates, and to encourage greater public confidence in the political and electoral process. Among other things, the Act imposed spending limits and provided for the disclosure of campaign expenses and contributions.[5]

[5] James R. Robertso*n, The Canadian Electoral System,* (Ottawa: Library of Parliament, 2004).

28. In 1997, the Supreme Court of Canada in *Libman v. Quebec (A.G.)*[6] recognized the validity of laws that impose campaign spending limits in the interest of fairness, and noted the following:

> The principle of electoral fairness flows directly from a principle entrenched in the Constitution: that of political equality of citizens. If the principle of fairness in the political sphere is to be preserved, it cannot be presumed that all persons have the same financial resources to communicate with the electorate. To ensure the right of equal participation in democratic government, laws limiting spending are needed to present the equality of democratic rights and ensure that on person's exercise of freedom to spend does not hinder the communication opportunities of others.

29. In 2003, Bill C-24, *An Act to Amend the Canada Elections Act and the Income Tax Act* ("Bill C-24) was enacted. In addition to addressing concerns about the level of spending by political parties, it was designed to reduce the dependence of political parties on big business and labour union contributions. Bill C-24 included limits on contributions by corporations and unions, limits on individual contributions, the extension of regulation to nomination and leadership campaigns, and enhanced public financing of the political system.[7]

30. In 2004, the Supreme Court of Canada reconsidered the issue of spending limits in *Harper v. Canada*[8] and found again that the objective of promoting electoral fairness provides a legitimate governmental reason to impose spending limits, in that case third party advertising expenses limits. The majority noted that Parliament could legitimately pursue the objective of establishing a fair electoral process that attempts to guarantee participants some measure of equal influence.

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[6] *Libman v. Quebec (A.G.)*, [1997] 3 S.C.R. 569 at para. 47. The Supreme Court of Canada considered the validity of provisions dealing with expenses incurred during a referendum campaign, including cost of goods or services to promote or oppose, directly or indirectly, an option submitted to a referendum. The Supreme Court struck down the provisions because they violated the freedom of expression and were too restrictive in that they came close to a total ban on individuals and groups who could not join or affiliate with national committees. However, the Supreme Court adopted the egalitarian model and justified spending and expression limits that mitigate the disproportional effects of wealth in the electoral process.

[7] Bill C-24 prohibits corporations, associations, and trade unions from making financial donations to registered political parties and leadership contestants. However, they may contribute an annual total of $1,000 to candidates, electoral district associations, and nomination contestants. In addition, individuals are not permitted to contribute more than $5,000 annually to registered parties, candidates, nomination contestants, or constituency association. The legislation permits individuals to also make a separate contribution of up to $5,000 to a leadership contestant of a registered party.

[8] [2004] S.C.C. 33. The Supreme Court notes that while the overarching objective of the third party advertising expense limits is electoral fairness, the more narrowly defined objectives are threefold: to promote equality in the political discourse, to protect the integrity of the financing regime applicable to candidates and parties, and to ensure that voters have confidence in the electoral process.

31. On December 12, 2006, Bill C-2 The *Federal Accountability Act* received Royal Assent and reforms the political financing rules in the *Canada Elections Act*. One goal of the Act is to ensure that influence cannot be bought through political donations, and to attempt to level the playing field by toughening the laws around the financing of political parties and candidates to reduce the opportunity to exert influence through large donations. Specifically, The *Federal Accountability Act* imposes a complete ban on contributions by corporations, unions, and organizations; lowers from $5,000 to $1,000 the annual limit on contributions an individual can make to a particular registered party and the annual limit on contributions an individual can make to the local entities of a particular registered party (candidates, nomination contestants, and district associations); lowers to $1,000 the contribution that a candidate, a nomination contestant, or a party leadership contestant can make to his or her own campaign; and makes it an offence to give or willfully receive a cash donation of more than $20.

32. Although the issue of spending limits in the federal electoral process may not appear to be relevant to bencher election, Convocation should note that the Supreme Court of Canada and Parliament have recognized the importance of imposing spending limits in the electoral process in order to promote electoral fairness.

33. Bill C-24 also changed the regulation of money in the Canadian political process by extending financial regulation to the nomination process.[9] The legislation required all candidates running for a party's nomination to register with Elections Canada, and all candidates who spent more than $1,000 in their nomination bid to file detailed accounts of contributions and expenditures. This new source of publicly collected data on nominations, which applied to the 2004 federal nomination contests, led to increased transparency and accountability in the nomination process. A study about the 2004 federal nomination contests in Canada[10] , presented to the Canadian Political Science Association in 2005, may be of interest to Convocation. The study considers whether candidates spent excessively on campaigning activities during the 2004 nomination contests. It concludes that, in the great majority of nomination cases, spending was not excessive and was well within established limits. Of the 1,252 individuals who ran for party nominations in 2004 and registered with Elections Canada, only 297 (23.7%) spent more than $1,000. On average, these candidates spent $5,413. The authors of the study indicate that the legislation, with its reporting requirements, has vastly increased the degree of transparency in nomination contests, notwithstanding the fact that the quality

[9] Citizens or permanent residents of Canada could contribute up to $5,000 in a calendar year to a registered political party and its registered electoral district associations, nomination contestants and candidates. A candidate for a party nomination could contribute up to a further maximum amount of $5,000 in support of his or her own candidacy. Corporations and trade unions were limited to $1,000 in total to a party, candidate, or nomination contestant in any calendar year. Any candidate spending more than $1,000 in their bid to win a nomination was obligated to file a financial disclosure report covering contributions and expenses associated with their campaigns.

[10] Munroe Eagles, Harold Jansen, Anthony Sayers, Lisa Young, "Financing Federal Nomination Contests in Canada – An Overview of the 2004 Experience", Paper prepared for presentation at the annual meeting of the Canadian Political Science Association, University of Western Ontario, London, Ontario, June 2-4, 2005.

of the data presented is not always accurate. The authors observe that spending limits were potentially meaningful in a small, but significant number of nomination contests. Spending limits varied by electoral district, but generally fell between $12,000 and $15,000. Only 36 of the 1,252 nomination contestants who registered with Elections Canada spent over $10,000.

34. In Ontario, the *Election Finances Act*[11] imposes spending limits, which include all expenses incurred by the candidate's campaign organization and any spending done by others on the candidate's behalf during the campaign period, particularly the constituency association. The candidate's spending limit is calculated at $1.08 times the number of electors in the candidate's electoral district. Campaign expenses are recorded and reported.[12] Spending in excess of the maximum set under the Act automatically results in a reduction of the amount of the campaign subsidy from the Chief Election Officer. In some cases it could also result in further penalties, such as fines or forfeiture of a person's seat in the Legislative Assembly.

35. In conclusion, spending limits have been used in the Canadian political sphere, including in the context of political nominations contests, as a way of promoting fairness in the electoral process. Regulating campaign spending has been recognized by the Supreme Court of Canada as an important and effective way of promoting fairness in electoral processes. In the context of party nominations contests, a 2005 study showed that spending was typically not excessive and well below the limit, but that the legislation vastly increased the degree of transparency in nomination contests.

*Spending limits imposed by other law societies or regulatory bodies*

36. Our research has not identified Ontario regulatory bodies or other law societies that have imposed spending limits on campaigning.

37. However, the Ontario College of Teachers has recently modified its election regulation to include a reporting requirement on those elected to Council. The purpose of the reporting requirement is to increase transparency in the electoral process. The amendments read as follows:

    a. Every person elected to the Council shall, within 30 days after being declared elected, provide the Registrar with a reporting setting out,

        i) the amount of money received in relation to the election;
        ii) the value of goods or services received in relation to the election; and
        iii) the sources of the money, goods or services referred to in the clauses above.

38. The Ontario College of Teachers held Council elections at the end of 2006. Therefore, the College does not yet have information about the effectiveness of the amendments and whether they will result in increased transparency in the election process.

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[11] R.S.O. 1990, C. E.7.

[12] For an overview of campaign expenses rules in Ontario, see http://www.electionsontario.on.ca/en/cp_guides_ef_campaign_en.shtml?printable.

*Arguments in favour and against imposing spending limits*

39. In discussing strategies to enhance fairness in the bencher election process, the Committee considered the following:

    a. whether to recommend spending limits in bencher election;
    b. the amount of the campaign spending limits that would most likely level the playing field.

40. In light of trends in Canadian politics to regulate campaigning activities in order to enhance transparency, accountability and fairness, Committee members were of the view that there is merit to imposing campaign spending limits in bencher election. Committee members believed that spending limits would enhance transparency, accountability and fairness in bencher election. Therefore, it also considered what amount would most likely enhance fairness. In doing so, it took the following factors into account.

41. There are presently 34,616 eligible voters. Some candidates only campaign in their regions. The number of eligible voters in each region is currently as follow:
    a. City of Toronto - 17,123;
    b. Northwest - 278;
    c. Northeast – 551;
    d. East - 4,721;
    e. Central East - 2,616;
    f. Central West - 2,293;
    g. Central South - 2,079;
    h. Southwest - 1,975;
    i. Outside Ontario - 2,980.

42. Campaign activities vary and the Committee considered that activities would approximately cost as follows:

    a. printing of promotional brochures - $5,000 to $10,000 for 35,000 brochures;
    b. printing of promotional letters - $4,000 to $6,000 for 35,000 letters;
    c. mailing of promotional materials – $20,000 if sent to 35,000;
    d. emailing of campaign message - $1,800 if sent to all voters;
    e. advertising in Ontario Reports, Lawyers Weekly or Law Times and others - $100 to $1,000 per advertisement;
    f. reception/cocktail and dinners to promote candidate - $1,000 to $5,000;
    g. development of a website - $1,000 to $2,000.

43. Some campaigning activities, more specifically mass mailing, are expensive and spending limits could help those who do not have the means to cover those costs. However, studies have indicated that the amount of spending limits should not be so low as to prevent candidates from communicating with the electors. Imposing spending limits that are too low could in fact assist incumbents to the detriment of those who do not

already have name recognition, or who have not had a platform to communicate with the electors.[13]

44. In considering the amount of spending limits, the Committee took into account findings that indicate that the most common and effective method of campaigning in bencher election is through mass mailing, emailing and advertisements in legal reports and newspapers. Mailing is the most expensive way of campaigning.

45. The Committee considered whether the following campaign spending limits would likely level the playing field:

a. $5,000;
b. $10,000; or
c. $25,000.

46. Members of the Committee did not reach a consensus about the amount of spending limits that would most likely enhance fairness and level the playing field. Most members indicated that this is a decision that is difficult to make in a vacuum, without further information about what candidates spend on their campaigns and the type of campaigning activities they undertake. Although there was consensus that the amount should not be so high as to have a disproportionate negative impact on those who cannot afford to spend on campaigning activities, and should not be so low as to prevent any campaigning activities, the Committee could not reach a consensus as to what that amount could be.

47. Some members were of the view that imposing spending limits of $5,000 would be appropriate. This amount would allow candidates to undertake limited campaigning activities, such as emailing, advertising online and advertising in legal publications. It would significantly limit the ability to do mass mailings and to prepare promotional brochures and letters. It was believed that candidates with limited access to resources are unlikely to spend more than $5,000 to campaign. It is also a limit that is likely to assist non-incumbents, those who do not already benefit from name recognition and those who do not have access to resources, by providing them with opportunities for campaigning through emailing and advertising, while restricting campaigning opportunities through mass mailing, which usually provides advantages to those who can afford such practices.

48. Other members of the Committee thought that a $10,000 spending limit might be more appropriate. It would increase the ability to mail campaign materials, but would probably not be enough to cover the development of a promotional brochure for all voters or for voters in the Toronto region, and/or do mass mailing to all eligible voters or to all eligible voters in the Toronto region. This spending limit was seen as not so high as to provide an unfair advantage to those in larger urban centres and larger firms.

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[13] Filip Palda , in “Desirability and effects of campaign spending limits”, (1994) 21 Crime, Law and Social Change, measures the influence of campaign spending on incumbent and challenger votes in Canadian federal elections. It is found that in the 1984 and 1988 Canadian federal elections, challengers could increase their vote share by spending but that incumbents could not. On this evidence, it is argued that spending ceilings may tilt the playing field in favour of incumbents.

49. The spending limit of $25,000 was considered but not fully discussed by the Committee. This spending limit would increase the ability to undertake mass mailing to most eligible voters and would to prepare promotional materials for distribution. However, this spending limit would likely be tantamount to maintaining the status quo, as it is presumed that most candidates spend less than $25,000 on campaigning for bencher election.

*Committee's recommendations*

50. Committee members are in favour of spending limits. However, the Committee noted that, if Convocation were to impose spending limits in a By-Law adopted on January 25, 2007, the By-Law would become effective only a few weeks prior to the close of nominations on February 9, 2007. In light of the fact that some candidates may already be preparing their campaigns and may already have incurred campaign expenses, Committee members were reluctant to recommend spending limits in the 2007 bencher election.

51. Committee members were also concerned that they did not have sufficient information about candidates' spending practices to make an informed decision about the amount of spending limits that would most likely level the playing field.

52. Therefore, the Committee decided to recommend that Convocation impose spending limits commencing in the 2011 bencher election. This would allow the Law Society to compile information about campaign spending and practices, design a spending limit scheme, and set the amount of spending limits that would most effectively enhance fairness.

53. Committee members also noted that, because benchers do not know whether they will be running in the 2011 bencher election and do not have a vested interest in that election, it is particularly appropriate for this Convocation to make policy decisions about electoral reform that would apply to the 2011 bencher election process.

54. Committee members were also adamant that the Law Society should begin designing the spending limit scheme well before the next election in 2011. In addition to recommending that Convocation impose spending limits commencing in the 2011 bencher election, it recommends that Convocation request the Committee to develop the spending limit scheme and make recommendations to Convocation in 2007, for implementation in the 2011 bencher election.

Reporting campaign spending

55. In light of the recommendation to develop a spending limit scheme for the 2011 bencher election, the Committee considered how best to compile information about campaign spending and activities. It recommends to Convocation that candidates be required to report their spending and/or campaigning activities 60 days following the 2007 bencher election.

56. As mentioned above, a similar practice has recently been adopted by the Ontario College of Teachers, and has been in place in the context of federal and provincial electoral processes.

57. The Committee was of the view that a mandatory reporting requirement would increase the accountability of the bencher election process; provide valuable information for future consideration of this issue; and assist in the development of a spending limit scheme for future bencher election.

58. The Committee discussed how it would define “campaign spending”. In Ontario, the *Election Finances Act* defines a "campaign expense" to be any expense incurred for goods or services in relation to an election by or on behalf of a political party, constituency association or candidate registered with the Chief Election Officer for use in whole or in part during the period beginning when the election is called and ending on polling day, and is deemed to include the value of any goods held in inventory or any fees or expenses for services for any candidate or political party, and any contribution of goods and services to the political party, constituency association or candidate registered with the Chief Election Officer.

59. Because bencher election differs significantly from federal or provincial elections, the following definition was considered by the Committee:

    a. Campaign spending is any expense incurred by an election candidate, or by anyone acting on his or her behalf, to promote his or her candidacy in the bencher election. Spending related to activities or services that are not of a partisan nature, such as child care expenses, travel and accommodation expenses and expenses incurred to accommodate a person on the grounds enumerated under the Ontario *Human Rights Code,* are not included.

*Committee’s recommendations*

60. The Committee decided to recommend that the Law Society require candidates to report

    a. campaign spending, including an estimate of campaign spending by any individual, law firm or organization acting on their behalf;
    b. the value or their best estimate of goods and services provided in relation to their campaign; and
    c. a list of endorsements and support received from organizations including non-solicited contributions where known.

61. The proposed parameters would encompass all campaign spending incurred not only by candidates, but also by their law firm or partners, family members, friends, colleagues and associations. It would not cover spending incurred by third parties without the knowledge or consent of the candidate.

62. The Committee considered how or whether the Law Society would monitor spending and other activities incurred by candidates or others on their behalf, and the sanction or penalties, if any, for not reporting.

63. As the purpose of the reporting requirement is to enhance accountability, and to compile sufficient information to develop an appropriate spending limit scheme for future bencher election, the Committee recommends that the reporting requirement be mandatory for all candidates in the 2007 bencher election within 60 days of the election. The 60-day timeline is meant to allow the Elections Officer to remind candidates, at the Convocation meeting following the election, of their reporting obligations. The information gathered in

the 2007 bencher election through mandatory reporting is meant to assist the Law Society in developing its spending limit scheme and it is not recommended that the reported information be made public. The Committee recommends that Convocation approve amendments to By-Law 5 – Election of Benchers, to include the reporting requirement as described above.

64. The Committee also considered whether it would, following the bencher election, conduct a survey of successful and unsuccessful candidates to identify factors, including equity-related factors and factors such as financial resources, that affect the experience of candidates during the election process. Members were of the view that such a survey would provide valuable information to the Law Society. The required resources to develop and conduct the survey would be minimal and would fall within the Equity Initiatives Department budget. No decision was made on this point.

Not provide access to emailing services for campaigning purposes, but provide members the option in the MAR to expressly permit the Law Society to allow the use of their email addresses for campaigning purposes

65. The Committee reconsidered whether the Law Society should provide campaign emailing services to candidates. Based on the advice provided by the Director of Information Systems, it decided that this option should not be recommended. However, the Committee strongly recommends that, beginning with the 2007 MAR, members be given the option to expressly permit the Law Society to allow the use of their email addresses for bencher election campaigning purposes.

66. As mentioned in previous reports on this issue, the 2004 Task Force on Spam created by Industry Canada outlines best practices for marketing email use, including the recommended practice that campaign or marketing emails should only be sent to recipients who have provided their express consent to receiving the information.[14] The MAR presently does not provide an option for members to expressly permit the Law Society to allow the use of their emails addresses for campaign purposes.[15]

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[14] *Stopping Spam - Creating a Stronger, Safer Internet* , available online at: http://www.e-com.ic.gc.ca/epic/internet/inecic-ceac.nsf/vwapj/stopping_spam_May2005.pdf/$file/stopping_spam_May2005.pdf

[15] The privacy option reads as follows:

> On occasion, the Law Society may provide members' names, business addresses and email addresses to professional legal associations, organizations and institutions (e.g. Ontario Bar Association, Ontario law schools) without charge, to facilitate the maintenance of mailing lists, and enhance communications with the profession, including information about programs, initiatives, products and services. You have the option to instruct the Law Society not to provide your name and business address to any professional association, organization or institution. Fill in the oval if you do not wish the Law Society to provide your name or business address to any professional legal association, organization or institution.

The MAR privacy option, as worded, only allows the Law Society to provide members' information to legal associations, organizations and institutions, and does not extend to the transfer or selling of email addresses to election candidates for the purpose of campaigning.

67. Because benchers indicated that emailing is an affordable and effective way of campaigning and they strongly encouraged the Law Society to identify strategies to facilitate campaign emailing by candidates, the Information Systems department of the Law Society contacted external service providers to identify ways in which it could provide emailing opportunities to candidates for campaigning purposes.

68. It determined that third party service providers have the capability, for a fee, to email members on behalf of the Law Society to request their express consent to receiving campaign emails. However, when such express consent is sought for marketing purposes, it is estimated that only approximately 5% to 10% of recipients consent to the use of their emails. Service providers have also indicated that, for the 2007 bencher election, the timelines are too tight to request the express consent of members and set up an effective emailing system that would allow candidates to send out, through a third party, campaign emails.

*Committee's recommendations*

69. On the advice of the Director of Information Systems, the Committee decided not to recommend that an emailing service be made available for the 2007 bencher election because,

    a. there is insufficient time to set up the system prior to the 2007 bencher election;
    b. the likelihood that a high proportion of members will expressly consent to receiving campaign emails is low.

70. As mentioned in its December 8, 2006 report to Convocation, the Privacy Option in the MAR is not tantamount to an express consent by members to receive campaigning emails.

71. In order to remedy this situation for future bencher election, the Committee decided on January 11, 2007 to strongly recommend to Convocation that it adopt the following:

    a. beginning with the 2007 MAR, members be given the option to expressly permit the Law Society to allow the use of their email addresses for bencher election campaigning purposes.

72. The Committee recommends that express consent be requested every year, commencing with the 2007 MAR, to provide the ability for the Law Society to compile statistical information about the proportion of members who agree to receive campaign emails. This will assist the Law Society in making informed decisions in 2011, and in future bencher election, about whether it should provide candidates with access to a campaign emailing service.

<u>Not</u> provide access to address labels of electors

73. Benchers have asked the Committee to consider, in an attempt to equalize campaigning opportunities, whether the Law Society should refrain from providing mailing labels of electors in the 2007 bencher election.

74. In considering this option, the Committee took into account the fact that, since the last bencher election in 2003, Canada Post has changed its rates and no longer provides bulk rates for mailings. It has now adopted a policy that allows individuals or organizations to apply to receive reduced mailing rates for what is called Admail. To qualify as Admail, items must bear a uniform message that promotes the sale or use of products or services, reports on financial performance primarily for promotional purposes or solicits donations or contributions. In order to qualify as a promotional mailing, or Admail, the intent of the mailing must motivate an individual to buy, acquire or use a product or service, or contribute to or support a cause. Canada Post has confirmed that election material and material related to voter notification and awareness does not qualify as Admail, but campaign materials could be considered promotional. To qualify for the reduced rate, candidates would have to apply for an Admail contract, provide a sample of the material and be assigned a customer account. The item being mailed would have to be processed by an approved processing plant located in Ottawa, London, Windsor, Toronto or Hamilton. Prices to send Admail vary, but can be as low as $0.37 for a letter of up to 50 grams.

75. As it is unlikely that candidates will have access to Admail rates for the purpose of campaigning, the following information is based on the standard Canada Post mailing rates. The costs for sending letter mail are as follows:

a. standard: 0 – 30 grams $0.51;
b. standard: 30 – 50 grams $0.89;
c. non-standard and oversize: 0 – 100 grams $1.05;
d. non-standard and oversize: 100 – 200 grams $1.78;
e. non-standard and oversize: 200 – 500 grams $2.49.

76. The Law Society contacted a mailing service provider to determine the cost of providing pressure sensitive address labels preprinted with the names and addresses of eligible voters. If such an option is provided to the candidates, they will be asked to agree in writing that the labels will be used for bencher election purposes only. The courier of the candidate's choice would ship the labels, but courier charges would be an additional cost to the candidate.

77. The following table represents the costs per region to purchase labels of electors and to forward a standard letter to electors. The costs do not include preparing and printing promotional materials and letters.

| Regions | Quantity | Cost for labels (including taxes) | Cost for mailing (@ $0.51) | Total |
|---|---|---|---|---|
| All eligible voters | 34,616 | $1,042.21 | $17,654.16 | $18,696.37 |
| City of Toronto | 17,123 | $528.97 | $8,732.73 | $9,261.70 |
| Northwest | 278 | $34.74 | $141.78 | $176.52 |
| Northeast | 551 | $42.75 | $281.01 | $323.76 |
| East | 4,721 | $165.10 | $2,407.71 | $2,572.81 |
| Central East | 2,616 | $103.33 | $1,334.16 | $1,437.49 |
| Central West | 2,293 | $93.85 | $1,169.43 | $1,263.28 |
| Central South | 2,079 | $87.58 | $1,060.29 | $1,147.87 |
| Southwest | 1,975 | $84.53 | $1,007.25 | $1,091.78 |

| | | | | |
|---|---|---|---|---|
| Outside of Ontario | 2,980 | $114.02 | $1,519.80 | $1,633.82 |

78. The Committee considered whether the Law Society should refrain from providing mailing addresses and labels to candidates in the 2007 bencher election, in light of the fact that a number of candidates cannot afford the exorbitant cost of mass mailing.[16] The Committee took into account information about the use of this service in the 2003 bencher election.

79. In 2003, the Law Society provided candidates with full mail house services, including printing and distribution of campaign material. In addition, the mailing house provided pressure-sensitive address labels of electors by region to candidates who requested them. Of the 102 candidates for bencher election in 2003, only 20 (20%) requested mailing labels. Of the 20 who ordered mailing labels, half were elected. Of those who ordered mailing labels, 9 ordered mailing labels for all eligible voters. Of those who ordered mailing labels for all eligible voters, 7 (78%) were elected. Five of the candidates who ordered mailing labels for all eligible voters were from firms of more than 100 lawyers and they were all elected. One was from the education or government sector and was not elected. Two came from medium size firms (over 5 lawyers and under 100 lawyers). One was elected and one was not elected. One was a sole practitioner and was elected.

80. Of the eleven candidates who ordered labels only for their region or for outside of Ontario, 9 (82%) did not get elected. Those who requested labels for their regions were all from firms of 10 lawyers or less, in education or in-house and all but one were from outside of Toronto.

81. Other than candidates who indicated that they speak more than one language, including French, candidates who ordered mailing labels did not self-identify as being a member of an equality-seeking, Francophone or Aboriginal community.

82. Of the candidates who ordered mailing labels, 11 were incumbent benchers. Of the 11 incumbent benchers, 7 (63%) were elected. Of the 9 who were not incumbent benchers, 3 (33%) were elected.

83. It appears from the information provided above that mailing labels have been particularly useful to candidates who request labels for all voters, and therefore can afford to mail out campaign information to all eligible voters. It also appears that those from large law firms and candidates from the Toronto region are much more likely to request mailing labels for all voters. Regional mailing labels have been requested by candidates in firms with less than 10 lawyers who run in regions outside of Toronto, and a number of those who have requested regional mailing labels were not elected.

[16] Although the membership varies for each regulatory body and law society, it should be noted that a number of regulatory bodies and law societies provide mailing lists to candidates, either for a fee or free of charge, including the College of Audiologists and Speech-Language Pathologists of Ontario, the College of Physicians and Surgeons, the College of Dental Surgeons, the Barreau du Québec and the Law Society of Manitoba.

84. Only a small percentage of candidates have taken advantage of this service and it appears that the service has successfully assisted those who can afford the exorbitant cost of mailing, mostly candidates in large firms and in Toronto, and has not successfully assisted candidates who have used the service outside of Toronto. It also appears that ordering mailing labels by those who were not incumbents only assisted a minority of candidates.

*Committee's recommendation*

85. The Committee recommends to Convocation that the Law Society not provide candidates the option of using the mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. More specifically, the Committee was of the view that most candidates did not take advantage of this service. A majority of those who used the service to communicate with the profession as a whole were already incumbent benchers or in large firms and already had opportunities to communicate their campaign messages. The others only ordered labels to communicate with electors in their regions and were generally not successful candidates. Offering that service may have a negative impact on lawyers in sole practices, in rural areas and those with lower incomes.

86. If Convocation decides that mailing labels of voters should not be made available to candidates, it should also refrain from providing other information about voters, such as lists of names of voters per region and lists of Francophone voters per region.

Prohibit campaigning

87. The Committee also considered whether all campaigning activities by candidates, other than the publication by the Law Society of the *Voters' Guide* in accordance with By-Law 5, should be prohibited. The Committee decided against recommending such an option to Convocation.

88. Campaigning activities was described to the Committee as activities undertaken by the candidate, or anyone acting on his or her behalf, to promote his or her candidacy in the bencher election. Campaigning activities could include sending or distributing promotional brochures or letters, campaign emails, campaign advertisements in legal publications, hosting receptions, cocktails and/or dinners to promote a candidate, placing campaign information on a website and making presentations to promote a candidate.

89. In an attempt to level the playing field for candidates in the bencher election, the Law Society adopted provisions in By-Law 5 to provide assistance to candidates by publishing an election booklet that contains a photograph of the candidate, biographical information and an election statement. Some could argue that the election booklet is one campaigning method that is not costly for candidates, may increase name recognition and provides a way for candidates to communicate their electoral platforms and provide information about the candidate's involvement and achievements in the legal profession.

90. However, our findings indicate that some candidates enter the election process with some advantage because they are incumbent benchers or because they already have name recognition and/or are from large law firms. This option could have the effect of disadvantaging non-incumbents and those who do not already benefit from name

recognition. Those candidates will likely need to campaign and to have access to the electors to communicate their messages and increase their name recognition.

FOR INFORMATION

ADVISING A CLIENT OF HER OR HIS FRENCH LANGUAGE RIGHTS IN THE JUDICIAL AND QUASI-JUDICIAL CONTEXT – INFORMATION ABOUT A LAWYERS' RESPONSIBILITIES

BACKGROUND

129. In May 2005, the Committee created the Working Group on French Legal Services. Josée Bouchard, Equity Advisor, coordinates the work of the Working Group. Members of the Working Group include members of the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG), representatives of the Association des juristes d'expression française de l'Ontario (AJEFO) and representatives of the Official Languages Committee of the Ontario Bar Association.

130. The Working Group's mandate is to,

a. develop resources for lawyers to inform them of the obligation to provide legal services in the French language;
b. develop resources for the Francophone community to inform the public of its right to receive legal services in the French language; and
c. develop a communication strategy.

131. The Working Group drafted the document entitled *Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context* (Appendix 1). The Working Group consulted with lawyers who are experts in the area of language rights, members of the AJEFO, members of the Official Languages Committee of the Ontario Bar Association, professors of the French Common Law Program of the University of Ottawa, and staff in the Professional Development and Competence Department, Professional Regulations unit and the Policy Secretariat.

132. The Committee approved the document in November 2006, and the Professional Regulations Committee considered the document in January 2007. The document will be translated into French and be made available on-line. A promotional/information brochure in French and English will also be developed and broadly disseminated to the profession. A communication strategy will be developed in collaboration with the French Common Law Program of the University of Ottawa and the AJEFO.

133. The document is aligned with a recommendation contained in the *Rapport sur les personnes diplômées du programme de common law en français de l'Université d'Ottawa*, which reads as follows :

a. We recommend to the provincial law societies that they conduct awareness campaigns among their members of the importance of access to legal services in French. A campaign of this kind, periodically renewed, could be easily set up with the provincial law associations, would be relatively inexpensive, and would serve to maintain a level of awarenees among the pracitioners, whether Anglophone or Francophone, of the right of Francophones to be served in their language and of the obligations related to this that appear in the Rules of Professional Conduct.

134. The document is also one of a number of model policies and resources produced by the Law Society to promote equality within the legal profession, in accordance with Recommendation 5 of the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*[1] which reads as follows:

a. 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.

EQUITY PUBLIC EDUCATION SERIES –2007

135. The schedule of Public Education Series events for 2007 is presented at Appendix 2.

Appendix 1

Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context

Information about Lawyers' Responsibilities

January 25, 2007

Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context

Information about the Lawyer's Responsibility

"Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the *Charter of the French Language* itself indicates, a means by which the individual expresses his or her personal identity and sense of individuality."

*Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712 at 748-749

Introduction

The mandate of the Law Society is to govern the legal profession in the public interest by upholding its independence, integrity and honour for the purpose of advancing the cause of justice and the rule of law. Canada is an officially bilingual (French/English) country and lawyers

[1] (Toronto: Law Society of Upper Canada, May 1997).

in Ontario have the responsibility to act in the public interest and, when appropriate, to advise their clients of their French language rights.

Constitutional law and quasi-constitutional law recognize English and French as the official languages of Canada and as having equal status in all institutions of the Parliament and government of Canada. In Ontario, legislation and case law recognize the right to proceed in French before most judicial, quasi-judicial and administrative tribunals. This right is particularly important to the Francophone community as it allows its members to defend themselves in their language and encourages them to continue making the necessary efforts to prevent assimilation. It also recognizes the important role played by the Francophone community in the history of this province.

In 2000, the Law Society of Upper Canada modified its *Rules of Professional Conduct*[2] to clarify lawyers' responsibilities in this area.

The objective of this document is to describe lawyers' responsibilities to advise their clients of their language rights, to discuss when and in what circumstances that responsibility applies, and to ensure that lawyers are aware of their responsibility in this respect.

This document is a guide to assist lawyers in understanding their responsibility to advise clients, where appropriate, of their language rights under the *Rules of Professional Conduct.* It is not a legal opinion and is not exhaustive. It is current to the date of publication, and all members should keep abreast of legislative and jurisprudential changes.

The document is divided as follows:

| | |
|---|---|
| Part I – | Responsibility under the *Rules of Professional Conduct* |
| Part II - | Constitutional and Quasi-Constitutional Language Rights |
| Part III - | Criminal Law |
| Part IV – | Languages of the Courts of Ontario |
| Part V - | Quasi-Judicial and Administrative Tribunals |
| Part VI- | Resources |

## Part I - Responsibilities under the *Rules of Professional Conduct*

*A Lawyer should advise a client who speaks French of his or her French Language Rights*

> "A lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario".
>
> Rule 1.03, *Rules of Professional Conduct*

[2] *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, 2000).

The commentary to Rule 1.03 describes circumstances in which it would be appropriate for a lawyer to advise a client who speaks French of French language rights in Ontario.

*Rules of Professional Conduct*

Rule 1.03 – Interpretation
Commentary

> A lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter, including where applicable
>
> (a) subsection 19 (1) of the *Constitution Act, 1982* on the use of French or English in any court established by Parliament,
>
> (b) section 530 of the *Criminal Code* about the right of an accused to a trial before a court that speaks the official language of Canada that is the language of the accused,
>
> (c) section 126 of the *Courts of Justice Act* that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and
>
> (d) subsection 5(1) of the *French Language Services Act* for services in French from Ontario government agencies and legislative institutions.[3]

Other laws and case law, not mentioned in the commentary to Rule 1.03, also recognize language rights of clients in the judicial and quasi-judicial context. For example, Part III of the *Official Languages Act*[4] specifies that English and French are the official languages of the federal courts, and any person may use those languages in any pleading in, or process issuing from, any federal court or administrative tribunal.

A tribunal or court has yet to interpret the commentary to Rule 1.03. Jurisprudence on language rights may assist in indicating where it would be appropriate for lawyers to inform clients of French language rights.

The Supreme Court of Canada, in a criminal matter, decided that the "language of the accused" is the official language to which that person has a sufficient connection. The accused must be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself. The test to determine whether the accused has a right to a trial in one or the other official language is whether the accused has sufficient knowledge of the official language to instruct counsel.[5]

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[3] Section 5(1) of the *French Language Services Act*, R.S.O. 1990, c. F-32, uses the following terminology: "A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule."

[4] *Official Languages Act,* R.S.C. 1985, c. 31 (4th Supp.).

[5] *R. v. Beaulac*, [1999] 1 S.C.R. 768.

It is in such circumstances that the responsibility to inform his or her client of French language rights would arise. The lawyer should be proactive in this respect, and if the client wishes to receive legal services in the French language, the lawyer should ensure that the client is served in French.

*Competency Includes the Capacity to Offer Services in the Official Language of the Client*

The *Law Society Act* confirms the Law Society's legislative authority to regulate competence. The *Law Society Act*[6] addresses incompetent performance and identifies circumstances in which a member of the profession fails to meet standards of professional competence for the purposes of the *Act*.[7]

Section 41 – *Law Society Act*

> Section 41 of the Act, stipulates that a member fails to meet standards of professional competence if,
>
> (a) there are deficiencies in,
> (i) the member's knowledge, skill or judgment,
> (ii) the member's attention to the interests of clients,
> (iii) the records, systems or procedures of the member's practice, or
> (iv) other aspects of the member's practice and
>
> (b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

The standards of professional competence defined in the *Act* are client-driven and focus on the quality of legal services provided to the clients. A lawyer may not be competent to act if he or she is unable to provide quality legal services in French to clients who have requested such services or appear to require such services. These services include understanding the client in his or her official language, ensuring that relevant documents and evidence in a file are provided in the official language of the client wherever possible.

Rule 2.01 (1) of the *Rules of Professional Conduct* defines a "competent lawyer". Rule 2.01(1) requires that the lawyer not only meet the described standard of competence, but maintain that competence in a rapidly evolving world. The requirements may be divided into five areas: knowledge, skills, communications, judgment and practice management.

*Rules of Professional Conduct*

Rule 2.01 - Competence

> 2.01 (1) In this rule,

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[6] *Law Society Act,* R.S.O. 1990, c. L. 8.

[7] Elizabeth Cowie, "The Lawyer and The Client" in the *48th Bar Admission Course Academic Phase*, *Professional Responsibility and Practice Management Reference Materials* (Toronto: Law Society of Upper Canada, 2005).

> *"competent lawyer"* means a lawyer who has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client including […]
>
> > (d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client; […]
> >
> > (h) recognizing limitations in one's ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served […]
>
> (2) A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.

The commentary to the obligation to be competent explains:

> "As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with legal matters to be undertaken on the client's behalf."

In order to fulfill this requirement, the communication must be effective for the client for whom it is intended.

A member who is incapable of effectively communicating with clients who request services, or who appear to require such services, in French may not have the "ability and capacity" to deal adequately with legal matters on behalf of the client.

The lawyer who offers services in the French language should have sufficient knowledge of the language, including sufficient knowledge of French common law terminology (as opposed to civil law), to competently act for the client. The lawyer should be able to,

- communicate effectively, orally and in writing, with the client;
- where applicable, effectively represent the client before courts, tribunals and/or quasi-judicial tribunals.

If a lawyer does not feel competent to undertake the matter for reasons described above, the lawyer should recognize his or her lack of competence for a particular task and the disservice that would be done to the client by undertaking the task. In such circumstances, the lawyer should either decline to act or obtain the client's instructions to retain, consult, or collaborate with a lawyer who is competent for that task.

*Discrimination Based on Language or Accent and Rule 5.04 of the Rules of Professional Conduct*

Rule 5.04 prohibits discriminatory conduct and imposes a special responsibility on lawyers to treat clients and colleagues equally and without discrimination. Although language is not an enumerated ground of discrimination, discriminatory conduct based on a person's language or

accent may be a violation of the *Ontario Human Rights Code*[8] under a number of related grounds, such as ancestry, ethnic origin, place of origin and race.[9]

As the rule requires lawyers to respect the requirements of human rights laws in Ontario, discrimination by a lawyer against another lawyer, articled student, or any other person or in professional dealings with other members of the profession or any other person, because he or she speaks French or has an accent when speaking English, may offend the rule.

*Rules of Professional Conduct*

Rule 5.04 – Discrimination

> A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship […] with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other members of the profession or any other person.

## Part II - Constitutional and Quasi-Constitutional Language Rights

> "Equality does not have a lesser meaning in matters of language. With regard to existing rights, equality must be given true meaning. This Court has recognized that substantive equality is the correct norm to apply in Canadian law. Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada."
>
> R. v. Beaulac, [1999] S.C.R. 768

There are constitutional and quasi-constitutional rights to use the French language in certain courts and tribunals across Ontario. Where appropriate, a lawyer should advise his or her clients of those rights.

Under section 133 of the *Constitution Act, 1867*[10] , subsection 19(1) of the *Charter of Rights and Freedoms*[11] , and Part III of the *Official Languages Act*[12] , the use of the French language is guaranteed in the courts created by the federal Parliament. Provincial and superior courts in Ontario and provincially appointed administrative tribunals are not subject to those provisions.

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[8] Ontario *Human Rights Code* R.S.O. 1990, C. H-19.

[9] *Policy on Discrimination and Language* (Toronto: Ontario Human Rights Commission, 1996).

[10] *Constitution Act, 1867,* (U.K.) 30 & 31 Victoria Vict. C. 3.

[11] *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [the *Charter of Rights*].

[12] *Official Languages Act, supra* note 6.

However, other laws noted below guarantee the right to use the French language in most courts in Ontario and lawyers should be knowledgeable of these rights.

*Constitution Act, 1867*

Section 133 – Use of French and English Languages

> Either the English or the French Language may be used by any person […] or in any pleading or process in or issuing from any Court of Canada established under this Act […].

*Charter of Rights and Freedoms*

Subsection 19 (1) – Proceedings in Courts Established by Parliament

(1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

*Official Languages Act*

Section 14 – Official Languages of Federal Courts

> English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court.

*"Federal Court" Defined to Include Federal Administrative Tribunals*

Subsection 3(2) of the *Official Languages Act* interprets "federal court" to mean "any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament."

The Supreme Court of Canada has defined the terms "Court of Canada", "court established by Parliament" and/or "federal court" broadly to encompass any federal institution that, by virtue of its organic statute, holds the authority to judge matters affecting the rights or interests of the individual and applies the principles of law. Federal courts are judicial tribunals like the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada, and administrative tribunals performing quasi-judicial functions, such as the Immigration and Refugee Board, the Canadian Human Rights Tribunal and the Copyright Board Canada.[13]

"Federal courts" include :[14]

- Supreme Court of Canada;
- Federal Court of Appeal of Canada;
- Federal Court of Canada;
- Tax Court of Canada;

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[13] *Official Languages Act* - Annotated Version

[14] Vanessa Gruben, "Bilingualism and the Judicial System" in Michel Bastarache, ed., *Language Rights in Canada,* 2nd edition (Cowansville: Les éditions Yvon Blais, 2004) at 157-158.

- Court Martial Appeal Court.

According to the Commissioner of the Official Languages, federal tribunals subject to the *Official Languages Act* also include:

- Board of Arbitration and Review Tribunal;
- Canada Industrial Relations Board;
- Canadian Artists' and Producers' Professional Relations Tribunal;
- Canadian International Trade Tribunal;
- Canadian Radio-Telecommunications Commission;
- Competition Tribunal;
- Copyright Board;
- Canadian Human Rights Tribunal;
- National Energy Board;
- National Parole Board;
- National Transportation Agency;
- Immigration and Refugee Board;
- Pensions Appeal Board.

The phrase "any person" includes :[15]

- An individual;
- A corporation;
- A litigant;
- A counsel;
- Witnesses;
- Members of juries;
- Judges;
- Other court officers.

*What are your Clients' Constitutional and Quasi-Constitutional Language Rights?*

Closely linked to the constitutional language rights provided by the *Constitution Act, 1867* and the *Charter of Rights*, the *Official Languages Act* is the focal piece of legislation enacted to protect language rights in Canada. Its preamble notes "Whereas the Constitution of Canada provides for full and equal access to Parliament, to the laws of Canada and to courts established by Parliament in both official languages". The purpose of the *Official Languages Act* is threefold, to

> (a) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;
> (b) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and
> (c) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

[15] *Ibid.*at 159.

Since its decision in the 1986 criminal case of *R. v. Beaulac,* the Supreme Court of Canada has adopted a purposeful and broad interpretation of language rights. In that decision, the Honourable Justice Bastarache states the following:

> The fear that a liberal interpretation of language rights will make provinces less willing to become involved in the geographical extension of those rights is inconsistent with the requirement that language rights be interpreted as a fundamental tool for the preservation and protection of official language communities where they do apply. Language rights are a particular kind of right, distinct from the principles of fundamental justice. They have a different purpose and a different origin. When s. 530 of the *Criminal Code* was promulgated in British Columbia in 1990, the scope of the language rights of the accused was not meant to be determined restrictively. The amendments were remedial and meant to form part of the unfinished edifice of fundamental language rights.[16]

Part III of the *Official Languages Act* imposes obligations on the government that are not included in either the *Constitution Act, 1867* or the *Charter of Rights and Freedoms*. For example, Part III provides the following:

- the duty on every federal court to ensure that a person giving evidence be heard in the official language of his or her choice;
- the duty on every federal court at the request of any party to the proceedings, to make available simultaneous interpretation of the proceedings, including evidence given and taken;
- the duty on every federal court other than the Supreme Court of Canada, to ensure that every judge or other officer who hears the proceedings is able to understand the official language of the proceeding without the assistance of an interpreter. If both languages are the languages of the proceeding, the judge or other officer must understand both languages without the assistance of an interpreter.

Part III Administration of Justice

*Official Languages Act*

14. English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court.

15. (1) Every federal court has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in the official language of his choice, and that in being so heard the person will not be placed at a disadvantage by not being heard in the other official language.

(2) Every federal court has, in any proceedings conducted before it, the duty to ensure that, at the request of any party to the proceedings, facilities are made available for the simultaneous

[16] *R. v. Beaulac, supra* note 7 at para. 25.

interpretation of the proceedings, including the evidence given and taken, from one official language into the other.

(3) A federal court may, in any proceedings conducted before it, cause facilities to be made available for the simultaneous interpretation of the proceedings, including evidence given and taken, from one official language into the other where it considers the proceedings to be of general public interest or importance or where it otherwise considers it desirable to do so for members of the public in attendance at the proceedings.

16. (1) Every federal court, other than the Supreme Court of Canada, has the duty to ensure that

> *(a)* if English is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand English without the assistance of an interpreter;
>
> *(b)* if French is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand French without the assistance of an interpreter; and
>
> *(c)* if both English and French are the languages chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand both languages without the assistance of an interpreter.

(2) For greater certainty, subsection (1) applies to a federal court only in relation to its adjudicative functions.

(3) No federal court, other than the Federal Court of Appeal, the Federal Court or the Tax Court of Canada, is required to comply with subsection (1) until five years after that subsection comes into force.

17. (1) The Governor in Council may make any rules governing the procedure in proceedings before any federal court, other than the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court or the Tax Court of Canada, including rules respecting the giving of notice, that the Governor in Council deems necessary to enable that federal court to comply with sections 15 and 16 in the exercise of any of its powers or duties.

(2) Subject to the approval of the Governor in Council, the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada may make any rules governing the procedure in their own proceedings, including rules respecting the giving of notice, that they deem necessary to enable themselves to comply with sections 15 and 16 in the exercise of any of their powers or duties.

18. Where Her Majesty in right of Canada or a federal institution is a party to civil proceedings before a federal court,

> *(a)* Her Majesty or the institution concerned shall use, in any oral or written pleadings in the proceedings, the official language chosen by the other parties unless it is established by Her Majesty or the institution that reasonable notice of the language chosen has not been given; and

*(b)* if the other parties fail to choose or agree on the official language to be used in those pleadings, Her Majesty or the institution concerned shall use such official language as is reasonable, having regard to the circumstances.

19. (1) The pre-printed portion of any form that is used in proceedings before a federal court and is required to be served by any federal institution that is a party to the proceedings on any other party shall be in both official languages.

(2) The particular details that are added to a form referred to in subsection (1) may be set out in either official language but, where the details are set out in only one official language, it shall be clearly indicated on the form that a translation of the details into the other official language may be obtained, and, if a request for a translation is made, a translation shall be made available forthwith by the party that served the form.

20. (1) Any final decision, order or judgment, including any reasons given therefore, issued by any federal court shall be made available simultaneously in both official languages where

*(a)* the decision, order or judgment determines a question of law of general public interest or importance; or

*(b)* the proceedings leading to its issuance were conducted in whole or in part in both official languages.

(2) Where

*(a)* any final decision, order or judgment issued by a federal court is not required by subsection (1) to be made available simultaneously in both official languages, or

*(b)* the decision, order or judgment is required by paragraph (1)(a) to be made available simultaneously in both official languages but the court is of the opinion that to make the decision, order or judgment, including any reasons given therefor, available simultaneously in both official languages would occasion a delay prejudicial to the public interest or resulting in injustice or hardship to any party to the proceedings leading to its issuance, the decision, order or judgment, including any reasons given therefor, shall be issued in the first instance in one of the official languages and thereafter, at the earliest possible time, in the other official language, each version to be effective from the time the first version is effective.

(3) Nothing in subsection (1) or (2) shall be construed as prohibiting the oral rendition or delivery, in only one of the official languages, of any decision, order or judgment or any reasons given therefore.

(4) No decision, order or judgment issued by a federal court is invalid by reason only that it was not made or issued in both official languages.

Any person may use either English or French in any pleading or process issuing from any federal court. Written pleadings include allegations by parties appearing for the applicant and the respondent, oral pleadings, memorandums and briefs. Section 18, however, does not cover evidence given in connection with written pleadings, since witnesses may testify in the official language of their choice.

*The Supreme Court of Canada*

Section 11 of the *Rules of the Supreme Court*, [SOR/2002-156], provides for the use of English or French in communications before the Court.

*Rules of the Supreme Court*

*Official Languages*

11. (1) A party may use either English or French in any oral or written communication with the Court.
(2) Subject to subrule (3), the Registrar shall provide to the parties services for simultaneous interpretation in both official languages during the hearing of every proceeding.
(3) In the case of a motion to be heard by a judge or the Registrar, the Registrar shall provide the services referred to in subrule (2) upon request of any party to the motion, made at least two days before the hearing of the motion.

Part III - Criminal Law

"Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada."[17]

Most language rights protections in the *Criminal Code*[18] are set out in Part XVII – Language of Accused, section 530 and 530.1, Part XXVIII – Miscellaneous, and subsection 849(3) of the Criminal Code.

Section 530 sets out the conditions for granting an application by an accused for a judge or a jury who speak the official language of the accused. Section 530.1 enumerates the rights to which an accused is entitled once a section 530 order has been rendered.

*Criminal Code*

Section 530 – Language of Accused

(1) On application by an accused whose language is one of the official languages of Canada, made not later than

*a)* the time of the appearance of the accused at which his trial date is set, if

[17] Principle adopted in the criminal law case of *R. v. Beaulac*, *ibid.*, reiterated by the Supreme Court of Canada in the context of the New-Brunswick *Official Languages Act,* S.N.B. 2002, c. 0-0.5 (see *Charlebois* v. *City of Saint John*, [2005] 3 S.C.R. 563).

[18] *Criminal Code,* R.S.C. 1985, c. C-46.

(i) he is accused of an offence mentioned in section 553 or punishable on summary conviction, or

(ii) the accused is to be tried on an indictment preferred under section 577,

*(b)* the time of the accused's election, if the accused elects under section 536 to be tried by a provincial court judge or under subsection 536.1 to be tried by a judge without a jury and without having a preliminary inquiry, or

*(c)* the time when the accused is ordered to stand trial, if the accused

(i) is charged with an offence listed in section 469,
(ii) has elected to be tried by a court composed of a judge or a judge and jury, or
(iii) is deemed to have elected to be tried by a court composed of a judge and jury,

a justice of the peace, provincial court judge or judge of the Nunavut Court of Justice shall grant an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak the official language of Canada that is the language of the accused or, if the circumstances warrant, who speak both official languages of Canada.

(2) On application by an accused whose language is not one of the official languages of Canada, made not later than whichever of the times referred to in paragraphs (1)(a) to (c) is applicable, a justice of the peace or provincial court judge may grant an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak the official language of Canada in which the accused, in the opinion of the justice or provincial court judge, can best give testimony or, if the circumstances warrant, who speak both official languages of Canada.

(3) The justice of the peace or provincial court judge before whom an accused first appears shall, if the accused is not represented by counsel, advise the accused of his right to apply for an order under subsection (1) or (2) and of the time before which such an application must be made.

(4) Where an accused fails to apply for an order under subsection (1) or (2) and the justice of the peace, provincial court judge or judge before whom the accused is to be tried, in this Part referred to as "the court", is satisfied that it is in the best interests of justice that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the official language of Canada that is the language of the accused or, if the language of the accused is not one of the official languages of Canada, the official language of Canada in which the accused, in the opinion of the court, can best give testimony, the court may, if it does not speak that language, by order remand the accused to be tried by a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak that language or, if the circumstances warrant, who speak both official languages of Canada.

(5) An order under this section that an accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the official language of Canada that is the language of the accused or the official language of Canada in which the accused can best give testimony may, if the circumstances warrant, be varied by the court to require that the accused

be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak both official languages of Canada.

The leading authority regarding the rights of the accused under section 530 is the Supreme Court of Canada decision in *R. v. Beaulac* [19], which confirmed that subsection 530(1) confers upon the accused an absolute right, upon timely application, to be tried in his or her official language. The following provides an overview of the conclusions in *R. v. Beaulac.*

Trial in official language

- In order to be tried in the official language of his or her choice, the accused must assert his or her official language by bringing forward an application within the timelines established in section 530 of the *Criminal Code,* with some exceptions.

- The "language of the accused" is the official language to which the accused has a sufficient connection. The accused must be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself. The test to determine whether the accused has a right to a trial in his or her official language is whether the accused has sufficient knowledge of the official language to instruct counsel.[20]

- The accused has a right to a trial in the official language of his or her choice even if the language chosen is not the dominant language. The ability of the accused to speak the other official language is also not relevant.

- An absolute right to a trial in one's official language exists, provided the application is made in a timely manner.[21] The application must be made within delays established in paragraphs 530(1) a), b) and c), which vary with the type of infraction. When the accused fails to apply for an order and it is in the best interest of justice to make an order, the tribunal has the discretion to order the trial of an accused in the official language of his or her choice.

Application in a "timely manner" [22]

- An accused has automatic access to a trial in one's official language when an application is made in a timely manner (within the delays established in section 530 (1) a), b) and c)). When the application is not timely, the judge has the discretion to order the trial in the official language of the accused. In exercising his or her discretion, the judge should consider factors to determine the reasons for the delay. The following questions will be considered:
  - when the accused was made aware of his or her right?
  - whether he or she waived the right and later changed his or her mind?
  - why he or she changed his or her mind?

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[19] *R. v. Beaulac, supra* note 7

[20] See *R. v. Beaulac, ibid.*

[21] See *R. v. Beaulac, ibid.* .

[22] Interpreted in *R. v. Beaulac, ibid.*

- whether it was because of difficulties encountered during the proceedings?

· Once the reason for the delay has been examined, the trial judge should consider a number of factors that relate to the conduct of the trial, such as,
  - whether the accused is represented by counsel;
  - the language in which the evidence is available;
  - the language of witnesses;
  - whether a jury has been empanelled;
  - whether witnesses have already testified;
  - whether they are still available;
  - whether proceedings can continue in a different language without the need to start the trial afresh;
  - the fact that there may be co-accuseds (which may indicate the need for separate trials);
  - changes of counsel by the accused;
  - the need for the Crown to change counsel; and
  - the language ability of the presiding judge.

· Mere administrative inconvenience is not a relevant factor. The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling should not be considered.

Bilingual proceedings

· The accused may also have the right to a bilingual proceeding in some circumstances, such as ,

  - where counsel for the accused speaks only one official language and speaks a different language than the accused; or
  - where the official language of the accused is different from the majority of the witnesses.

Accused whose language is not French or English

· An accused whose language is not French or English may apply for an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, who speak the official language in which the accused, in the opinion of the justice or provincial court judge, can best give testimony or, if the circumstances warrant, who speak both official languages.

Self-represented accused

· A judge or justice of the peace must inform a self-represented accused of the right to choose French or English as the language for the preliminary inquiry and trial.

*Criminal Code*

Section 530.1 – Rights of Accused when Order Granted under Section 530

Where an order is granted under section 530 directing that an accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the official

language that is the language of the accused or in which the accused can best give testimony,

*(a)* the accused and his counsel have the right to use either official language for all purposes during the preliminary inquiry and trial of the accused;

*(b)* the accused and his counsel may use either official language in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial of the accused;

*(c)* any witness may give evidence in either official language during the preliminary inquiry or trial;

*(d)* the accused has a right to have a justice presiding over the preliminary inquiry who speaks the official language that is the language of the accused;

*(e)* except where the prosecutor is a private prosecutor, the accused has a right to have a prosecutor who speaks the official language that is the language of the accused;

*(f)* the court shall make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial;

*(g)* the record of proceedings during the preliminary inquiry or trial shall include

(i) a transcript of everything that was said during those proceedings in the official language in which it was said,

(ii) a transcript of any interpretation into the other official language of what was said, and

(iii) any documentary evidence that was tendered during those proceedings in the official language in which it was tendered; and

*(h)* any trial judgment, including any reasons given therefore, issued in writing in either official language, shall be made available by the court in the official language that is the language of the accused.

Where an order is granted under section 530, section 530.1 applies. It provides as follows:

<u>Written pleadings or documents</u>

- The accused and his or her counsel have the right to use either official language for all purposes during the preliminary inquiry and trial of the accused, in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial.

<u>Witnesses</u>

- Any witness may give evidence in either official language during the preliminary inquiry or trial.

<u>Interpreters</u>

- The court must make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial.

<u>Judgement</u>

- Any trial judgment, including any reasons given for it, issued in writing must be in either official languages and made available by the court in the official language of the accused.

<u>Judges, juries, prosecutors and other court staff</u>

- Judges, juries, prosecutors (except where the prosecutor is a private prosecutor) and other court staff must be available in either official language.

Subsection 849(3) of the *Criminal Code* also provides that any pre-printed portions of a form set out in Part XXVIII of the *Code*, such as warrants and summons, will be printed in both official languages.

Part IV –Languages of the Courts of Ontario

> "If linguistic duality were a person, today it would be an adult who communicates with others, participates in the democratic process, and cherishes tolerance and diversity; who travels, having acquired experience that is, in many respects, recognized and sought out around the world; who embodies one of Canada's strongest values and works with determination in a changing world. This person still faces many challenges in preserving past achievements and obtaining justice on as yet unexplored fronts."
>
> Office of the Commissioner of Official Languages
> *Annual Report*, Special Edition, 35yh Anniversary 1969-2004, Volume 1 at 115

*Courts of Justice Act*[23] *– Use of French and English in proceedings before Courts of Ontario*

Sections 125 and 126 of the *Courts of Justice Act* [C.J.A.][24] provide for the use of English and French in proceedings before the courts of Ontario.

The word "court" in the C.J.A. does not include administrative or quasi-judicial tribunals. See below for a discussion of the language requirements applying to such tribunals.

Sections 125 and 126 of the C.J.A. apply to:
- natural persons;
- corporations;
- partnerships; and
- sole proprietorships.[25]

*Courts of Justice Act*

Section 125 – Official Language of the Courts

Section 125

(1)The official languages of the courts of Ontario are English and French.

(2) Except as otherwise provided with respect to the use of the French language,

[23] See *R. v. Beaulac, ibid.* .

[24] S.O. 1984, c. 11.

[25] Section 126(8) of the C.J.A.

(a) hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and
(b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by the affidavit of the translator.

*Courts of Justice Act*

Section 126 – Bilingual Proceedings

Subsection 126 (1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.

(2) The following rules apply to a proceeding that is conducted as a bilingual proceeding:

1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.
2. If a hearing that the party has specified is held before a judge and jury in an area named in Schedule 1, the jury shall consist of persons who speak English and French.
3. If a hearing that the party has specified is held without a jury, or with a jury in an area named in Schedule 1, evidence given and submissions made in English or French shall be received, recorded and transcribed in the language in which they are given.
4. Any other part of the hearing may be conducted in French if, in the opinion of the presiding judge or officer, it can be so conducted.
5. Oral evidence given in English or French at an examination out of court shall be received, recorded and transcribed in the language in which it is given.
6. In an area named in Schedule 2, a party may file pleadings and other documents written in French.
7. Elsewhere in Ontario, a party may file pleadings and other documents written in French if the other parties consent.
8. The reasons for a decision may be written in English or French.
9. On the request of a party or counsel who speaks English or French but not both, the court shall provide interpretation of anything given orally in the other language at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and translation of reasons for a decision written in the other language.

Prosecutions
(2.1)When a prosecution under the *Provincial Offences Act* by the Crown in right of Ontario is being conducted as a bilingual proceeding, the prosecutor assigned to the case must be a person who speaks English and French.

Appeals
(3)When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks French has the right to require that the appeal be heard by a judge or judges who speak English and French; in that case subsection (2) applies to the appeal, with necessary modifications.

Documents
(4) A document filed by a party before a hearing in a proceeding in the Family Court of the Superior Court of Justice, the Ontario Court of Justice or the Small Claims Court may be written in French.

Process
(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Family Court of the Superior Court of Justice or the Ontario Court of Justice may be written in French.

Translation
(6) On a party's request, the court shall provide translation into English or French of a document or process referred to in subsection (4) or (5) that is written in the other language.

Interpretation
(7) At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in French or a witness gives oral evidence in French, the court shall provide interpretation of the submissions or evidence into English.

Parties who are not natural persons
(8) A corporation, partnership or sole proprietorship may exercise the rights conferred by this section in the same way as a natural person, unless the court orders otherwise.

The following summarizes the language rights provided under sections 125 and 126 of the *Courts of Justice Act*:

<u>Right to bilingual proceeding</u>

- A party who speaks French has the right to request a bilingual proceeding including a judge or judges who speak English and French. The court has the discretion to order otherwise.

- The right to a bilingual proceeding is a substantive right available to individuals who speak French. However, case law provides that the court has the discretion to order a bilingual proceeding even if the party does not speak French.

- A bilingual proceeding includes the following elements:
  - that the proceeding is heard by a judge who speaks English and French;
  - a hearing held before a bilingual judge and jury is only available in the designated areas mentioned below;
  - if the bilingual hearing is held without a jury, or with a jury in an area named in the designated area below, the evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given;
  - in a proceeding that is not a bilingual hearing without a jury or with a jury in an area named in the designated area below, the court will provide interpretation of any submissions in French or any evidence given by a witness in French, into English;
  - a judge has a discretion to conduct any other part of the hearing in French if it can be conducted in that language;

- oral evidence given in English or French in an out-of-court examination is to be received, recorded and transcribed in the language it is given;
- the party does not necessarily have the right to file pleadings in French. For the right to file pleadings in French, see below.

Designated areas for hearing before bilingual judge and jury

- The right to request a hearing before a bilingual judge and jury is, as of right, available in all areas below (this list may be subject to change from time to time):

  - The counties of Essex, Middlesex, Prescott and Russell, Renfrew, Simcoe, Stormont, Dundas and Glengarry.
  - The territorial districts of Algoma, Cochrane, Kenora, Nipissing, Sudbury, Thunder Bay, Timiskaming.
  - The area of the County of Welland as it existed on December 31, 1969.
  - The Municipality of Chatham Kent.
  - The City of Hamilton.
  - The City of Ottawa.
  - The Regional Municipality of Peel.
  - The City of Greater Sudbury.
  - The City of Toronto.

Pleadings and other documents filed in French

- The right to file pleadings and other documents written in French may be filed in the designated areas specified below. Outside the designated areas, consent is required from the other party to file the pleadings and other documents in French.

- Opposing parties or their lawyers do not have to file their pleadings and other documents, make submissions in, or communicate with the party who requested a bilingual proceeding, in the language of that party's choice.

- At hearings before a judge and jury in the designated areas mentioned above, at a hearing without a jury, or at examinations out of court, a party or counsel who speaks English or French but not both may request, and the court will provide, interpretation of anything given orally in the other language and translation of reasons for a decision written in the other language.

- Reasons for a decision may be written in English or French. Translations of decisions, judgments or orders are not required, but when requested by a party or counsel who speaks English or French but not both, the court will provide interpretation of anything given orally in the other language at hearings and at examinations out of court, and translation of reasons for a decision written in the other language.

- Costs of translation will not be awarded against the unsuccessful party.

- A document filed by a party before a hearing in a proceeding in the Ontario Court of Justice or in the Small Claims Court may be written in French. A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

Designated areas for pleadings and other documents filed in French

- Pleadings and other documents written in French may be filed in the following areas. In other areas, a party who wishes to file the pleadings and other documents in French must receive the consent of the opposing party (this list may be subject to change from time to time):

  - The counties of Essex, Middlesex, Prescott and Russell, Renfrew, Simcoe, Stormont, Dundas and Glengarry.
  - The territorial districts of Algoma, Cochrane, Kenora, Nipissing, Sudbury, Thunder Bay, Timiskaming.
  - The area of the County of Welland as it existed on December 31, 1969.
  - The Municipality of Chatham Kent.
  - The City of Hamilton.
  - The City of Ottawa.
  - The Regional Municipality of Peel.
  - The City of Greater Sudbury.
  - The City of Toronto.

*The Provincial Offences Act*[26]

Where a defendant is served with an "offence notice, parking infraction notice or notice of impending conviction in a proceeding under the *Provincial Offences Act*," and that defendant makes a written request that the trial be held in French, the proceeding in those cases must be conducted as a bilingual proceeding and be presided over by a judge or officer who speaks both official languages.[27] If an individual requests a trial in French and the information sworn against the individual is in English, the information is considered a nullity.[28]

Part V - Quasi-Judicial or Administrative Tribunals

One of the underlying purposes and objectives of the *French Language Services Act* was the protection of the minority Francophone population in Ontario; another was the advancement of the French language and promotion of its equality with English. These purposes coincide with the underlying unwritten principles of the Constitution of Canada. As already stated, underlying constitutional principles may in certain circumstances give rise to substantive legal obligations because of their powerful normative force.

*Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 O.R. (3d) 505

[26] *Provincial Offences Act,* R.S.O. 1990, c. S - 22.

[27] *Bilingual Proceedings,* O. Reg. 53/01, s. 4. The defendant is deemed to have exercised his right under section 126(1) of the *Courts of Justice Act.*

[28] *R. v. Charest,* [2001] O.J. No. 5763 (Ct. J.).

*Official Languages Act*[29]

As mentioned above, the *Official Languages Act* applies to federal courts (defined to include tribunals) or other bodies that carry out adjudicative functions and are established by or pursuant to an Act of Parliament.

"Federal courts" include :[30]

- Supreme Court of Canada;
- Federal Court of Appeal of Canada;
- Federal Court of Canada;
- Tax Court of Canada;
- Court Martial Appeal Court.

According to the Commissioner of the Official Languages, federal tribunals subject to the *Official Languages Act* include:

- Board of Arbitration and Review Tribunal;
- Canada Industrial Relations Board;
- Canadian Artists' and Producers' Professional Relations Tribunal;
- Canadian International Trade Tribunal;
- Canadian Radio-Telecommunications Commission;
- Competition Tribunal;
- Copyright Board;
- Canadian Human Rights Tribunal;
- National Energy Board;
- National Parole Board;
- National Transportation Agency;
- Immigration and Refugee Board;
- Pensions Appeal Board.

The following summarizes the language rights of individuals appearing before a federal administrative or quasi-judicial tribunal:

Official languages

- English and French are the official languages of the federal tribunals and any person may use those languages in any pleading in, or process issuing from, any federal tribunal.

- A party has the right to speak and be understood by the court/tribunal in the official language of his or her choice.

Judge and other officers

- The language chosen by the parties must be understood by every judge or every officer who heard the proceeding without the assistance of an interpreter. The same duties are imposed on the tribunal where the parties choose a bilingual proceeding. This is limited to the adjudicative functions carried out by the tribunal.

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[29] R.S.C. 1985, c. 31 (4th Supp.).

[30] Vanessa Gruben, *supra* note 17 at 157-158.

Witnesses

- Witnesses have a right to give evidence and be cross-examined in the official language of their choice.

Simultaneous interpretation

- When a party makes a request for translation, simultaneous interpretation of proceedings will be available from one official language to the other, including the evidence given and taken.

Crown

- The Crown must, when it is a party to a proceeding, use in oral and written pleadings before a federal tribunal, the official language chosen by the other party, unless reasonable notice of language chosen has not been given or where the other parties fail to choose or agree on the official language to be used in the pleadings.

Pleadings, forms, decisions

- The term "pleadings" includes oral and written arguments, but excludes evidence presented to the court.

- Pre-printed portions of any form that is used in proceedings and is required to be served by the institution that is a party to the proceedings on the other party must be in both official languages. The details in the form may be added in the official language of the issuer but must indicate that translation is available upon request.

- Every final decision, order or judgment, including reasons must be given in both official languages.

*Tribunals Created by the Ontario Government – the French Language Services Act*[31] *and the Statutory Powers Procedure Act*[32]

There are few obligations and very little guidance provided to administrative or quasi-judicial tribunals in the *Statutory Powers Procedure Act*[33] , which only states that summonses and warrants must be in the "prescribed form (in English or in French)", and that a tribunal has the obligation to make its rules available to the public in both languages. Obligations related to services offered in official languages of administrative tribunals are found under the *French Language Services Act (the F.L.S.A.)*[34] , supported by unwritten constitutional principles and other principles of interpretation.

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[31] *French Language Services Act, supra* note 31.

[32] *Statutory Powers Procedure Act,* R.S.O. 1990, c. S - 22.

[33] R.S.O. 1990, c. S. 22.

[34] *French Language Services Act,* R.S.O. 1990, c. F - 32 [F.L.S.A.].

The preamble to the Ontario's *French Language Services Act* sets out its underlying rationale as follows:

> Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act […]

Subsection 5(1) of the *French Language Services Act* provides a right to communicate in French with government agencies or institutions of the Legislature.

*French Language Services Act*

Subsection 5 (1)

5. (1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

The definition of "government agency" in section 1 of the *French Language Services Act* would include administrative or quasi-judicial tribunals a majority of whose members are appointed by the Lieutenant Governor in Council.

*French Language Services Act*

Section 1

"government agency" means,

(a) a ministry of the Government of Ontario, except that a psychiatric facility, residential facility or college of applied arts and technology that is administered by a ministry is not included unless it is designated as a public service agency by the regulations,

(b) a board, commission or corporation the majority of whose members or directors are appointed by the Lieutenant Governor in Council,

(c) a non-profit corporation or similar entity that provides a service to the public, is subsidized in whole or in part by public money and is designated as a public service agency by the regulations,

(d) a nursing home as defined in the *Nursing Homes Act* or a home for special care as defined in the *Homes for Special Care Act* that is designated as a public service agency by the regulations,

(e) a service provider as defined in the *Child and Family Services Act* or a board as defined in the *District Social Services Administration Boards Act* that is designated as a public service agency by the regulations,

and does not include a municipality, or a local board as defined in the *Municipal Affairs Act,* other than a local board that is designated under clause (e); ("organisme gouvernemental")

"service" means any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.

The *F.L.S.A.* has been applied in the context of the Financial Services Commission of Ontario, an administrative tribunal a majority of whose members are appointed by the Lieutenant Governor in Council. In *Ndem v. General Accident Assurance Co. of Canada*[35] , Arbitrator David Leitch found that the Commission is a government agency bound by the F.L.S.A. and that a person has the right to communicate in French and to receive available services in French from the Commission.

In *Dehenne v. Dehenne* [36] , Justice Beaulieu of the Ontario Superior Court of Justice confirmed that the F.L.S.A. applies to the Office of the Public Guardian and Trustee, as it is part of the Ontario Ministry of the Attorney General. He stated [at paras. 9, 11, 12 and 15]:

> Like the Attorney General, the Public Guardian and Trustee has a duty to take the necessary steps to effectively implement language rights and cannot allege a lack of human or financial resources in an effort to justify an obstacle to carrying out his language responsibilities […]
>
> In this case, in response to an application made in French, the Office of the Public Guardian and Trustee replied to counsel for the applicant in English only, which is a breach of the letter and spirit of the *French Language Services Act*. The Office of the Public Guardian and Trustee has a duty to reply in French to communications he receives in French. The intervention of this Court should not be necessary to reinforce this right.
>
> The Public Guardian and Trustee also asked the Court to include an English text in an order although the application for that order was made in French, which is manifestly to disregard the status of French as an official language of the Ontario courts […]
>
> The right to the use of French is not a right to an interpreter: French-speaking families who pay a professional to assess a person's capacity are entitled to an assessment conducted in French (without the assistance of an interpreter) and the preparation of a report in French. The Office of the Public Guardian and Trustee should certify a sufficient number of assessors to ensure an assessment in French and the preparation of the assessment report in French."

Therefore, the Government of Ontario is required to ensure that services are provided in French in accordance with the F.S.L.A.. A person has the right to communicate with and to receive services in French from any head or central office of a government agency or institution of the Legislature.

It should be noted, however, that not all of Ontario's tribunals guarantee the right to a French-language decision-maker. Thus, the Ontario Rental Housing Tribunal states in its Rule 32 (available on the ORHT's website) that:

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[35] FSCO A98-001476, November 1 and 2, 1999.

[36] z *Dehenne v. Dehenne* (1999), 47 O.R. (3d) 140.

> 32.6 Where a party is entitled to and requests French language services at a hearing, the Tribunal will attempt to schedule a French-speaking Member within a reasonable time to preside at the hearing.
> 32.7 Where a French-speaking Member cannot be scheduled to hear a matter within a reasonable time, the Tribunal may schedule an English-speaking Member and arrange for the services of an interpreter at the hearing.

These policies may be based on the tribunal's interpretation of s. 7 of the FLSA which states that:

> 7. The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made. R.S.O. 1990, c. F.32, s. 7.

Further, the Ontario Government's Office of Francophone Affairs published French-language Services Guidelines in September 2004. Section 7 of the Guidelines applies to agencies, boards and commissions and discusses bilingual proceedings before administritive triunal hearings. In particular, the section states, at page 19, that:

> Every effort is made to appoint a sufficient number of bilingual members to administrative tribunals so that Francophones have access to hearings conducted in French....
>
> When all necessary efforts have been made and a sufficient number of bilingual adjudicators are still not available, linguistic assistance is provided by professional interpreters (consecutive or simultaneous) enabling Frenchspeaking clients to actively participate without prejudice to them.

Such guidelines are reviewed from time to time and lawyers are encouraged to consult the guidelines if they have clients who may appear before an administrative tribunal.

*Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

There are few language obligations and very little guidance provided to administrative or quasi-judicial tribunals in the *Statutory Powers Procedure Act*[37] , which only states that summonses and warrants must be in the “prescribed form (in English or in French)”, and that tribunals must make their rules governing their practice and procedure available to the public in both languages.

Part VI – Resources

*To find a lawyer who provides legal services to clients in French, you may contact the following :*

Law Society of Upper Canada Lawyer Referral Service
You need a lawyer but you are not sure how to find one. The Law Society's Lawyer Referral Service (LRS) can help. For $6, the LRS will provide the name of a lawyer who will provide a free consultation of up to 30 minutes to help you determine your rights and options. You can access the service by calling:

[37] R.S.O. 1990, c. S. 22.

1-900-565-4LRS (4577)

For those callers who are incarcerated, institutionalized, under the age of 18, calling about a Child Protection issue, or are in crisis (domestic abuse) situations, please call us at (416) 947-3330 in the Toronto calling area, or toll-free (800) 268-8326 from elsewhere in Ontario.

On-line information about the Lawyer Referral Service: http://www.lsuc.on.ca/public/a/finding/lrs/

On-line information inFrench about the Lawyer Referral Service:
http://www.lsuc.on.ca/fr/for-the-public/a/finding-a-lawyer/lawyer-referral-service/

Contact the Law Society of Upper Canada
General Inquiries
Toll-free: 1-800-668-7380
General line: 416-947-3300
Facsimile: 416-947-5263
E-mail: lawsociety@lsuc.on.ca

The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Consult the Directory of the Association des juristes d'expression française de l'Ontario at :

Available on-line at : www.ajefo.ca
or at http://ajefo.ca/index.cfm?Voir=ajefo_juriste_liste

*Rules of Professional Conduct*
For information about the *Rules of Professional Conduct,* please contact the Practice Management Helpline at : http://mrc.lsuc.on.ca/jsp/pmhelpline/index.jsp or Call 416-947-3315 or 1-800-668-7380 extension 3315.

Information is also available on the Law Society's Members Resource Centre at http://mrc.lsuc.on.ca/jsp/home/

Information about the Equity Initiatives Department of the Law Society of Upper Canada available at www.lsuc.on.ca.

Legislation and Jurisprudence

*Competence*

*Law Society Act*, R.S.O. 1990, c. L.8, available on-line at: http://www.canlii.org/on/laws/sta/l-8/20060314/whole.html

*Constitutional law*

Section 133 of the Constitution Act, 1867, (U.K.) 30 & 31 Victoria Vict. C. 3 available on-line at: http://www.canlii.ca/ca/const_en/const1867.html#judicature

Sections 19 and 20 of the *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 available on-line at: http://www.canlii.ca/ca/const_en/const1982.html#I

*Criminal law*

Section 530, subsection 849(3) and Part XXVIII of the *Criminal Code,* R.S.C. 1985, c. C-46 available on-line at: http://www.canlii.ca/ca/sta/c-46/part181644.html

*Use of French Language in Courts and Administrative and Quasi-Judicial Tribunals*

Sections 125 and 126 of the *Courts of Justice Act*, S.O. 1984, c. 11 (Proceedings before Ontario's courts) available on-line at: http://www.canlii.org/on/laws/sta/c-43/20060314/whole.html#BK161

*French Language Services Act,* R.S.O. 1990, c. F. 32 (Administrative and quasi-judicial tribunals) available on-line at: http://www.canlii.ca/on/laws/sta/f-32/20060314/whole.html

*Official Languages Act* (federal courts (defined to include tribunals) or other bodies that carry out adjudicative functions and are established by or pursuant to an Act of Parliament) available on-line at: http://www.canlii.ca/ca/sta/o-3.01/part204998.html

*Provincial Offences Act,* R.S.O. 1990, c. S. 22 (Proceedings under that Act) available on-line at: http://www.canlii.ca/on/laws/sta/p-33/20060314/whole.html

*Statutory Powers Procedure Act,* R.S.O. 1990, c. S. 22 (Administrative and quasi-judicial tribunals) available on-line at: http://www.canlii.ca/on/laws/sta/s-22/20060314/whole.html

Secondary Sources

For an extensive review of secondary sources, see Linda Cardinal et al., *Environmental Scan – French Language Services in Ontario's Justice Sector* (Ottawa: University of Ottawa, December 2005).

See also:
Braën, Foucher and Le Bouthillier, *Languages, Consitutionalism and Minorities* (Markham: LexisNexis, Butterworths, 2006.

Linda Cardinal et al., *Statistical Overview – French Ontario: A Statistical Overview* (Ottawa: University of Ottawa, October 2005).

Department of Justice and Department of Heritage Canada, *Annotated Language Laws of Canada*, 2nd edition, (Ottawa: Department of Justice and Department of Heritage Canada, 2000) available on-line in English at: http://www.canadianheritage.gc.ca/progs/lo-ol/perspectives/english/law/index.html. Also available in on-line in French at: http://www.canadianheritage.gc.ca/progs/lo-ol/perspectives/francais/lois/index.html

The Law Society of Upper Canada, *Professional Responsibility and Practice Management Reference Materials* (Toronto: Law Society of Upper Canada, 2005).

Michel Bastarache, *Language Rights in Canada,* 2nd edition (Cowansville: Les Éditions Yvon Blais, 2004.

Appendix 2

EQUITY PUBLIC EDUCATION SERIES –2007

Black History Month - Dedication to Diversity and Excellence in the Legal Profession

The Law Society of Upper Canada and the Canadian Association of Black Lawyers are partnering again to host an annual reception to celebrate Black History Month.

The keynote speaker will be Vanita Banks, President – Elect of the National Bar Association in the United States, the oldest and largest organization of lawyers and judges of colour in the world, representing over 20,000 lawyers, judges, legal scholars and law students internationally.

Date: Wednesday, February 7, 2007
Time: 6:00 p.m. – 8:00 p.m.
Location: The Law Society of Upper Canada, Convocation Hall

Access Awareness - Mental Health and the Criminal Law

The Law Society of Upper Canada and ARCH Disability Law Centre are pleased to invite you to their fourth annual forum on disability and the law. This year's program is presented in collaboration with the Criminal Lawyers Association.

Join criminal justice professionals, clinicians and psychiatric consumer survivors who will discuss issues in mental health and criminal law. There will also be a presentation of services delivered by the Toronto Mental Health and Justice Network, a major new initiative funded by the Ontario government through an inter-ministerial agreement.

Date: Wednesday, February 21, 2007
Time: 4:30 p.m. – 7:30 p.m.
Location: The Law Society of Upper Canada, Convocation Hall

Speakers:

- Mohamed Badsha – Director, Community Support Services, Canadian Mental Health Association, Toronto
- Dr. Howard Barbaree – Clinical Director, Law and Mental Health Program, Centre for Addiction and Mental Health
- Lana Frado – Executive Director, Sound Times Support Services
- Hon. Richard D. Schneider – Ontario Court of Justice, Toronto Mental Health Court
- Frank Sirotich – Team Leader, Mental Health Court Support Program, Canadian Mental Health Association, Toronto
- Jennifer Zosky – Program Director, Reconnect Mental Health Services

International Women's Day – Gender, Law and Legal Professionalism: How Women Have Shaped Justice

Date: March 7, 2007
Time: 4:00 p.m. – 6:00 p.m., reception at 6:00 p.m.
Speakers:

- Hon. Madame Justice Claire L'Heureux-Dubé – Judge of the Supreme Court of Canada (retired)
- Mary Jane Mossman – Professor of Law, Osgoode Hall Law School, York University, Toronto
- Fiona Sampson – Women's Legal Education and Action Fund
- Joanne St. Lewis – Bencher, The Law Society of Upper Canada

International Day for the Elimination of Racial Discrimination

Date: March 28, 2007
Time: 4:00 p.m. – 6:00 p.m., reception at 6:00 p.m.

National Holocaust Memorial Day –

Date: April 16, 2007
Time: 4:00 p.m. – 6:00 p.m., reception at 6:00 p.m.

Asian Heritage Month

Date: May 24, 2007
Time: 4:00 p.m. – 6:00 p.m., reception at 6:00 p.m.

National Aboriginal Day

Date: June 14, 2007
Time: 4:00 p.m. – 6:00 p.m., reception at 6:00 p.m.

Pride Week

Date: June 20, 2007
Time: 4:00 p.m. – 6:00 p.m., reception at 6:00 p.m.

Louis Riel Day

Date: November 15, 2007
Time: 4:00 p.m. – 6:00 p.m., reception at 6:00 p.m.

It was moved by Mr. Copeland, seconded by Ms. St. Lewis, that Convocation

a. impose campaign spending limits commencing in the 2011 bencher election.
b. request that the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones develop a scheme to implement campaign spending limits and make recommendations to Convocation in 2007, for implementation in the 2011 bencher election.

c. amend By-Law 5 – *Election of Benchers* to provide that, in the 2007 bencher election, the Law Society require candidates to report,

   i. campaign spending, including an estimate of campaign spending by any individual, law firm or organization acting on their behalf;
   ii. the value or their best estimate of goods and services provided in relation to their campaign; and
   iii. a list of endorsements and support received from organizations including non-solicited contributions where known.

d. decide that the Law Society not provide the email addresses of members to candidates in the 2007 bencher election.
e. decide that, beginning with the 2007 Member's Annual Report (the "MAR"), members be given the option to expressly permit the Law Society to allow the use of their email addresses for bencher election campaigning purposes.
f. decide that the Law Society not provide candidates the option of using the mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region.

Not Put

It was moved by Mr. Swaye, seconded by Mr. Aaron, that the motion be amended by adding that the information supplied by benchers pursuant to this by-law be kept confidential and be provided to the committee or the public in an anonymous form. This was accepted as a friendly amendment.

It was moved by Mr. Robins, seconded by Ms. Ross, that the matter be referred back to the committee for further discussion.

Carried

ROLL-CALL VOTE

| | | | |
|---|---|---|---|
| Alexander | For | Henderson | For |
| Backhouse | Against | Krishna | For |
| Campion | For | Lawrie | For |
| Carpenter-Gunn | For | Legge | For |
| Caskey | Against | Martin | For |
| Chahbar | For | Millar | For |
| Coffey | For | Minor | For |
| Copeland | Against | Murray | Against |
| Crowe | For | Pawlitza | Against |
| Curtis | Against | Porter | For |
| Dickson | Against | Potter | Against |
| Doyle | Against | Robins | For |
| Dray | For | Ross | For |
| Eber | For | Ruby | Against |
| Feinstein | Against | St. Lewis | Against |
| Filion | For | Sandler | Against |
| Finlayson | Against | Silverstein | For |
| Go | Against | Simpson | For |
| Gold | For | Swaye | For |
| Gottlieb | Against | Symes | Against |

| | | | |
|---|---|---|---|
| Harris | Against | Warkentin | Against |
| Heintzman | Against | Wright | For |

Vote: 24 For; 20 Against

*Items for Information*

- Advising a Client of Her or His French Language Rights in the Judicial and Quasi-Judicial Context – Information about Lawyers' Responsibilities
- Public Education Series 2007

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

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IN PUBLIC

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HERITAGE COMMITTEE REPORT

Professor Backhouse presented the Report.

Re: Contribution to the McMurtry Gardens of Justice Project

Report to Convocation
January 25, 2007

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Heritage Committee

Purpose of Report: Decision
Information

Committee Members
Constance Backhouse (Chair)
Andrea Alexander (Vice Chair)
Robert Aaron
Gordon Bobesich
Andrew Coffey
Patrick Furlong
Allan Lawrence
Laura Legge

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

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COMMITTEE PROCESS

1. The Committee met on January 11, 2007. Committee members Constance Backhouse (Chair), Andrea Alexander (Vice Chair), Andrew Coffey, Patrick Furlong and Alan Lawrence attended. Staff members Terry Knott, Deidre Rowe-Brown and Sophia Sperdakos attended. A portion of the meeting was held jointly with the Finance and Audit Committee. Finance and Audit Committee members Derry Millar (Chair), Beth Symes (Vice Chair), Brad Wright (Vice Chair), Ab Chahbar, Andrew Coffey, Marshall Crowe, Holly Harris, Ross Murray and Alan Silverstein attended. Finance Committee staff members Andrew Cawse, Fred Grady and Wendy Tysall attended.

## CONTRIBUTION TO THE MCMURTRY GARDENS OF JUSTICE PROJECT (JOINT REPORT WITH THE FINANCE AND AUDIT COMMITTEE)

Motion

2. That Convocation approve a Law Society contribution to the McMurtry Gardens of Justice Project of $100,000, payable over three years, beginning in 2007.

Introduction and Background

3. The McMurtry Gardens of Justice Project is intended to serve as a permanent tribute to Chief Justice Roy McMurtry upon the occasion of his retirement as Chief Justice of Ontario in 2007. It is sponsored by a group of judges and lawyers. The project will be devoted to the artistic representation through sculpture of the values that underlie the Canadian justice system.

4. The McMurtry Gardens of Justice will be located on the pedestrian avenue between Osgoode Hall and the 361 University Avenue Courthouse joining University Avenue to Nathan Phillips Square in Toronto.

5. The Gardens of Justice Project has made a request, through the Treasurer and the Chief Executive Officer, that the Law Society become a major financial supporter of the project with a contribution in the amount of $100,000, payable over three years, for funding of a work of art to be located in the Gardens of Justice. Background material and correspondence on the McMurtry Gardens of Justice project is provided at APPENDIX 1.

6. To facilitate consideration of the request and provide it to Convocation it was considered appropriate for both the Heritage Committee and the Finance and Audit Committee to meet jointly to discuss the request.

7. Clifford Lax, one of the organizers of the McMurtry Gardens of Justice Project, attended a portion of the joint meeting to provide information.

8. The Gardens of Justice is scheduled to open in June 2007, but will take a number of years to be fully developed, allowing funding over three years. The project brochure, attached as APPENDIX 2 notes,

> The McMurtry Gardens of Justice will honour the values of the rule of law as enshrined in the Charter of Rights and Freedoms. The inaugural sculpture entitled "The Pillars of Justice" depicts the relationship between the community and our court system with reference to the critical role of the individual juror who brings integrity and commitment to the discharge of this important public duty.[1]

Budget

9. The organizers intend to raise in excess of $1.5 million to be used to commission approximately eight sculptures and an educational foyer. There has already been significant fundraising among individual members of the profession and legal organizations. To date the Gardens of Justice Project has raised over $1,100,000 mostly from the legal profession. The Toronto Lawyers Association has donated $100,000 and the organizers are in discussions with the Ontario Bar Association, the Advocates Society and the Law Foundation of Ontario in respect of their possible participation.

10. The $100,000 requested from the Law Society has not been included in the 2007 budget. If the payment and timetable are approved, $33,333 would be funded from the 2007 contingency account, which has $600,000 available for the year. The two further installments of $33,333 each would be included in the 2008 and 2009 budgets.

11. The organizers are working with the province and the City of Toronto concerning the current refurbishment of the Garden area. The Law Society is not expected to incur any ongoing maintenance or security costs or expenses over and above the funding request.

Discussion

12. Both Committees agree that the project is a valuable and important one, not only to honour the enormous contributions of the Chief Justice, but also for its symbolic representation of the values of our justice system.

13. Some members of both committees did, however, raise questions about,

[1] The sculpture is depicted on the front page of the brochure

a. whether this type of contribution is properly within the mandate of the Law Society; and

b. whether it was appropriate to consider the request at this time, given that it was not included in the 2007 budget discussions.

14. Although some members of the committees were of the view that the Law Society's mandate does not extend to this type of project, the majority of members of both Committees felt that this is an important project with which the Law Society should be associated. Their view is that the project speaks to values that underpin the Law Society's role in the justice system and are within the Society's broad mandate. The physical location of the Gardens further connects it to the Law Society and creates a link between the Courthouse at 361 University and Osgoode Hall.

15. The majority of the Finance Committee was also of the view that although the request was not considered as part of the 2007 budget discussions, there are funds available to meet the portion of the contribution in 2007 ($33,333), as set out above, if Convocation approves the request.

## INFORMATION

### MCMURTRY LEGAL HISTORY FELLOWSHIP

16. In 2005 Convocation was advised of a joint Law Society and Osgoode Society effort to obtain funding from the Law Foundation of Ontario and private donors to support the creation of a legal history Fellowship to honour the Chief Justice of Ontario, Roy McMurtry, upon his retirement.

17. The Fellowship would be awarded annually to support the work of a post-graduate student or post-doctoral candidate. The proposal submitted to the Law Foundation included the following information about the Fellowship:

> The legal profession has played and continues to play a unique and important role in the development of Canadian society. Legal events and issues underlie many of the social and political developments that have shaped our society. Capturing and recounting the history of those events and the lawyers who participated in them are fundamentally important to both an understanding of where the profession and the country have been and where they are going.
>
> In 1979 the Chief Justice R. Roy McMurtry, inspired by his belief in the importance and value of legal scholarship and publication, spearheaded the creation of the Osgoode Society for Canadian Legal History to study and promote public interest in the history of the law, the legal profession and the judiciary in Ontario and Canada and to stimulate research and publication on these subjects.
>
> The Chief Justice's commitment to legal history and scholarship has continued throughout the Osgoode Society's twenty-five year history as he has tirelessly

promoted the importance of legal history and encouraged greater commitment to supporting it.

It is entirely fitting that the Chief Justice's contributions to many facets of the legal system be honoured. The endowment of a fellowship, to be known as the Honourable R. Roy McMurtry Legal History Fellowship, would honour and continue his commitment to legal scholarship in perpetuity and support the legal history about which he is so passionate.

The fellowship would be established to fund graduate and post-doctoral research (ordinarily within two years of completion of a program) in Canadian legal history, broadly defined. This would include graduate and post-doctoral research from any number of disciplines such as history, law (thesis-based LLMs), criminology, sociology, etc.

18. The Law Foundation of Ontario approved the Law Society and Osgoode Society's application for funding and their support of this worthwhile Fellowship is gratefully acknowledged and appreciated.

19. In addition, a private Foundation has made a grant payable over two years in support of the Fellowship and, as well, a number of law firms have made donations to date.

20. The Law Society of Upper Canada and the Osgoode Society have undertaken a unique collaboration to bring the Fellowship to fruition. The Osgoode Society's mandate is to stimulate research and publication on Canadian legal history. Its Board of Directors has experience with the Canadian legal history community and some of its board members are themselves current or former members of university faculty. It is proposed that the Osgoode Society would establish a subcommittee of legal historians who have or have had careers that include teaching in a university setting. The role of this subcommittee would be to evaluate the applications for the Fellowship and determine the best candidate(s) for the annual award.

21. The Law Society of Upper Canada has the staff knowledgeable in administering funds, such as the Fellowship funds, and meeting the necessary reporting requirements. The Law Society's Heritage Committee, the chair of which is legal historian Professor Constance Backhouse, is able to assist with the communication of the Fellowship awards.

22. Together the Law Society of Upper Canada and the Osgoode Society will ensure that the Fellowship award honours Chief Justice McMurtry, for whom it has been named, and will ensure that all communications about the project acknowledge the Law Foundation of Ontario's support for this worthy project.

175TH ANNIVERSARY OF OSGOODE HALL EVENTS

23. On February 6, 2007, the 175th anniversary of the first Convocation in Osgoode Hall, the Law Society will host a reception and dinner to inaugurate two Exhibitions that celebrate the history of Osgoode Hall.

24. The first Exhibition is an on-line exhibit of the historic architectural drawings of Osgoode Hall, created in partnership with the Archives of Ontario. The second Exhibition showcases the Osgoode Hall grounds throughout the history of the building.

25. The Lieutenant Governor of Ontario has graciously accepted the Law Society's invitation to open the Exhibitions. In addition invitations will be extended to the Attorney General, the Minister of Culture and the Minister of Government Services, to the Chief Justices and members of the judiciary, benchers and staff.

26. The special banners and letterhead noting the 175th anniversary of Osgoode Hall are currently being designed and will be available by the beginning of February.

27. Calls for papers for the Canadian Legal History Symposium have been circulated and the planning committee has begun to receive a number of proposals. The date for the symposium has been confirmed for October 12, 2007 in the Donald Lamont Learning Centre.

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

(1) Copy of background material and correspondence on the McMurtry Gardens of Justice project.

(Appendix 1, pages 7 – 19)

(2) Copy of the project brochure.

(Appendix 2, pages 20 – 22)

It was moved by Professor Backhouse, seconded by Mr. Millar, that Convocation approve a Law Society contribution to the McMurtry Gardens of Justice Project of $100,000 payable over three years, beginning in 2007.

Carried

*Items for Information*

- McMurtry Legal History Fellowship
- 175th Anniversary of Osgoode Hall Events

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M. AND RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Aaron, Alexander, Caskey, Copeland, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Feinstein, Furlong, Go, Gold, Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrence, Lawrie, Legge, Millar, Minor, Murphy, Murray, Pawlitza, Porter (by telephone), Potter, Ross, Ruby, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes, Warkentin and Wright.

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IN PUBLIC

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PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS COMMITTEE REPORT

Ms. Pawlitza presented the Report.

Re: Lakehead University – Law School Proposal

REPORT TO CONVOCATION
January 25, 2007

Professional Development, Competence and Admissions Committee

Committee Members
Laurie Pawlitza (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Robert Aaron
Kim Carpenter-Gunn
James Caskey
Carole Curtis
Paul Henderson
Vern Krishna
Laura Legge
Daniel Murphy
Judith Potter
Bonnie Warkentin

Purpose of Report: Decision
Information

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

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COMMITTEE PROCESS

1. The Committee met on January 11, 2007. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice-Chair), Kim Carpenter-Gunn, James Caskey, Paul Henderson, Vern Krishna, Laura Legge, Daniel Murphy, Judith Potter and Bonnie Warkentin attended. Staff members Diana Miles, Nancy Reason and Sophia Sperdakos attended.

## FOR DECISION

## LAKEHEAD UNIVERSITY – LAW SCHOOL PROPOSAL

MOTION

2. That Convocation defer the decision respecting the Lakehead University proposal for a law school at this time.

3. That the Law Society advise Lakehead University of its concerns with the proposal as set out in paragraph 16 of this report.

4. That Convocation direct the Committee to review the 1957 (1969) requirements for a law program with a view to establishing modern, relevant criteria for the 21st century.

5. That any ultimate recognition of the Lakehead University proposal should be subject to the understanding that if the requirements for a law program change, it will be expected to meet the new requirements.

6. That the Law Society communicate with the Ministry of Training, Colleges and Universities to explain its decision to review the 1957(1969) criteria and advise it that the Law Society will not consider any new proposals for law programs until such time as it completes its review.

7. That the Law Society should advise the Federation of Law Societies of Canada of the review it is undertaking.

Introduction and Background

8. In October 2006 Lakehead University in Thunder Bay, Ontario submitted a proposal to the Ministry of Training, Colleges and Universities for the establishment of a law school at that university. A copy of the University's proposal is set out at APPENDIX 1.

9. In order for graduates of a law school to be eligible for admission to the Law Society's licensing process the law school program must be one that has been approved by the Law Society for such purposes.

10. The requirements for a law program date back to 1957, with the last changes made in 1969. A copy of the requirements is set out at APPENDIX 2. These were provided to Lakehead.

11. Prior to the Lakehead proposal, the last universities that sought approval for their law programs were the University of Victoria in 1975 and the University of Calgary in 1979. Copies of these proposals were provided to Lakehead.

Consideration of the Proposal

12. The Committee began its consideration of the proposal in the fall, but noted that contrary to the earlier applications from Victoria and Calgary, the Lakehead proposal made no reference to consultation with or support from the other Ontario law schools.

13. The Committee inquired whether Lakehead would be obtaining letters of support and was advised that it would. Attached at APPENDIX 3 are letters of support from three universities that have law faculties. Only one of the letters is from a law school.

14. The stated focus of the proposed new law school would be on educating law students to provide legal services to Aboriginal peoples and rural and northern communities in Northwestern Ontario and elsewhere in the province. The proposal places emphasis on the Law Society's Sole Practitioner and Small Firm Task Force Report's discussion of shortages of lawyers in the north. The Task Force Report is one of the appendices to the Lakehead proposal.

15. The Committee applauds the Lakehead proposal's goals, but has some concerns about the viability of Lakehead's proposal as currently envisioned.

16. In particular, the Committee notes the following:

    a. It would not appear that Lakehead has engaged in any meaningful discussions with the other law schools or the Council of Law Deans to gain insight into how to ensure the viability of a northern law school. The proposal is very general and basic. In the letter from Neil Gold, Vice-President, Academic, University of Windsor, he discusses the significant changes that have occurred in legal

education and the importance of a law school structure that affords students the greatest opportunities for development. He notes:

> We would be very pleased to convene a group with which you might wish to discuss your proposal. Such a group would be comprised of individuals who have experience in modern legal education and have thought about these profound changes that have occurred in the legal academy. I believe that the Council of Law Deans' members would be a good choice, among others. Such discussions would no doubt assist your planning and the filling out of your proposal.

The Committee considers this to be a very helpful and important suggestion for Lakehead to consider.

b. One of the central features of the proposal is the idea that graduates will obtain cooperative placements and articling positions in the north. Yet the Committee has serious concerns about whether the research into northern articling placements and law firm commitment to taking cooperative students has been thorough enough. The proposal states that Lakehead sent surveys to 123 firms in Northwestern Ontario. Approximately one-third of the questionnaires were returned and the proposal says that the results demonstrated significant support. However this conclusion is based on support for 10-15 placements from those who responded to the survey and another 20-30 positions if "a similar ratio is assumed for the approximately two-thirds not returning the surveys."

   The Committee questions whether any interest can be imputed to those who did not respond to the survey. Moreover, given the focus on a cooperative program, each student would be seeking two placements, one for the co-op placement and one for articling, thereby doubling the number of positions that must be found.

c. Given that Lakehead does not appear to have had detailed consultations with law schools it is not clear how it can state that unmet faculty needs "will be fulfilled by teaching arrangements with other Ontario law schools."

17. The Committee is of the view that it would be premature for the Law Society to indicate whether a Bachelor of Law program and an L.L.B. degree conferred on graduates of a law school at Lakehead would meet requirements for admission to the licensing process in Ontario.

18. The Committee is of the view that a letter should be sent to Lakehead expressing the concerns and suggestions set out in paragraph 16 above and that a decision on the proposal should be deferred at this time.

The 1957 Requirements

19. The Lakehead proposal has focused the Committee's attention on the 1957 requirements, as revised in 1969, and provided at APPENDIX 2.

20. No review of these requirements has been undertaken in the more than 35 years. They reflect a reality of legal education that is outdated and which does little to assist

universities interested in opening law faculties to understand what is necessary to establish a faculty that will produce an approved law degree.

21. Other Ontario universities have begun to indicate interest in the possible establishment of law schools. It is clear that there may be other proposals submitted to the Ministry and that the 1957 (1969) requirements will be sought out as guidance for establishing a program.

22. It is the Committee's view that,

    a. priority should be given to the Law Society reviewing the 1957 (1969) requirements with a view to establishing modern, relevant criteria for the 21st century;

    b. that the Law Society should communicate with the Ministry of Training, Colleges and Universities, explain its decision to review the 1957(1969) criteria and advise it that the Law Society will not consider any new proposals for law programs until such time as it completes its review;

    c. that the Law Society should advise the Federation of Law Societies of Canada of the review it is undertaking; and

    d. that any ultimate recognition of the Lakehead University proposal should be subject to the understanding that if the requirements change, Lakehead will be expected to meet the new requirements.

FOR INFORMATION

PROPOSED REAL ESTATE TRANSACTION GUIDELINES AND AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT*

23. In the spring of 2005, through the efforts of the Chief Executive Officer, the Working Group on Real Estate Issues was formed to focus on issues arising in real estate practice that relate to the Law Society's regulatory responsibilities.

24. The Working Group determined the need to formulate minimum standards or guidelines for residential real estate practice and the need to consider rules and rule amendments to the Rules of Professional Conduct.

25. The Professional Regulation Committee has considered proposed rules and rules amendments. The Professional Development, Competence and Admissions Committee considered guidelines for residential real estate practice, which it approved for provision to Convocation for information. Both are being reported to Convocation at the same time through the Professional Regulation Committee's Report to Convocation.

PROFESSIONAL DEVELOPMENT AND COMPETENCE DEPARTMENT BENCHMARKING REPORT

26. The Quarterly Benchmarking Report of the Director, Professional Development and Competence, for the period ending December 31, 2007 is provided to Convocation for information at APPENDIX 4.

LAW SOCIETY OF BRITISH COLUMBIA PRELIMINARY REPORT ON MANDATORY PROFESSIONAL DEVELOPMENT

27. The Law Society of British Columbia has recently approved in principle a report recommending the introduction of some form of mandatory professional development for lawyers in British Columbia.

28. Further study will now be undertaken about which options in the report should be developed, how a lawyer might obtain credit under the program, over what period of time or stage of one's career the credits would need to be obtained, how program enforcement would be structured, the consequences of non-compliance, and the staff required to run the program.

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

(1) Copy of Lakehead University Proposal for Creation and Accreditation of a School of Law.

(Appendix 1, pages 9 – 110)

(2) Copy of requirements for a law program dated 1969.

(Appendix 2, pages 111 – 116)

(3) Copies of letters of support from three universities and one law school.

(Appendix 3, pages 117 – 123)

(4) Copy of Quarterly Benchmarking Report of the Director, Professional Development and Competence for the period ending December 31, 2007.

(Appendix 4, pages 125 – 139)

It was moved by Ms. Pawlitza, seconded by Ms. Warkentin,

1. That Convocation defer the decision respecting the Lakehead University proposal for a law school at this time.

2. That the Law Society advise Lakehead University of its concerns with the proposal as set out in paragraph 16 of this report.

3. That Convocation direct the Committee to review the 1957 (1969) requirements for a law program with a view to establishing modern, relevant criteria for the 21st century.

4. That any ultimate recognition of the Lakehead University proposal should be subject to the understanding that if the requirements for a law program change, it will be expected to meet the new requirements.

5. That the Law Society communicate with the Ministry of Training, Colleges and Universities to explain its decision to review the 1957(1969) criteria and advise it that the Law Society will not consider any new proposals for law programs until such time as it completes its review.

6. That the Law Society should advise the Federation of Law Societies of Canada of the review it is undertaking.

An amendment was accepted that the words “it will” be deleted in the second line of paragraph 4 and the words “all law schools would” be inserted.

The main motion as amended was approved.

*Items for Information*

- Proposed Real Estate Transaction Guidelines and Amendments to the *Rules of Professional Conduct*
- Professional Development and Competence Department Benchmarking Report
- Law Society of British Columbia Preliminary Report on Mandatory Professional Development
- In Camera Matter

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*Matter Not Reached*
Professional Regulation Committee Report
- Amendments to *Rules of Professional Conduct* 2.02 and 2.04 and Commentaries
- Federation of Law Societies of Canada Protocol for Law Office Searches
- Amendments to By-Law 18 (Record Keeping Requirements)

*Reports for Information Only*
Emerging Issues Committee Report
- Review of the Process Relating to Federation of Law Societies Issues and the Law Society's Delegate to the Federation

Finance and Audit Committee Report
- Third Quarter Statements for the nine months ending September 30, 2006
- McMurtry Gardens of Justice

Report to Convocation
January 25, 2007

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Emerging Issues Committee

Committee Members
Ron Manes, Co-chair
Bonnie Warkentin, Co-chair
Robert Aaron
Paul Copeland
Susan Elliott
Richard Filion
Holly Harris
Allan F. Lawrence
Janet Minor
Julian Porter
Joanne St. Lewis

Purpose of Report: Information

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

COMMITTEE PROCESS

1. The Emerging Issues Committee ("the Committee") met on January 10, 2007. In attendance were Ron Manes and Bonnie Warkentin (Co-Chairs), Paul Copeland (by telephone), Holly Harris, Allan Lawrence, Julian Porter and Joanne St. Lewis. Staff attending were Katherine Corrick, Allison O'Shea, Roy Thomas and Jim Varro.

## REVIEW OF THE PROCESS RELATING TO FEDERATION OF LAW SOCIETIES ISSUES AND THE LAW SOCIETY'S DELEGATE TO THE FEDERATION

2. For some months, the Committee has been considering whether improvements could be made to the process through which the Law Society addresses issues that come from or are referred to the Federation of Law Societies of Canada. A related question was whether a more formalized structure for reports to the Society from the Society's delegate to the Federation was needed. This review was prompted by the increased profile of the Federation on national legal issues, in particular in connection with Federal Government initiatives, and the major human resource contribution the Law Society makes through its operational staff to the work of the Federation.

3. The issues the Committee reviewed included the following:
   a. Whether the Society's delegate to the Federation should become a member of the Committee;
   b. Whether the Society's delegate should provide regular reports through the Committee on Federation business; and
   c. If issues arise at the Federation that require review by the Society, whether the Committee should be the body through which the Society's delegate addresses these issues.

4. In addition to the Committee's discussions, the Committee's co-chairs met with the Treasurer, John Campion, who is the Society's current delegate to the Federation, Malcolm Heins, the Chief Executive Officer (CEO) and policy staff to obtain their views.

5. The Committee concluded that the current process for dealing with Federation issues, which is a flexible process, should be maintained for the following reasons.

6. The Society's policy staff, who provide most of the support for the Federation's initiatives, closely monitor developments that either involve or appear likely to involve the Federation. They prepare briefings and reports as needed to inform the Treasurer, the Federation delegate or the CEO. In respect of a particular issue, the delegate obtains the guidance he needs from the Treasurer, the CEO and the Director of Policy. This may involve a decision to refer a matter to the Federation for review or to develop the issue for that purpose. By this stage, much of the work in preparation for Convocation's review has been completed or has been identified and assigned. It would not appear that having the Committee inserted into this process would serve a useful purpose.

7. Many matters relevant to the Federation are government-relations oriented, and often require expeditious review. Requiring that the Committee be the designated committee

for Federation issues may make the process more cumbersome when it is required to be more nimble.

8. When a Federation issue is identified for particular treatment, it will often be sent to the Law Society committee that has the greatest expertise in the area. For example, this may be the Professional Regulation Committee or the Access to Justice Committee. It might even be the Emerging Issues Committee, for those matters that do not fall neatly within the jurisdiction of other committees. The view was that this flexibility should remain as the most useful way to funnel issues, rather than adding the step of having one committee review all issues.

9. Input to the Federation from the Law Society on issues of national concern is achieved by channeling the information through the Treasurer, the CEO, the Director of Policy or the Federation delegate, depending on the circumstances.

10. In summary, through the consultations among the Society's CEO, Director of Policy, the Federation's delegate and the Treasurer, appropriate treatment is given to the issues in preparation either for referral to the Federation through Convocation, or referral to the appropriate Law Society committee if the issue has been developed to the stage where it can be identified for such treatment. This process works well and the Committee determined that dedicating a specific committee to Federation work would encumber rather than enhance the current process.

Report to Convocation
January 25, 2007

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Finance and Audit Committee

Committee Members
Derry Millar, Chair
Beth Symes, Vice-Chair
Brad Wright, Vice-Chair
Abdul Chahbar
Andrew Coffey
Marshall Crowe
Holly Harris
Ross Murray
Alan Silverstein
Gerald Swaye

Purposes of Report: Decision and Information

Prepared by the Finance Department
Wendy Tysall, Chief Financial Officer – 416-947-3322

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COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on January 11, 2007. Committee members in attendance were: Derry Millar (c.), Beth Symes (v.c.), Brad Wright (v.c.) Abdul Chahbar, Andrew Coffey, Marshall Crowe, Holly Harris, Ross Murray, and Alan Silverstein. Constance Backhouse, Andrea Alexander, Patrick Furlong Allan Lawrence, Laura Legge attended part of the meeting as part of a joint meeting with the Heritage Committee.

2. Also in attendance were Clifford Lax and Gowra Prashad representing the McMurtry Gardens of Justice, Akhil Wagh of LawPro and Suzan Hebditch of LibraryCo Inc. Staff in attendance were Malcolm Heins, Wendy Tysall, Terry Knott, Fred Grady, Andrew Cawse, Sophia Sperdakos and Deidre Rowe-Brown.

## FOR INFORMATION

### GENERAL FUND - FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2006

16. The Committee recommends the third quarter financial statements for the General Fund be received by Convocation for information.

17. The third quarter financial statements for the General Fund with accompanying management analysis are attached.

Financial Instruments

18. The Committee reviewed the report of the Audit Sub-Committee to the Finance & Audit Committee. One of the Sub-Committee's responsibilities is to review and approve financial statement disclosures. The Sub-Committee addressed changes to accounting rules that require the valuation of the General Fund and Compensation Fund's long-term investments be calculated at fair (market) value rather than cost. This will result in unrealized gains and losses on investments increasing or decreasing the fund balance. The change does not affect 2006 but will be in place on January 1 for the Law Society's 2007 financial year.

19. The long-term investments are required to be classified as "held for trading", "held to maturity" or "available for sale". In preparation for the change, the nature and intent of the long-term investments were reviewed by the Law Society. The classification of "held for trading" appears most appropriate as it is most representative of the underlying nature of our investments, it results in less complex disclosure and accurately conveys resources available to the Law Society.

## General Fund

### Financial Statement Highlights
### For the nine months ended September 30, 2006

20. The attached unaudited financial statements for the first three quarters of 2006 have been prepared on a full accrual basis consistent with the annual financial statements.

21. At the end of September, the Society's unrestricted fund has a surplus of $1.7 million and an accumulated fund balance of $2.4 million. By the end of 2006, it is anticipated that the unrestricted fund will have an accumulated fund balance of $1 million.

Balance Sheet

22. Cash and short-term investments have decreased by $1.6 million since September 2005. Over the twelve-month period, $3.5 million in payments for the North Wing project have been made bringing the total to $9.8 million, in line with the project budget and reports to the Finance & Audit Committee. A payment has been made on a large litigation accrual and these two major outflows have offset the proceeds from the sale of the Ottawa building of just over $2 million at the beginning of 2006.

23. Accounts receivable and prepaid expenses are in line with 2005. Accounts receivable are for the most part members' annual fees that are collected as part of the monthly installment plan.

24. Portfolio investments have increased slightly over 2005 as income earned and gains realized from investments have been re-invested in the long-term portfolio. Market value is nominally higher than book value.

25. Accounts payable and accrued liabilities have decreased from $7.3 million to $4.3 million. The 2005 balance included large accruals and holdbacks for the North Wing project. With the completion of this project, those accrued liabilities and holdbacks have

been paid. In addition, the accounts payable balance for 2005 included amounts related to the wind up of the old Bar Admission Course. These amounts have been paid and are not included in the 2006 balance. The difference also reflects normal fluctuations in amounts due to the Compensation Fund and regular trade payables.

26. Deferred revenue levels are consistent and comprise members' fees billed but not yet earned, licensing process tuition fees and CLE fees billed but not yet earned.

Revenues and Expenses

27. Annual membership fee revenue is recognized on a monthly basis. Membership fees have increased from $27.8 million in 2005 to $30.2 million in 2006 with approximately 1,000 new members and an increase of $68 in the member fee.

28. Professional development and competence revenue has declined over 2005 as a result of a reduction in the licensing process tuition fee from $4,400 to $2,600.

29. Investment income has increased by approximately $500,000. $250,000 of this increase relates to increased investment income from the E&O fund with the balance being the result of higher rates of return over 2005.

30. Total unrestricted fund expenses have decreased over 2005 in line with expectations because Professional Development and Competence expenses have decreased by $1.2 million with the change to the licensing process. 2006 expenses in professional regulation are at $9.7 million compared to $8.9 million in 2005. The 2005 regulatory expenses included a $700,000 provision for a litigation matter. 2006 numbers do not include this but as anticipated in the budget, operating expenses have increased with the rising costs associated with mortgage fraud.

31. Amortization has increased over 2005 with the amortization of the renovation costs of the North Wing. The project will be amortized over a 10-year period.

32. Bencher and Convocation expenses have decreased from $1.2 million in 2005 to just over $1 million in the current year with savings spread over the categories of bencher expenses, Treasurer expenses and bencher remuneration.

Changes in Fund Balances

33. The unrestricted fund balance ends the period at $2.4 million. The 2006 budget anticipated utilizing $1.0 million of this fund balance to reduce the annual membership levy. It is projected that the unrestricted fund will end 2006 with a balance of approximately $1.7 million.

34. The invested in capital assets fund has decreased by $4 million over the year with the depreciation of the new wing commencing and the disposal of the Ottawa building.

35. The special projects fund includes a transfer of $190,000 from the unrestricted fund for projects approved for funding from contingency, primarily for the Task Force on the Rule of Law and the Retention of Women Working Group.

36. Funding under the Repayable Allowance Program has decreased substantially from $210,000 in 2005 to $88,000 this year and from 59 to 26 applicants respectively. This program has had the same profile and prominence as last year, but the shorter, cheaper Licensing Process and student's reluctance to take on further debt are perceived as the reasons for the reduction in activity.

FOR INFORMATION

LAWYERS FUND FOR CLIENT COMPENSATION - FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2006

37. The Committee recommends the third quarter financial statements for the Lawyers Fund for Client Compensation be received by Convocation for information.

38. The third quarter financial statements for the Lawyers Fund for Client Compensation with accompanying management analysis are attached.

Financial Instruments

39. The Committee reviewed the report of the Audit Sub-Committee to the Finance & Audit Committee. One of the Sub-Committee's responsibilities is to review and approve financial statement disclosures. The Sub-Committee addressed changes to accounting rules that require the valuation of the General Fund and Compensation Fund's long-term investments be calculated at fair (market) value rather than cost. This will result in unrealized gains and losses on investments increasing or decreasing the fund balance. The change does not affect 2006 but will be in place on January 1 for the Law Society's 2007 financial year.

40. The long-term investments are required to be classified as "held for trading", "held to maturity" or "available for sale". In preparation for the change, the nature and intent of the long-term investments were reviewed by the Law Society. The classification of "held for trading" appears most appropriate as it is most representative of the underlying nature of our investments, it results in less complex disclosure and accurately conveys resources available to the Law Society.

Lawyers Fund for Client Compensation
Financial Statement Highlights
For the nine months ended September 30, 2006

41. The first three quarters of 2006 have been completed and the financial position of the LAWYERS FUND FOR CLIENT COMPENSATION ("the Fund") remains strong. The Fund's Financial Statements for the nine months ended September 30, 2006 identify a surplus of $1.689 million for the period compared to a deficit of $1.740 million for the same period in 2005. This change is attributable to the downward revision of the Reserve for Unpaid Grants of $2.4 million since the beginning of the year and recoveries in 2006 of just under $1 million compared to $184,000 in 2005.

42. The Fund balance at the end of September 2006 is $19.6 million up from $17.8 million at the same time last year.

Balance Sheet

43. The Fund's balance sheet remains strong with total assets in excess of $30 million and liabilities (including the Reserve for Unpaid Grants) of $11 million. The combination of the Fund's short-term and long-term investments is stable at just over $30 million ($7.5 million + $23 million). The market value of the portfolio investments exceeds book value by just under $1 million, similar to the same time in 2005.

44. The Reserve for Unpaid Grants of $8.3 million is down from the $10.5 million reported in 2005. The decrease in the reserve reflects the processing of multiple claims against one member originating in late 2004. The Society's actuary reviewed the Fund's Reserve for Unpaid Claims and his report is attached.

Statement of Revenues And Expenses

45. Fee revenues of $4.6 million are nominally higher than 2005 due to the increase in equivalent full fee paying members from 30,000 to 31,000. Annualized fee revenue for the Fund will approximate the budget of $6.0 million.

46. Investment income has decreased from $1.1 million to $850,000 primarily because of some realized losses in U.S. equities in 2006.

47. Grants paid of $3.6 million have increased by $900,000 compared to the first three quarters of 2005. These incurred payments, combined with favourable developments on previously reserved amounts and low claims in the current year means the Reserve for Unpaid Grants has decreased by $2.4 million during the year.

48. Recoveries of $968,000 are unusually significant in the first three quarters of 2006. Recoveries do not follow any pattern and the current receipts are sourced from court orders on trust accounts frozen by Trustee Services, the sale of some property and restitution orders. We are optimistic the Monitoring and Enforcement department will facilitate future recoveries.

49. The Fund's share of investigation, discipline and administrative expenses allocated from the unrestricted fund has increased in line with the increases in the underlying costs. For instance, the share of investigations and discipline costs rose from $726,000 to $819,000 in line with the 13% increase in the budget for investigations and discipline in 2006.

## FOR INFORMATION

LIBRARYCO INC. – FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2006

50. The Committee recommends Convocation receive the third quarter financial statements for LibraryCo Inc. for information.

FOR INFORMATION

INVESTMENT COMPLIANCE REPORTS

51. The Committee recommends the investment compliance reports for the General Fund and Compensation Fund long-term and short-term portfolios be received by Convocation for information.

FOR INFORMATION

STATEMENT OF COMPLIANCE – SHORT-TERM PORTFOLIO

FOR INFORMATION

STATEMENT OF COMPLIANCE – LONG-TERM PORTFOLIO

FOR INFORMATION

COMPLIANCE REPORT – COMPENSATION FUND - FOYSTON, GORDON & PAYNE

FOR INFORMATION

COMPLIANCE REPORT – GENERAL FUND - FOYSTON, GORDON & PAYNE

FOR INFORMATION

LAWPRO FINANCIAL STATEMENTS FOR THE THIRD QUARTER ENDED SEPTEMBER 30, 2006

52. The Committee recommends the third quarter financial statements for the Errors and Omissions Insurance Fund and Lawyers' Professional Indemnity Company be received by Convocation for information.

53. LawPro's Report to the Finance and Audit Committee is attached.

FOR INFORMATION

MCMURTRY GARDENS OF JUSTICE

54. A motion, recommending the Law Society provide a total of $100,000 over three years in support of the McMurtry Gardens of Justice, is in the Heritage Committee Report to Convocation this month. Further details on the Gardens is also in the Heritage Committee Report.

55. Mr. Clifford Lax, one of the organizers of the McMurtry Gardens of Justice, made a presentation to a joint meeting with the Heritage Committee on the Gardens project. The McMurtry Gardens of Justice is intended to serve as a permanent tribute to Chief Justice Roy McMurtry upon the occasion of his retirement as Chief Justice of Ontario in April 2007.

56. The Gardens will be located on the pedestrian avenue between Osgoode Hall and the 361 University Avenue Courthouse, joining University Avenue to Nathan Phillips Square. It is intended to contain a number of sculptures inspired by legal values protected by the Charter of Rights and Freedom or by the common law tradition.

57. The Law Society has been requested to become a major financial supporter of the project in the approximate amount of $100,000 representing partial funding of a work of art to be located in the Gardens.

58. The $100,000 requested from the Law Society has not been included in the 2007 budget. If the payment and timetable is approved, $33,333 would be funded from the 2007 contingency account, which has $600,000 available for the year. The two further installments of $33,333 each would be included in the 2008 and 2009 budgets.

59. The organizers are working with the province and the City of Toronto concerning the current refurbishment of the Garden area. The Law Society is not expected to incur any ongoing maintenance or security costs or expenses over and above the funding request.

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

(1) Copy of the third quarter financial statements for the General Fund.
(pages 10 – 12)

(2) Copy of the third quarter financial statements for the Lawyers Fund for Client Compensation.
(pages 16 – 17)

(3) Copy of the third quarter financial statements for LibraryCo Inc.
(pages 19 – 28)

(4) Copy of the LAWPRO Financial Statements for the third quarter ending September 30, 2006.
(pages 35 – 49)

CONVOCATION ROSE AT 5:10 P.M.

Confirmed in Convocation this 22nd day of February, 2007

Treasurer