MINUTES OF CONVOCATION

Thursday, 27th January 2005
9:00 a.m.

PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Aaron, Alexander, Backhouse, Banack, Bourque, Boyd, Campion, Carpenter-Gunn, Caskey, Cass, Chahbar, Cherniak, Dickson, Doyle, Dray, Eber, Elliott, Feinstein, Filion, Finlayson, Furlong, Gold, Gotlib, Gottlieb, Harris, Heintzman, Hunter, Krishna, Lawrence, Legge, MacKenzie, Manes, Martin (by telephone), Millar, Murray, O'Donnell, Pattillo, Pawlitza, Porter, 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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TREASURER'S REMARKS

The Treasurer drew benchers' attention to his letter to Mr. George Thomson respecting the independent review of registration appeals process.

On March 1st the Law Foundation will be presenting The Law Foundation Guthrie Award to Chief Justice R. Roy McMurtry, and announcing the creation of the Roy and Ria McMurtry Endowment, which is being created in their honour and directed to the charitable purposes of their choice. Copies of the Award brochure were distributed to the benchers.

MOTION–APPOINTMENT TO COUNCIL OF FEDERATION OF LAW SOCIETIES OF CANADA

It was moved by Mr. Heintzman, seconded by Mr. Silverstein that Vern Krishna be appointed to the Council of Federation of Law Societies of Canada.

Carried

MOTION-APPOINTMENTS TO LAW SOCIETY MEDAL/LINCOLN ALEXANDER AWARD COMMITTEE AND LL.D. ADVISORY COMMITTEE

It was moved by Mr. Heintzman, seconded by Mr. Silverstein:

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

John Campion
Laurie Pawlitza
William Simpson
Bonnie Warkentin

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

Constance Backhouse
John Campion
Anne Marie Doyle
Neil Finkelstein
William Simpson
Beth Symes

Carried

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DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of November 25th, 2004 were confirmed.

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REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Amendments to By-Laws 18 and 19 and Rule 2.02(5) of the Rules of Professional Conduct Respecting Money Laundering

Mr. Pattillo presented the Report of the Professional Regulation Committee.

Professional Regulation Committee
January 27, 2005

Report to Convocation

Committee Members
Carole Curtis, Chair
Mary Louise Dickson, Vice-Chair
Laurence Pattillo, Vice-Chair
Gordon Z. Bobesich
Anne Marie Doyle
Sy Eber
George D. Finlayson
Patrick G. Furlong
Allan Gotlib
Ross W. Murray
Tracey O'Donnell
Mark Sandler
Roger D. Yachetti

Purposes of Report: Decision and Information

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

OVERVIEW OF POLICY ISSUE

PROPOSED AMENDMENTS TO BY-LAW 18 AND BY-LAW 19 AND RULE 2.02(5) OF THE *RULES OF PROFESSIONAL CONDUCT* WITH RESPECT TO MONEY LAUNDERING

Request to Convocation

Convocation is requested to approve amendments to By-Law 18 (Record Keeping Requirements), By-Law 19 (Handling of Money and Other Property), and an amendment to the commentary to rule 2.02(5) of the *Rules of Professional Conduct* with respect to the prevention of money laundering. The motion to amend the By-Laws appears at page 11 The new commentary appears on page 16.

Summary of the Issue

1. As an aspect of its challenge to the application of federal money-laundering legislation to lawyers, the Federation of Law Societies has adopted a model rule that includes

   - a prohibition on lawyers accepting large amounts of cash from clients or third parties,
   - new record keeping requirements with respect to receipt of cash, and
   - new advisory commentary on lawyers' responsibilities when their suspicions are raised about the legality of a transaction for which the lawyer receives instructions.

2. The Federation has requested that each law society in Canada implement the model rule through its own regulatory instruments. To date, the law societies in the Northwest Territories and Newfoundland have implemented the model rule. Prior to preparation of the model rule, British Columbia adopted its own prohibition on accepting large cash amounts.

3. This report includes proposals to implement the model rule through amendments to By-Laws 18 and 19 and rule 2.02(5) of the *Rules of Professional Conduct.*

4. The purpose of adopting the model rule is to enhance the Society's ability to regulate the profession in the public interest, which interest includes eradicating money laundering. Adopting the rule will also indicate to the federal Government that the regulators of the legal profession take their responsibilities in this respect seriously.

5. By agreement with the federal Government, the hearing of the Federation's constitutional challenge to the money laundering legislation has been adjourned to November 2005.

THE REPORT

TERMS OF REFERENCE/COMMITTEE PROCESS

6. The Professional Regulation Committee ("the Committee") met on December 3, 2004 and January 13, 2005. In attendance at the meetings were Carole Curtis (Chair), Mary Louise Dickson and Laurie Pattillo (Vice-chairs), Earl Cherniak, Anne Marie Doyle, Sy Eber, Abe Feinstein, George Finlayson, Allan Gotlib, Gavin McKenzie, Ross Murray and Mark Sandler. Staff attending were Bruce Arnott, Naomi Bussin, Lesley Cameron, A.K. Dionne, Malcolm Heins, Leslie Greenfield, Terry Knott, Zeynep Onen, Jim Varro and Andrea Waltman.

7. The Committee is reporting on the following matters:

For Decision
- Proposed amendments to By-Laws 18 and 19 and rule 2.02(5) of the Rules of Professional Conduct with respect to money laundering

Information
- Review of Rules Relating to the Financing of Law Firms

PROPOSED AMENDMENTS TO BY-LAW 18 AND BY-LAW 19 AND RULE 2.02(5) OF THE *RULES OF PROFESSIONAL CONDUCT* WITH RESPECT TO MONEY LAUNDERING

A. BACKGROUND

8. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), sets out a regulation-making authority for carrying out the purposes and provisions of the Act, including the implementation of requirements for record-keeping, client identification and reports of suspicious and prescribed transactions.

9. The PCMLTFA provides the authority to prescribe by regulations individuals and entities engaged in a business or profession that are subject to Part I of the Act. Until March 2003, lawyers were covered by the PCMLTFA through the regulations. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* require financial institutions and intermediaries to report certain financial transactions, such as large cash transactions and international electronic funds transfers of $10,000 or more, to the

Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). They also require reporting entities to ascertain the identity of their clients whether they are individuals, corporations or other entities, keep certain records and implement an internal compliance program. Lawyers were included as intermediaries subject to the Regulations.

10. On November 8, 2001, the Federation of Law Societies of Canada and the Law Society of British Columbia launched a constitutional challenge in British Columbia to the application of the PCMLTFA to lawyers. The Federation's position is that the application of the PCMLTFA requirements to lawyers violates solicitor-client confidentiality and the independence of legal counsel.

11. On November 20, 2001, the Federation was granted interim relief for lawyers in British Columbia pending a full hearing on the constitutionality issue. Similar decisions were made by courts in other Canadian jurisdictions. The Attorney General and the Federation reached an agreement, on May 14, 2002, to have the interim relief granted by the courts in a number of provinces apply to lawyers across Canada. The interim relief granted by the courts exempts lawyers from regulatory requirements such as reporting, record-keeping, client identification and compliance.

12. In light of the above, in March 2003 the federal government repealed the provisions that subject lawyers to the client identification, recordkeeping, reporting and internal compliance requirements under Part I of the PCMLTFA. Lawyers are therefore no longer subject to these regulatory requirements. Recently, agreement was reached between the government and the Federation of Law Societies to adjourn the constitutional challenge to November 2005.

13. Following the repeal of the above provisions, the government indicated that Canada's anti-money laundering and anti-terrorist financing regime must cover all entities that act as financial intermediaries, including lawyers, in order to be effective. Following consultations, the government has advised that it intends to put in place a new regime for lawyers consistent with this principle that better reflects the nature of their duties. An important fact is that an international intergovernmental body, the Financial Action Task Force on Money Laundering ("FATF"), of which Canada is a member, has made a commitment to implement FATF's recommendations for a framework for anti-money laundering efforts, which would apply to the legal profession. [1]

14. A Federation of Law Societies Task Force was struck to consult with the federal government. In recognizing that lawyers support efforts to eradicate money laundering, the Federation proposed that each law society in Canada adopt regulations that would assist in preventing money laundering, including a prohibition on lawyers accepting or handling cash (above a certain threshold limit) on behalf of their clients or third parties. To this end, the Federation adopted a model rule and has requested that each law society adopt it within its own regulatory instruments.

15. The Committee urges Convocation to implement the model rule. This recommendation is premised on the proposition not only that the Society should do this in recognition of its obligation to the public interest, but that the regulators of the legal profession take their responsibilities in this respect seriously.

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[1] The FATF's "40 Recommendations" with respect to money laundering appear at Appendix 1.

B. OVERVIEW OF THE PROPOSED AMENDMENTS

16. The model rule, appearing at Appendix 2, prohibits lawyers from accepting large cash amounts and includes enforcement measures relating to books and records requirements that will complement this prohibition.

17. The Committee consulted with the Criminal Lawyers Association (CLA), as the proposals are likely to impact more on the criminal defence bar than other practitioners. Staff met with representatives of the CLA in June and communicated further with the representatives in October and November 2004. Written feedback on the proposals was received prior the Committee's December 3, 2004 meeting. The CLA's letter is attached at Appendix 3. While the Committee considered the CLA's concerns, no changes were made to the original proposals.

Comments on the Model Rule

18. The following are the significant aspects of the model rule:

    a. Lawyers are prohibited from accepting cash in the amount of $7,500 or greater, subject to limited exceptions;
    b. New record keeping requirements include recording when cash is received, and creating a new duplicate cash receipt record, to be signed by the lawyer and the person delivering the cash to the lawyer;
    c. New commentary to rule 2.02(5) of the Rules of Professional Conduct advises lawyers to be alert to situations that raise suspicions about the nature of a client's transaction;
    d. An addition to the Member's Annual Report (MAR) for the 2005 filing year will require lawyers to advise if they have received cash and, if so, whether the receipt was in compliance with the By-Laws.

    Notice of the new regulations will be given to the profession through the Society's various publications.

Particulars of the Amendments

19. To implement the model rule, amendments to By-Laws 18 and 19 and to the commentary to rule 2.02(5) of the Rules of Professional Conduct are required. A blackline version of the By-Laws with the proposed amendments appears in Appendix 4. Motions for the amended By-Laws appear on page 11. The new commentary appears on page 16

20. The following explains in more detail the amendments to the By-Laws and Rules.

By-Law 19

21. The By-Law 19 amendments will prohibit a lawyer from receiving $7,500 or more in respect of any one client file or matter. This will prevent a client from delivering smaller amounts of cash that exceed $7,500 over a period of time (s. 1.2). Certain narrow exemptions to the prohibition appear in s. 1.4 and include:
    - receipt of cash from a peace officer, law enforcement agency or other agent of the Crown (acting in his or her official capacity),

- receipt of cash pursuant to an order of a tribunal, or to pay a fine or penalty, and
- receipt of cash for fees, disbursements, expenses or bail, provided that a refund of any of the cash is returned in cash.

By-Law 18

22. Amendments to By-Law 18 focus on the need to monitor compliance with the cash receipt prohibition through the Spot Audit process and the Investigations department. The amendments will help investigators to determine if the regulation has been breached. The amendments will also enhance the ability of the Law Society to show publicly that it is taking regulation of the activity of its members seriously.

23. The following are the key amendments.

Amendment #1

24. Members will be required to identify the manner in which funds are received. Currently By-Law 18, s. (2) 1., which deals with the receipt of trust funds, provides as follows:

Requirement to maintain financial records

2. Every member shall maintain financial records to record all money and other property received and disbursed in connection with the member's practice, and, as a minimum requirement, every member shall maintain, in accordance with sections 4, 5 and 6, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the person from whom money is received, the amount of money received, the client for whom money is received in trust.

25. Paragraph 1. will be amended to require the lawyer to also record the method of receipt, whether by cash or other money (including cheques, drafts, money orders, credit card sales slips, wired funds, or electronic transfers).

Amendment #2

26. By-Law 18 s. (2) 5. relating to the receipt of other funds imposes the following requirement:

Requirement to maintain financial records

2. Every member shall maintain financial records to record all money and other property received and disbursed in connection with the member's practice, and, as a minimum requirement, every member shall maintain, in accordance with sections 4, 5 and 6, the following records:

…

5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the person from whom money is received, the amount of money received.

27. Paragraph 5. will be amended to require the lawyer to also show the method of receipt, whether by cash or other money (including cheques, drafts, money orders, credit card sales slips, wired funds, or electronic transfers).

Amendment #3

28. The By-Law will include a new paragraph (s. 2.1) to require members to keep a record of the receipt of cash through a duplicate cash receipt system. The receipt would be pre-numbered and contain particulars such as the amount of cash, date received, client name, matter number, name of person providing the cash, etc. The duplicate receipt must be signed by both parties and filed in chronological order. This system, in addition to recording the method of receipt in the financial books, provides an audit trail for cash receipts, and protects both the client and lawyer.

29. While the Federation's model rule requires the lawyer to obtain the signature of the person delivering the cash, the amendment to By-Law 18 in this respect provides that the member will satisfy the requirement if he or she makes reasonable efforts to obtain the signature (s. 2.1(2)). The Committee felt that in circumstances where a client or the person delivering the cash is, for example, providing a cash retainer and refuses to sign the receipt, the lawyer should not be required to not act for that client to avoid breaching the By-Law. In the Committee's view, s. 2.1(2) substantially reflects the model rule.

30. The Spot Audit department advised that a number of firms already have a duplicate cash receipt system in place, and recognize this as a good business practice.

31. Preservation of the receipts would also be required, which necessitates an amendment to By-Law 18, s. 6(2) ("Preservation of Financial Records") to include the receipts.

32. The following is the motion to amend By-Laws 18 and 19.

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 27, 2005

MOVED BY

SECONDED BY

THAT by-laws made by Convocation under subsection 62 (0.1) and (1) of the *Law Society Act* in force on January 27, 2005 be amended as follows:

BY-LAW 18
[RECORD KEEPING REQUIREMENTS]

1. Subsection 1 (1) of By-Law 18 [Record Keeping Requirements] is amended by adding the following:

"cash" means current coin within the meaning of the Currency Act, notes intended for circulation in Canada issued by the Bank of Canada pursuant to the Bank of Canada Act and current coin or banks notes of countries other than Canada;

2. Subsection 1 (1) of the By-Law is amended by deleting "current coin, government or bank notes" and substituting "cash" in the interpretation of "money".

3. Paragraph 1 of section 2 of the By-Law is amended by adding "the method by which money is received" after "for a client".

4. Paragraph 5 of section 2 of the By-Law is deleted and the following substituted:

5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the method by which money is received, the amount of money which is received and the person from whom money is received.

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

Record keeping requirements if cash received in trust

2.1 (1) Every member who receives cash shall maintain financial records in addition to those required under section 2 and, as a minimum additional requirement, shall maintain, in accordance with sections 4, 5 and 6, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received and any file number in respect of which cash is received and containing the signature of the member or the person authorized by the member to receive cash and of the person from whom cash is received.

No breach

(2) A member does not breach subsection (1) if a receipt does not contain the signature of the person from whom cash is received provided that the member has made reasonable efforts to obtain the signature of the person from whom cash is received.

6. Subsection 4 (1) of the By-Law is amended by deleting "and 3" and substituting "2.1 and 3".

7. Subsection 5 (1) of the By-Law is amended by deleting "and 3" and substituting "2.1 and 3".

8. Subsection 6 (1) of the By-Law is deleted and the following substituted:

Preservation of financial records required under ss. 2 and 2.1

6. (1) Subject to subsection (2), a member shall keep the financial records required to be maintained under sections 2 and 2.1 for at least the six year period immediately preceding the member's most recent fiscal year end.

BY-LAW 19
[HANDLING OF MONEY AND OTHER PROPERTY]

9. Subsection 1 (1) of By-Law 19 [Handling of Money and Other Property] is amended by adding the following:

"cash" means current coin within the meaning of the Currency Act, notes intended for circulation in Canada issued by the Bank of Canada pursuant to the Bank of Canada Act and current coin or banks notes of countries other than Canada;

10. Subsection 1 (1) of the By-Law is amended by deleting "current coin, government or bank notes" and substituting "cash" in the interpretation of "money".

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

Interpretation: "holiday"

(3) In sections 1.2 and 8.1, "holiday" means,

(a) any Saturday or Sunday;

(b) New Year's Day;

(c) Good Friday;

(d) Easter Monday;

(e) Victoria Day;

(f) Canada Day;

(g) Civic Holiday;

(h) Labour Day;

(i) Thanksgiving Day;

(j) Remembrance Day;

(k) Christmas Day;

(l) Boxing Day; and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Same

(4) Where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday.

Same
(5) Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays.

Same
(6) Where Christmas Day falls on a Friday, the following Monday is a holiday.

12. The By-Law is amended by adding immediately before section 1 the following:

PART I
GENERAL

13. The By-Law is amended by adding immediately before section 2 the following:

PART II
CASH TRANSACTIONS

Definition

1.1 In this part,

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them.

"public body" means,

(a) a department or agent of Her Majesty in right of Canada or of a province;

(b) an incorporated city, metropolitan authority, town, township, village, county, district, rural municipality or other incorporated municipal body or an agent of any of them; and

(c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act or agent of the organization.

Cash received
1.2 (1) A member shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of 7,500 or more Canadian dollars.

Foreign currency
(2) For the purposes of this section, when a member receives or accepts from a person cash in a foreign currency the member shall be deemed to have received or accepted the cash converted into Canadian dollars at,

(a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the member receives or accepts the cash; or

(b) if the day on which the member receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the member receives or accepts the cash.

Application
1.3 Section 1.2 applies when, in respect of a client file, a member engages in or gives instructions in respect of the following activities:

1. The member receives or pays funds.

2. The member purchases or sells securities, real properties or business assets or entities.

3. The member transfers funds by any means.

Exceptions
1.4 Despite section 1.3, section 1.2 does not apply when the member,

(a) receives cash from a financial institution or public body;

(b) receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;

(c) receives cash pursuant to an order of a tribunal;

(d) receives cash to pay a fine or penalty; or

(e) receives cash for payment of fees, disbursements, expenses or bail provided that any refund out of such receipts is also made in cash.

14. The By-Law is amended by adding immediately before section 2 the following:

PART III
TRUST ACCOUNT TRANSACTIONS

15. The By-Law is amended by adding “PART IV” immediately before the heading “AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS”.

16. The By-Law is amended by deleting subsection 7.1 (7) and substituting the following:

Application of subs. 8.1 (2)
(7) Subsection 8.1 (2) applies, with necessary modifications, with respect to the doing of any act under this section.

17. The By-Law is amended by deleting subsections 8.1 (4), (5), (6) and (7).

18. The By-Law is amended by adding immediately before section 9 the following:

PART V
COMMENCEMENT

Amendment to the *Rules of Professional Conduct*

33. The new commentary proposed for rule 2.02(5) appears below in bold underlined text and has been reviewed by Paul Perell, the drafter of the 2000 Rules.

34. The new commentary focuses on the lawyer's need to be aware of suspicious transactions for which he or she receives instructions and make appropriate inquiries if suspicions are raised. The commentary falls under rule 2.02(5), which prohibits a lawyer from knowingly assisting or encouraging any dishonesty, fraud, crime or illegal conduct.

35. In the Committee's view, this "awareness" aspect of the effort to eradicate money laundering is an important part of the implementation of the model rule.

Rule 2.02 QUALITY OF SERVICE
…

Dishonesty, Fraud etc. by Client

(5) When advising a client, a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or instruct the client on how to violate the law and avoid punishment.

[Amended – March 2004]

Commentary

A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client. A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activity such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

Before accepting a retainer or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer, including verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

A bona fide test case is not necessarily precluded by subrule 2.02(5) and, so long as no injury to the person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.

INFORMATION

REVIEW OF RULES RELATED TO THE FINANCING OF LAW FIRMS

A. BACKGROUND

36. In January 2004, the Treasurer asked that the Society examine the implications of law firms using various financing vehicles to fund their practices. The review was in response to developments in other jurisdictions where law firms financed their operations through the private debt market and where the possibility of public-traded law firm corporations was being discussed.

37. The matter was referred to the Committee, which struck a working group[2] for this study. The working group prepared a report to the Committee, reflected in this report. The Committee adopted the working group's conclusions and presents its report for the information of Convocation.

Developments Prompting the Study

38. In Canada, law firms or sole proprietorships historically have been financed by partners' capital or third party financing in the form of bank debt or lease financing. Today, large firms are seeking to do business in various jurisdictions at the same time, or are expanding their areas of service to attract new clients. They are also investing in major office information technology projects. This requires significant amounts of new capital and is leading firms to explore new ways of financing their operations. In some jurisdictions, firms have already used some of these new methods. The notion of law firm corporations offering shares in a public offering has also been discussed.

39. Should increased interest in new and different forms of financing law firms occur, for example, in the context of enhanced mobility between Canadian and foreign lawyers, the Society should be prepared to respond to any regulatory issues that new methods of financing create.

40. The issue also relates to developments that may occur outside of the legal profession, some of which are discussed in this report, on how and through whom legal services are provided. It is conceivable that pressure by large financial institutions to offer legal services to the public as part of a "full service" motto might raise the issue from a different perspective.

B. SUMMARY OF THE REVIEW

41. The Committee's review, through the working group, involved the following steps:
    a. Reviewing the various Law Society rules, regulations and statutory provisions that bear on this issue;
    b. Reviewing the developments in the other jurisdictions, including England and Wales, the United States, and Australia;

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[2] Laurie Pattillo (chair), Mary Louise Dickson, Anne Marie Doyle, Sy Eber and George Finlayson.

c. Educating itself on the various methods of financing available or potentially available to law firms; and
d. Interviewing a number of managing partners of large Toronto and national firms on their views on various financing methods.

Details relating to the above are discussed below.

C. THE PROFESSION'S VALUES RELEVANT TO THE STUDY

42. Upon a review of background material and source documents relating to the topic, the Committee realized that some new methods of financing, to the extent that they involve equity and non-lawyer investors, attract scrutiny from the perspective of the profession's core values. These include maintaining independence, protecting client confidentiality and avoiding conflicts of interest. Further, it became apparent that these issues had already been thoroughly canvassed in the study that led to the multi-discipline practice (MDP) model adopted by the Law Society in 1998.

43. In the MDP study, the primary issue was whether lawyers could provide legal services in a partnership with non-lawyers who provide a range of other services, and maintain the core values of the profession. In determining that the risks to these values were too great in a multi-discipline setting, the Society adopted a restrictive model that permits lawyers and non-lawyers to partner in a partnership that is a law firm and where the lawyers effectively control the non-lawyers' provision of services to clients.

44. The Committee believes that the MDP report reflects the appropriate policy on the importance of protecting the core values. The authors of that report articulated the issue in the following language:

MDPs, the Role of the Lawyer, and the Public Interest

The Law Society's study was premised on the belief that the legal profession should not embrace MDPs, whatever the commercial attractions, until a demonstrable and legitimate demand outweighs the risks to the profession in the public interest. The focus must be on the preservation of a strong and independent legal profession. In response to this approach, the Working Group identified and examined in detail the principal characteristics of the legal profession which establish the public interest imperative of preserving the profession and the services which it offers. Three specific areas are:

- solicitor client privilege
- independence, and
- the conflict of interest regime governing lawyers in their professional practices.

…

The analysis of these unique features of the profession illustrates that lawyers are not simply at one with other professionals and service providers who must serve with due care and skill. The lawyer has a pivotal role in the administration of justice and the upholding of the rule of law. The law has imposed these special responsibilities on the legal profession which must be discharged in the public interest. If lawyers fail to do so, not only is the profession discredited but the values and societal interests which lawyers

are charged with protecting are undermined and placed at risk. It is this responsibility that must be weighed when considering the profession's compatibility with MDPs.[3]

45. Some lawyers see law practice now as a business more than a profession. Some new funding methods would undoubtedly assist the "business" of the practice of law but the question is whether this would result in intrusions on the core values. It is against this background that the Committee undertook its study.

D. CURRENT REGULATION

46. The following explains the legislative provisions, rules, and policies that affect a financial investment in a law practice other than by the lawyers in the practice. The relevant regulation is discussed under the headings of partnership interests, debt obligation and share interests.

Partnership Interests

47. Rule 2.08(10)(a) of the Society's *Rules of Professional Conduct* provides that a lawyer cannot "directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer". The rule is based on the need to ensure the lawyer's independent professional judgment on behalf of a client. Rule 2.08(10)(a) appears to apply to partnership interests, if the prohibition is interpreted as capturing payment of a partnership share to a non-lawyer (as "indirectly" sharing, splitting, etc.). It appears that this was contemplated given the exception to the rule in rule 2.08(11)[4] for the payment of profits to non-lawyer partners in multi-discipline practices (discussed below) and non-Ontario or non-Canadian lawyers partners in inter-provincial and international law firms.

48. The *Law Society Act* permits the Society to make by-laws governing multi-discipline practices. By-Law 25 was adopted in April 1999 to address these circumstances, and permits lawyers and non-lawyers to partner. The By-Law is based on the policy that the Society should facilitate lawyers and non-lawyers providing their respective services within a law practice controlled by lawyers.

49. Under By-Law 25, the non-lawyer partner must practise a profession, trade or occupation that supports or supplements the lawyer's practice of law, and must agree with the lawyer in writing that the non-lawyer will not practise his or her profession, trade or occupation except to provide services to clients of the partnership or association. Thus, the By-Law does not permit "passive" partnership interests.[5]

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[3] The "Futures" Task Force - Final Report of the Working Group on Multi-Discipline Partnerships, Report to Convocation, September 25, 1998, pages 3 to 5.

[4] Subrule (10) does not apply to

(a) multi-discipline practices of lawyer and non-lawyer partners where the partnership agreement provides for the sharing of fees, cash flows or profits among members of the firm, and

(b) sharing of fees, cash flows or profits by lawyers who are

(i) members of an interprovincial law firm, or

(ii) members of a law partnership of Ontario and non-Canadian lawyers who otherwise comply with this rule.

[5] The Committee noted that as a matter of law, there is a question as to whether a passive investment partner would be considered a partner within the meaning of the *Partnerships Act*.

Debt Obligation

50. Rule 2.08(10)(a) also appears to prohibit a lawyer arranging a debt obligation with a person outside the law practice as a third party investor in the law practice, where the return on the investment is linked to the law practice's profit. An exception is provided in the commentary for the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold.

Share Interests

51. Rule 2.08(10)(a) also appears to apply to shareholder interests, if a share interest is analogized to a partnership interest, discussed above.[6]

52. The *Law Society Act* permits lawyers to form professional corporations. The policy basis for professional corporations is found in the report of the Special Committee on the Incorporation of Law Practices (adopted by Convocation on May 29, 1992). This report set the stage for amendments to the *Law Society Act* prior to 1999 permitting professional corporations, and later the amendments to the Act effective February 1999.

The *Limited Partnerships Act* provides a vehicle for investment by a limited partner, who can only contribute money or property (not services) to a partnership in which general partners carry on the business of the partnership. But even in these circumstances, the Society's Rules, noted above, appear to prevent this type of investment in a law partnership.

[6] The *Model Rules of Professional Conduct* of the American Bar Association are clearer on this issue. Rule 5.4 states:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

53. The policy clearly confines the structure to lawyers practising law. Section A13 of the report states:

> If a law corporation is to provide the services of a barrister or solicitor, the legal and beneficial ownership of all of its issued shares must be vested in one or more members of the Law Society… It is suggested that the articles of every law corporation should contain a provision prohibiting the transfer of shares to persons who are not members.

54. The *Law Society Act* confirms this policy. Pursuant to s. 61.0.1 of the Act and subject to the by-laws, a member or two or more members practising law as individuals or as a partnership may establish a professional corporation for the purpose of practising law.

55. The *Business Corporations Act* applies to these arrangements, and pursuant to s. 3.2(2), the following conditions (among others) must be met:

a. All of the issued and outstanding shares of the corporation must be legally and beneficially owned, directly or indirectly, by one or more members of the same profession.
b. All officers and directors of the corporation must be shareholders of the corporation.
c. The articles of incorporation of a professional corporation must provide that the corporation may not carry on a business other than the practice of the profession, but the corporation may carry on activities related to or ancillary to the practice of the profession, including the investment of surplus funds earned by the corporation.

56. In summary, regulations prohibit debt financing tied to profit and investment by non-lawyers (except in certain circumstances in authorized MDPs and inter-jurisdictional law firms). Passive non-lawyer investment either through partnerships or corporations is not permitted. There are no restrictions for conventional debt.

E. OTHER JURISDICTIONS

57. In 2002, London (UK)-based Clifford Chance raised US$150million in the US private debt market to finance its move to new offices in London's Canary Wharf and its office infrastructure needs.[7] Two American firms have also raised money in a similar way.[8] This type of financing arrangement appears to be rare among law firms, given the large amount of financing necessary to access the private debt market.

58. Some Australian jurisdictions are examining the merits of incorporated legal practices that do not restrict the shareholders to members of the legal profession. The question is whether this would lead to publicly traded law firms. The Law Society of Western Australia's discussion paper on incorporation of legal practices (see Appendix 6), in particular, paragraph 5.9 on financing issues), includes the following proposals:

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[7] Clifford Chance is a is global law firm with over 3300 legal advisors (602 partners) in 29 offices worldwide. Articles about its financing initiative appear at Appendix 5.

[8] In 2001, Morrison & Foerster raised US$75 million in three transactions, and in 2003, Pillsbury Winthrop LLP raised US$25 million. Morrison & Foerster LLP is one of the world's largest law firms with 1,000 lawyers in 19 offices worldwide. Pillsbury Winthrop LLP has 700 lawyers in 16 offices in the US, London and Asia.

- Solicitors should be permitted to incorporate their legal practices under the Corporations Law;
- There should be no restrictions on the shareholders or directors of incorporated legal practices;
- Only individual solicitors, not solicitor corporations, should be licensed.

The paper provides an overview of a number of issues that incorporation raises, including how privilege would apply in the corporate setting.[9] The report concluded that privilege could be managed but did not provide specific direction on how that might be accomplished.

59. Information reviewed suggested that some jurisdictions in Australia were permitting shares in firms to be publicly traded. A 2001 Law Council of Australia report noted that a private consortium of investors was planning to list a national legal firm on the Australian Stock Exchange (ASX). The report referred to an advertisement in a major Sydney daily newspaper calling for firms with billings of A$10million or more to join the investor group. This followed the changes in New South Wales that permitted lawyers to incorporate legal practices with lawyer and non-lawyer directors (and presumably non-lawyer-shareholders). A search of the ASX disclosed no legal practices listed. It would appear that to date, no jurisdiction in the world has allowed a publicly traded law firm.

60. On a broader scale, in April 2004, the Attorneys-General of the Australian states developed model laws for the legal profession in an effort to harmonize laws to facilitate a national legal profession. According to the introductory material to the report of the Model Laws Project, each state is now considering legislative amendments to implement the Model Provisions. The Model Provisions cover incorporated legal practices and are similar to those already in place in New South Wales, which permit an incorporated practice to also offer non-legal services, and which require at least one solicitor director.[10]

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[9] The report included the following on privilege:
Uncertainty as to the application of the doctrine of legal professional privilege to the corporate form.
The PL Committee identified this as a complex issue. Client professional privilege means that lawyers cannot be compelled by courts or other authorities to disclose certain matters which have been communicated to them by their clients and which they have communicated to their clients. The issue in relation to incorporated practices is whether legal professional privilege would apply to communications made by and to the incorporated entity, by and to all principals and employees of the incorporated practice, or only by and to legal members of the incorporated practice. However, the use of different practice structures by practitioners should not affect the application of legal professional privilege. The privilege is attracted by reason of the lawyer/client relationship. Such relationships will continue to exist regardless of the practice structure adopted by lawyers.

[10] Section 47C of the New South Wales *Legal Profession Act 1987* says that any incorporated legal practice may provide any other service or business that the corporation may lawfully provide. “Corporation” is defined as a company within the meaning the *Corporations Act 2001,* a State owned corporation, an industrial organization incorporated under law, or any other body corporate or body corporate of a kind prescribed by regulations.

61. In England, a current examination of the framework for legal service delivery and regulation may have implications for the Canadian legal profession. As a result of a March 2001 report from the Office of Fair Trading entitled "Competition in professions", the Government's Department of Constitutional Affairs, after a consultation, issued a report in July 2003 entitled "Competition and regulation in the legal services market". The report documented the Government's support for legal services to be provided through alternative business structures with "appropriate regulation, adequate and stringent enough to protect both the interests of the public and the core values of the professions".

62. In December 2004, the report on the Review of the Regulatory Framework for Legal Services in England and Wales under David Clementi was published. It included a recommendation for Legal Disciplinary Partnerships (LDPs), described as follows:

a. LDPs are law practices that permit lawyers from different professional bodies to be Managers in firms that provide legal services for third parties.
b. Non-lawyers are permitted to be Managers of LDPs. Their role is to enhance the provision of legal services, not to provide other services to the public.
c. Outside owners are permitted. They must be cleared by the regulatory authorities as 'fit to own'.
d. Outside owners must provide an indemnity in respect of any loss of client monies.
e. Lawyers must represent a majority by number of the Managers of the LDP.
f. Among the Managers of the LDP must be a nominated lawyer (Head of Legal Practice), responsible for service standards in the provision of legal services; and a nominated appropriately experienced Manager responsible for finance and administration (Head of Finance and Administration).
g. An LDP cannot take instructions on a case from a client where an outside owner has an adverse interest in the legal outcome.
h. Outside owners cannot interfere in individual client cases or have access to client files or other information about individual cases.

63. If such firms develop and evolve to effectively become a form of public law firm, this may affect how firms at a certain level respond to increased competition and could lead firms to explore how they should organize to meet the competition. If capital requirements become an issue, non-traditional financing methods may be considered to meet those needs.

64. The Committee believes that because the developments in other jurisdictions, especially England, may influence what occurs in the Canadian legal services market, they should continue to be monitored, not only for conclusions that are reached but how each jurisdiction proposes to protect the profession's core values.

F. FINANCING ALTERNATIVES AND INFORMATION FROM THE PROFESSION

65. At the working group's invitation, representatives from RBC Capital Markets made a presentation to the working group on current financing alternatives. The information provided by RBC was very helpful in explaining the broad range of financing alternatives, which include:

· Bank debt,

- Securitization of accounts receivable,
- Commercial paper,
- Private placement debt financing,
- Public debt financing,
- Income trusts, and
- Equity

66. Interestingly, many of these financing vehicles were developed by the financial services market in the recent past to satisfy demand. The Committee acknowledged that financing vehicles are likely to continue to change and evolve.

67. The information received from RBC was also helpful in framing questions for the working group chair's interviews with managing partners of five large Toronto and national law firms. The interviews were based on questions provided to the partners in advance of the meeting. The questions and a summary of the responses received (without attribution), organized in relation to the questions, is attached at Appendix 7. It is clear that some firms have explored the possibility of new financing options and are thinking broadly about the benefits and drawbacks of accessing funds beyond traditional forms of law firm financing. However, the firms did not identify a pressing need to raise capital in the "non-traditional" markets.

68. As a component of this study relates to access to legal services - lawyers' ability to provide the desired level and range of services for the benefit of clients - the material prepared for the managing partners indicated that the Society is mindful of the need to ensure that the values inherent in a lawyer and client relationship are maintained.

G. DISCUSSION

69. Based on the information obtained through this study, there appears to be no immediate need for or pressure on Canadian law firms to access new forms of financing. Depending on future plans for merger, expansion or new business, some firms might require the large capital infusion provided by some of the financing vehicles discussed above. But the size of the law firms and the Canadian market for legal services, relative to those firms and markets where private debt financing, for example, has occurred, would make this unlikely in the current environment.

70. That said, it is clear that some law firms are not necessarily content to accept the *status quo* and are at least considering what might work for them, should the need present itself. Developments outside of Canada may eventually change the competitive environment in which Canadian firms practice and impact upon the capital requirements of Canadian firms, e.g. in global consolidations or mergers or non-lawyer corporations providing certain legal services.

71. While new financing options may initially appear to be of interest only to large firms because of the scale on which some of them must occur, small and mid-size firms may also wish to access new methods of financing to facilitate consolidation of firms or franchise-type operations.

72. If the feedback received from the managing partners generally reflects the current view on this subject, most firms would take a conservative approach to new methods of financing, depending on the particular vehicle. Before taking any steps, it appears they

would balance the varying interests of the partners (new, established, nearing retirement and future), clients, and prospective investors, and would consider the certainty or uncertainty of a return on the investment and how choices could affect the future of the firm.

73. In the Committee's view, the Law Society has no reason to become involved in the business of law firms. The Society's concerns would only arise where proposed methods of financing impact on the core values of the profession. As a result, some, but not all, methods of financing attract the need for scrutiny from the Law Society's regulatory perspective.

74. The Committee believes that any form of financing must be in keeping with independence, confidentiality and conflicts of interest rules, the core values that define the profession. Current regulations are premised on these values. The prohibition against fee-splitting with a non-lawyer is intended to avoid the risk that the lawyer's independence could be compromised by a third party's interest in the fee. The regulation of professional corporations ensures that lawyers control the practice of law through the corporation. The multi-discipline practice structure in By-Law 25 prohibits investment by partners whose interest is primarily the return on investment or control by non-lawyers.

75. If unrestricted third party (non-lawyer) investment in law firms occurred, there is a risk that the interests of the non-lawyers could create an instability in the firm that affects how the firm manages itself, with a filter-down effect to client interests.

76. If interest in new methods of financing increases, the Society could be requested to "loosen" regulation to accommodate non-lawyer investment. The broad impact of any changes would have to be carefully assessed. Some changes are beyond the Society's control i.e. amending the Business Corporations Act to permit non-lawyer shareholders in professional corporations that practice law and amending the Law Society Act to permit those who are not members to be partners in an LLP. In the Committee's view, however, no changes to the current structure should be permitted unless the fundamental core values of the profession are protected.

77. Although there is no information that publicly-traded law firms are an imminent development, the Committee's view is that this structure would create a significant problem for a lawyer in fulfilling the role of independent counsel. It is not known whether it would be possible to structure third party financial interests so that they are limited to a monetary share with no authority to interfere with the management or practice of the firm. The primary concern is who would control the law firm. This was a key question in the Society's MDP study, discussed earlier, that resulted in a narrow law firm-based MDP model. In the MDP policy report adopted by Convocation, the authors focused on the need for the lawyer's independence and said:

> Independence requires for its efficacy untrammelled freedom on the part of the lawyer to interact with, for and on behalf of the client. Questions necessarily arise as to whether any such environment could be maintained where the lawyer is but a small part of a larger commercial enterprise, full service in nature, in which inter-professional dependencies are vital to its well-being. Is the lawyer's practical freedom to react in the best interests of the client not likely to be

compromised in these circumstances, more so where the enterprise is controlled by non-lawyers?[11]

78. Another aspect is the disclosure requirements associated with the public company. It is not known whether it would be possible to have a public company where no confidential or privileged client information is disclosed as part of the required public disclosure.

H. CONCLUSIONS

79. The Committee has come to the following conclusions:
    a. The Ontario legal profession is not actively seeking new methods of financing for either law firm cash flow or capital requirements. It is recognized however, that in the fast changing legal environment, new developments may cause lawyers to take an increased interest in alternative financing methods.
    b. It would appear that there is sufficient flexibility in the private debt markets to accommodate any financing requirements of Ontario law firms. Such financing would not appear to violate any of the Society's rules with respect to client confidentiality or lawyer's independence.
    c. Non-lawyer investment either in partnerships or corporations practicing law would create significant problems for law firms in meeting obligations to protect confidentiality and independence. As these are core values of the profession, Law Society regulations that effectively prohibit non-lawyer investment in law firms should not be changed to accommodate this or any structure that includes non-lawyer ownership. There appears to be no benefit to either the profession or the public in permitting publicly-traded law firms, once the claimed benefits of this type of corporate structure are placed against the fundamental shift which would be required in the profession's values to permit the structure. While it may be easy to state that the public interest can be protected in this new structure, implementing that protection is much harder. Ultimately, the broader implications for the profession and the public must be considered.
    d. Depending on how they are structured, other vehicles such as public debt offerings and income trusts appear to raise the same concerns.
    e. If competition in certain sectors of the profession becomes more intense, meeting the competition may cause firms to consider non-traditional forms of financing. However, as noted above, the methods of financing currently available that would not require changes to the regulations should be sufficient for the firms' needs.

80. In summary, the Committee does not recommend any changes to the Society's regulations to accommodate alternative forms of financing as

- There is no pressure on the profession to access the large amounts associated with these forms of financing;
- There are a number of methods that lawyers can use to fund their practices without running afoul of the regulations; and
- It is not appropriate, for the reasons identified above, to loosen regulatory restrictions to allow non-lawyer equity in law firms.

[11] *Supra* note 3 at page 36.

APPENDIX 1

FATF
THE FORTY RECOMMENDATIONS

APPENDIX 2

FEDERATION OF LAW SOCIETIES MODEL RULE

APPENDIX 3

LETTER FROM THE CRIMINAL LAWYERS ASSOCIATION

APPENDIX 4

BY-LAW 18

Made: January 28, 1999
Amended:
February 19, 1999
May 28, 1999
October 31, 2002

RECORD KEEPING REQUIREMENTS

GENERAL

Interpretation
1. (1) In this By-Law,

"cash" means current coin within the meaning of the *Currency Act*, notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act* and current coin or banks notes of countries other than Canada;

"client" includes a person or group of persons from whom or on whose behalf a member receives money or other property;

"firm of members" means a partnership of members and all members employed by the partnership;

'lender' means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation;

"member" includes a firm of members;

money" includes cash ~~current coin, government or bank notes~~, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

"Arm's length" and Arelated"

(2) For the purposes of this By-Law, "arm's length" and "related" have the same meanings given them in the *Income Tax Act* (Canada).

"charge"

(3) For the purposes of this By-Law, "charge" has the same meaning given it in the Land Registration Reform Act.

"teranet"

(4) In paragraph 12 of section 2, "teranet" means Teranet Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Business Services.

Requirement to maintain financial records

2. Every member shall maintain financial records to record all money and other property received and disbursed in connection with the member's practice, and, as a minimum requirement, every member shall maintain, in accordance with sections 4, 5 and 6, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the method by which money is received, the person from whom money is received, the amount of money received and the client for whom money is received in trust.

2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed and the client on whose behalf money is disbursed.

3. A clients' trust ledger showing separately for each client for whom money is received in trust all money received and disbursed and any unexpended balance.

4. A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.

~~5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the person from whom money is received and the amount of money received.~~

5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the method by which money is received, the amount of money which is received and the person from whom money is received.

6. A book of original entry showing all disbursements of money, other than money held in trust for a client, and identifying each date on which money is disbursed, the method by

which money is disbursed, including the number or a similar identifier of any document used to disburse money, the amount of money which is disbursed and the person to whom money is disbursed.

7. A fees book or a chronological file of copies of billings, showing all fees charged and other billings made to clients and the dates on which fees are charged and other billings are made to clients and identifying the clients charged and billed.

8. A record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparisons:

    i. A detailed listing made monthly showing the amount of money held in trust for each client and identifying each client for whom money is held in trust.

    ii. A detailed reconciliation made monthly of each trust bank account.

9. A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the member took possession of each property, the person who had possession of each property immediately before the member took possession of the property, the value of each property, the client for whom each property is held in trust, the date on which possession of each property is given away and the person to whom possession of each property is given.

10. Bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.

11. Signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds.

12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

Record keeping requirements if cash received in trust

2.1 (1) Every member who receives cash for a client shall maintain financial records in addition to those required under section 2 and, as a minimum additional requirement, shall maintain, in accordance with sections 4, 5 and 6, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received, any file number in respect of which cash is received and containing the signature of the member or the person authorized by the member who receives cash and of the person from whom the cash is received.

No Breach

(2) A member does not breach subsection (1) if a receipt does not contain the signature of the person from whom cash is received provided that the member has made reasonable efforts to obtain the signature of the person from whom cash is received.

Record keeping requirements if mortgages and other charges held in trust for clients

3. Every member who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain financial records in addition to those required under section 2 and, as a minimum additional requirement, shall maintain, in accordance with sections 4, 5 and 6, the following records:

1. A mortgage asset ledger showing separately for each mortgage or charge,

   i. all funds received and disbursed on account of the mortgage or charge,

   ii. the balance of the principal amount outstanding for each mortgage or charge,

   iii. an abbreviated legal description or the municipal address of the real property, and

   iv. the particulars of registration of the mortgage or charge.

2. A mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,

   i. all funds received and disbursed on account of each mortgage or charge held in trust for the person,

   ii. the balance of the principal amount invested in each mortgage or charge,

   iii. an abbreviated legal description or the municipal address for each mortgaged or charged real property, and

   iv. the particulars of registration of each mortgage or charge.

3. A record showing a comparison made monthly of the total of the principal balances outstanding on the mortgages or charges held in trust and the total of all principal balances held on behalf of the investors as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparison:

   i. A detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding.

   ii. A detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.

Financial records to be permanent

4. (1) The financial records required to be maintained under sections 2, 2.1 and 3 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

Paper copies of financial records

(2) If a financial record is entered and posted by mechanical or electronic means, a member shall ensure that a paper copy of the record may be produced promptly on the Society's request.

Financial records to be current
5. (1) Subject to subsection (2), the financial records required to be maintained under sections 2, 2.1 and 3 shall be entered and posted so as to be current at all times.

Exceptions
(2) The record required under paragraph 8 of section 2 and the record required under paragraph 3 of section 3 shall be created within fifteen days after the last day of the month in respect of which the record is being created.

~~Preservation of financial records required under s. 2~~
~~6. (1) Subject to subsection (2), a member shall keep the financial records required to be maintained under section 2 for at least the six year period immediately preceding the member's most recent fiscal year end.~~

Preservation of financial records required under ss. 2 and 2.1
6. (1) Subject to subsection (2), a member shall keep the financial records required to be maintained under sections 2 and 2.1 for at least the six year period immediately preceding the member's most recent fiscal year end.

Same
(2) A member shall keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10, and 11 of section 2 for at least the ten year period immediately preceding the member's most recent fiscal year end.

Preservation of financial records required under s. 3
(3) A member shall keep the financial records required to be maintained under section 3 for at least the ten year period immediately preceding the member's most recent fiscal year end.

Record keeping requirements when acting for lender
7. (1) Every member who acts for or receives money from a lender shall, in addition to maintaining the financial records required under sections 2 and 3, maintain a file for each charge, containing,

(a) a completed investment authority, signed by each lender before the first advance of money to or on behalf of the borrower;

(b) a copy of a completed report on the investment;

(c) if the charge is not held in the name of all the lenders, an original declaration of trust;

(d) a copy of the registered charge; and

(e) any supporting documents supplied by the lender.

Exceptions
(2) Clauses (1) (a) and (b) do not apply with respect to a lender if,

(a) the lender,

(i) is a bank listed in Schedule I or II to the Bank Act (Canada), a licensed insurer, a registered loan or trust corporation, a subsidiary of any of them, a pension fund, or any other entity that lends money in the ordinary course of its business,

(ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge, and

(iii) has given the member a copy of the written commitment before the advance of money to or on behalf of the borrower;

(b) the lender and borrower are not at arm's length;

(c) the borrower is an employee of the lender or of a corporate entity related to the lender;

(d) the lender has executed Form 1 of Regulation 798 of the Revised Regulations of Ontario, 1990, made under the Mortgage Brokers Act, and has given the member written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement;

(e) the total amount advanced by the lender does not exceed $6,000; or

(f) the lender is selling real property to the borrower and the charge represents part of the purchase price.

Requirement to provide documents to lender

(3) Forthwith after the first advance of money to or on behalf of the borrower, the member shall deliver to each lender,

(a) if clause (1) (b) applies, an original of the report referred to therein; and

(b) if clause (1) (c) applies, a copy of the declaration of trust.

Requirement to add to file maintained under subs. (1)

(4) Each time the member or any member of the same firm of members does an act described in subsection (5), the member shall add to the file maintained for the charge the investment authority referred to in clause (1) (a), completed anew and signed by each lender before the act is done, and a copy of the report on the investment referred to in clause (1) (b), also completed anew.

Application of subs. (4)

(5) Subsection (4) applies in respect of the following acts:

1. Making a change in the priority of the charge that results in a reduction of the amount of security available to it.

2. Making a change to another charge of higher priority that results in a reduction of the amount of security available to the lender's charge.

3. Releasing collateral or other security held for the loan.

4. Releasing a person who is liable under a covenant with respect to an obligation in connection with the loan.

New requirement to provide documents to lender

(6) Forthwith after completing anew the report on the investment under subsection (4), the member shall deliver an original of it to each lender.

Requirement to add to file maintained under subs. (1): substitution

(7) Each time the member or any other member of the same firm of members substitutes for the charge another security or a financial instrument that is an acknowledgment of indebtedness, the member shall add to the file maintained for the charge the lender's written consent to the substitution, obtained before the substitution is made.

Exceptions

(8) The member need not comply with subsection (4) or (7) with respect to a lender if clause (2) (a), (b), (c), (e) or (f) applied to the lender in the original loan transaction.

Investment authority: Form 18A

(9) The investment authority required under clause (1) (a) shall be in Form 18A.

Report on investment: Form 18B

(10) Subject to subsection (11), the report on the investment required under clause (1) (b) shall be in Form 18B.

Report on investment: alternative to Form 18B

(11) The report on the investment required under clause (1) (b) may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 18B.

Commencement

8. This By-Law comes into force on February 1, 1999.

BY-LAW 19

Made: January 28, 1999
Amended:
February 19, 1999
May 28, 1999
April 26, 2001
October 31, 2002

HANDLING OF MONEY AND OTHER PROPERTY

PART I
GENERAL

Interpretation
1. (1) In this By-Law,

"cash" means current coin within the meaning of the *Currency Act*, notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act* and current coin or banks notes of countries other than Canada;

"client" means a person or group of persons from whom or on whose behalf a member receives money or other property;

"firm of members" means a partnership of members and all members employed by the partnership;

"member" includes a firm of members;

"money" includes cash ~~current coin, government or bank notes~~, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

(2) For the purposes of subsections 4 (1), (2) and (3) and section 8, cash, cheques negotiable by the member, cheques drawn by the member on the member's trust account and credit card sales slips in the possession and control of the member shall be deemed from the time the member receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

Interpretation: "holiday"

(3) In sections 1.2 and 8.1, "holiday" means,

(a) any Saturday or Sunday;

(b) New Year's Day;

(c) Good Friday;

(d) Easter Monday;

(e) Victoria Day;

(f) Canada Day;

(g) Civic Holiday;

(h) Labour Day;

(i) Thanksgiving Day;

(j) Remembrance Day;

(k) Christmas Day;

(l) Boxing Day; and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Same
(4) Where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday.

Same
(5) Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays.

Same
(6) Where Christmas Day falls on a Friday, the following Monday is a holiday.

PART II
CASH TRANSACTIONS

Definition
1.1 In this part,

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them.

"public body" means,

(a) a department or agent of Her Majesty in right of Canada or of a province;

(b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them; and

(c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act or agent of the organization.

Cash received
1.2 (1) A member shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of 7,500 or more Canadian dollars.

Foreign currency
(2) For the purposes of this section, when a member receives or accepts from a person cash in a foreign currency the member shall be deemed to have received or accepted the cash converted into Canadian dollars at,

(a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the member receives or accepts the cash; or
(b) if the day on which the member receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the member receives or accepts the cash.

Application
1.3 Section 1.2 applies when, in respect of a client file, a member engages in or gives instructions in respect of the following activities:

1. The member receives or pays funds.

2. The member purchases or sells securities, real properties or business assets or entities.

3. The member transfers funds by any means.

Exceptions
1.4 Despite section 1.3, section 1.2 does not apply when the member,

(a) receives cash from a financial institution or public body;

(b) receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;

(c) receives cash pursuant to an order of a tribunal;

(d) received cash to pay a fine or penalty;

(e) receives cash for fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.

PART III
TRUST ACCOUNT TRANSACTIONS

Money received in trust for client
2. (1) Subject to section 3, every member who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the member, or in the name of the firm of members of which the member is a partner or by which the member is employed, and designated as a trust account.

Interpretation
(2) For the purposes of subsection (1), a member receives money in trust for a client if the member receives from a person,

(a) money that belongs in whole or in part to a client;

(b) money that is to be held on behalf of a client;

(c) money that is to be held on a client's direction or order;

(d) money that is advanced to the member on account of fees for services not yet rendered; or

(e) money that is advanced to the member on account of disbursements not yet made.

Money to be paid into trust account

(3) In addition to the money required under subsection (1) to be paid into a trust account, a member shall pay the following money into a trust account:

1. Money that may by inadvertence have been drawn from a trust account in contravention of section 4.

2. Money paid to a member that belongs in part to a client and in part to the member where it is not practical to split the payment of the money.

Withdrawal of money from trust account

(4) A member who pays into a trust account money described in paragraph 2 of subsection (3) shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her.

One or more trust accounts

(5) A member may keep one or more trust accounts.

Money not to be paid into trust account

3. (1) A member is not required to pay into a trust account money which he or she receives in trust for a client if,

(a) the client requests the member in writing not to pay the money into a trust account;

(b) the member pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or

(c) the member pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

Same

(2) A member shall not pay into a trust account the following money:

1. Money that belongs entirely to the member or to another member of the firm of members of which the member is a partner or by which the member is employed, including an amount received as a general retainer for which the member is not required either to account or to provide services;

2. Money that is received by the member as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the member on behalf of a client.

Record keeping requirements

(3) A member who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required to be maintained under By-Law 18.

Withdrawal of money from trust account

4. (1) A member may withdraw from a trust account only the following money:

1. Money properly required for payment to a client or to a person on behalf of a client

2. Money required to reimburse the member for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client;

3. Money properly required for or toward payment of fees for services performed by the member for which a billing has been delivered.

4. Money that is directly transferred into another trust account and held on behalf of a client.

5. Money that under this By-Law should not have been paid into a trust account but was through inadvertence paid into a trust account.

Permission to withdraw other money

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

Limit on amount withdrawn from trust account

(3) A member shall not at any time with respect to a client withdraw from a trust account under this section, more money than is held on behalf of that client in that trust account at that time.

Manner in which certain money may be withdrawn from trust account

5. A member shall withdraw money from a trust account under paragraph 2 or 3 of subsection 4 (1) only,

(a) by a cheque drawn in favour of the member;

(b) by a transfer to a bank account that is kept in the name of the member and is not a trust account; or

(c) by electronic transfer.

Withdrawal by cheque

6. A cheque drawn on a trust account shall not be,

(a) made payable either to cash or to bearer; or

(b) signed by a person who is not a member except in exceptional circumstances and except when the person has signing authority on the trust account on which a cheque will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all the trust accounts on which signing authority has been delegated to the person.

Withdrawal by electronic transfer

7. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

When money may be withdrawn

(2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the member must be one that does not permit an electronic transfer of funds unless,

i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and

ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.

2. The electronic transfer system used by the member must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.

3. The confirmation required by paragraph 2 must contain,

i. the number of the trust account from which money is drawn,

ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,

iii. the name of the person or entity in whose name the account to which money is transferred is kept,

iv. the number of the account to which money is transferred,

v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and

vi. the time and date that the confirmation from the financial institution is sent to the member.

4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition must be signed by,

i. a member, or

ii. in exceptional circumstances, a person who is not a member if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a member who practises law without another member as a partner and without another member or person as an employee, if the member himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Same

(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Additional requirements relating to confirmation

(5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a member, the member shall,

(a) produce a printed copy of the confirmation;

(b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;

(c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and

(d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 19A.

Definitions

7.1 (1) In this section,

"closing funds" means the money necessary to complete or close a transaction in real estate;

"transaction in real estate" means,

(a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the Land Titles Act and a mortgage, but excluding a rent charge, or

(b) a conveyance of freehold or leasehold land, including a deed and a transfer under the Land Titles Act, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 7, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the member must be one to which access is restricted by the use of at least one password or access code.

2. The electronic transfer system used by the member must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.

3. The confirmation required by paragraph 2 must contain,

i. the name of the person or entity in whose name the account from which money is drawn is kept,

ii. the number of the trust account from which money is drawn,

iii. the name of the person or entity in whose name the account to which money is transferred is kept,

iv. the number of the account to which money is transferred, and

v. the date the transfer is carried out.

4. Before the electronic transfer system used by the member is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,

i. the member, or

ii. in exceptional circumstances, a person who is not the member if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

Additional requirements relating to confirmation

(4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the member shall,

(a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);

(b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;

(c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and

(d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition: closing funds

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 19C [Electronic Trust Transfer Requisition: Closing Funds].

Application of subss 8.1 (2) ~~and (4) to (7)~~

(7) Subsections 8.1 (2) applies (~~4), (5), (6) and (7) apply,~~ with necessary modifications, with respect to the doing of any act under this section.

Requirement to maintain sufficient balance in trust account

8. Despite any other provision in this By-Law, a member shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

PART IV
AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

Interpretation: "teranet"

8.1. (1) In sections 8.2 and 8.3, "teranet" means Teranet Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Business Services.

Interpretation: time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act under sections 8.2 and 8.3 expires on a holiday, the act may be done on the next day that is not a holiday.

Interpretation: counting days

(3) In subsection 8.3 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 8.3 (1) for more than five days.

~~Interpretation: "holiday"~~

~~(4) In this section, "holiday" means,~~

~~(a) any Saturday or Sunday;~~

~~(b) New Year's Day;~~

~~(c) Good Friday;~~

~~(d) Easter Monday;~~

~~(e) Victoria Day;~~

~~(f) Canada Day;~~

~~(g) Civic Holiday;~~

~~(h) Labour Day;~~

~~(i) Thanksgiving Day;~~

~~(j) Remembrance Day;~~

~~(k) Christmas Day;~~

~~(l) Boxing Day; and~~

~~(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.~~

~~Same~~
~~(5) Where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday.~~

~~Same~~
~~(6) Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays.~~

~~Same~~
~~(7) Where Christmas Day falls on a Friday, the following Monday is a holiday.~~

Authorizing Teranet to withdraw money from trust account
8.2 (1) Subject to subsection (2), a member may authorize Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Conditions
(2) A member shall not authorize Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction unless Teranet agrees to provide to the member in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

Time of receipt of confirmation
(3) The confirmation required under subsection (2) must be received by the member not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the member.

Contents of confirmation
(4) The confirmation required under subsection (2) must contain,

(a) the amount of money withdrawn from the trust account;

(b) the time and date that the authorization to withdraw money is received by Teranet; and

(c) the time and date that the confirmation from Teranet is sent to the member.

Written record of authorization
(5) A member who authorizes Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, in any, related to a client's real estate transaction shall record the authorization in writing.

Same
(6) The written record of the authorization required under subsection (5) shall be in Form 19B and shall be completed by the member before he or she authorizes Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the

document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Additional requirements relating to confirmation

(7) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a member, the member shall,

(a) produce a paper copy of the confirmation, if the confirmation is sent to the member by electronic means;

(b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was withdrawn from the trust account by Teranet as authorized by the member;

(c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and

(d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

Special trust account

8.3 (1) The trust account from which Teranet may be authorized by a member to withdraw money shall be,

(a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act*, 1994 applies or a registered trust corporation kept in the name of the member or in the name of the firm of members of which the member is a partner or by which the member is employed, and designated as a trust account; and

(b) an account into which a member shall pay only,

(i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction; and

(ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction.

One or more special trust accounts

(2) A member may keep one or more trust accounts of the kind described in subsection (1).

Payment of money into special trust account

(3) A member shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction, and if more money is, through inadvertence, paid into the trust account, the member shall transfer from the trust account described in subsection

(1) into another trust account that is not a trust account described in subsection (1) the excess money.

Time limit on holding money in special trust account

(4) A member who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the member shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

Application of ss. 4, 6, 7 and 8

8.4 Sections 4, 6, 7 and 8 apply, with necessary modifications, to a trust account described in subsection 8.3 (1).

PART V
COMMENCEMENT

Commencement

9. This By-Law comes into force on February 1, 1999.

APPENDIX 5

CLIFFORD CHANCE ARTICLES

APPENDIX 6

LAW SOCIETY OF WESTERN AUSTRALIA DISCUSSION PAPER

APPENDIX 7

Professional Regulation Committee
Working Group on Review of Rules Related to Financing Law Firms

SUMMARY OF MEETINGS WITH MANAGING PARTNERS

From August to October, 2004, the chair of the Professional Regulation Committee' working group on review of rules relating to financing law firms and Law Society staff met with the managing partners of five national and large Toronto firms to obtain comments on questions focusing on some key issues in the study.

The following summarizes the feedback received, organized in relation to the questions put to the partners.

1. What forms of financing has your firm utilized for cash flow or capital financing?

Primarily financing is from partners' capital contributions, financed by loans to partners from a bank with the firm paying the interest on the loans, bank loans to the firm, and lines of credit. Capital for leasehold improvements and technology infrastructures is built into the subject leases.

2. Do you see your firm exploring other means of financing?

Feedback varied on this question. Some said no, and had the following comments:

- Firms may want capital for growth e.g. for new practice groups or new offices, but earning more to pay the cost of capital can put pressure on the partners, especially with outside investors.
- It would not be a "big leap" to consider a private placement, but Canadian firms are too small to access debt financing vehicles like private placements

Others said they have considered what is available, based less on capital needs than a strategic decision to bring in a capital partner. Moving to an LLP structure means that it makes little sense for partners to have capital in the firm. For global partnerships, it may make sense to see how financing can be done more efficiently.

Some other ideas included:

- Consolidating mid-size firms nationally or internationally under one corporate umbrella, where the investment vehicle would be a corporation separate from the law firms, so that non-lawyers would not invest directly in the law firm, and disclosure obligations would not be offensive from the clients' perspective. This would also permit smaller firms to be effectively managed and permit risk management.
- Using capital to buy talent and setting up a retirement fund as part of the transaction. Currently, firms are reluctant to use debt for these purposes.
- Following the lead of some UK firms, who are selling databases to clients, the creation of which cost millions of pounds.
- Financing class actions with funds from non-party investors.

Another firm echoed the above comments with respect to funding pension plans, and also mused about whether alternative vehicles could be used to permit tax savings, to retain earnings that are not taxed in the partners' hands. It also considered that if the point was to gain a competitive advantage by signing top talent with bonuses, raising capital may be a better way to do this than using partners' capital, as the obligation could be spread out over a period of time.

Another firm said that the legal profession has a different mindset than most businesses when it comes to financing – it is a minimalist approach, i.e. firms do not like to borrow for distributions.

Some firms said that until the landscape changes, they would use methods traditionally used by firms to finance operations. One of these firms said that other methods would only work if a small number of firms use them – if more and more firms use them, the market response will make them less advantageous.

3. Are there any vehicles for financing that are not available to you now that you wish to use?

Most firms answered no to this question.
Some firms had thought about income trusts, and made the following comments:

- One said it was unsure as to whether there is the critical mass to do this. It was admitted that no Canadian firm has the critical mass to do a private placement like that of the UK firm Clifford Chance.
- Another firm said the economics of the structure – the cost of the capital – was a disincentive, and this point was echoed by another firm.
- A third firm described this type of financing primarily as a way to recruit senior lawyers from other firms with signing bonuses. Expansion would also be easier and other professional services firms could be tied in, using a management vehicle, to which management fees as opposed to legal fees would have been diverted. The downside involves managing partner issues, giving away a future income stream and factoring in that there may be a reduction in earnings for the lawyers, and creating a wedge between the future and established partners (selling the venture to the future earners and creating an incentive for the mid-30s partners who would bear the financial burden was seen as difficult, and in the worst case, some of these partners might leave).

4. Depending on your answer to 3., does the unavailability of certain financing vehicles impact your ability to adequately finance your firm and your ability to provide legal services?

   The partners answered no to this question, although one firm said that it does impact what it can do with respect to things like recruiting talent. There are limits on what can be borrowed for these purposes.

   Some firms said that more options for financing would be good for law firms. Law firms are businesses.

5. Have the Law Society's rules or regulations restricted or otherwise interfered with the way you finance your firm?

The partners answered no to this question, but one firm indicated that lawyer-ownership rules will have an impact eventually. When the issue arises, the question to be answered is what concerns are the rules addressing.

Another firm said there is an effect at the macro-level, although it has never solicited outside investors, and there is a significant limitation on what the rules or regulations have not interfered with.

6. What are your views on:
   a. non-lawyer investment partners in a law partnership?
   b. private loans from individuals whose return on investment is linked to the profitability of the law firm?
   c. non-lawyer shareholders within the structure of a professional (privately held) corporation practising law?

   What risks, professional or otherwise, might be associated with these arrangements?

One firm said a. is not something it would need, and it is not attractive from the regulatory perspective. It is the idea of paying capital to those who are not contributing work. This firm, however, questioned whether a bank lending money to the firm is really like this type of "partner".

Another firm noted that an example of a. is the financing of class actions. This is in the public interest as an access issue, and lawyers run the files. It is private lending where a syndicate is formed for the funding.

Another firm said it had not given a. much thought, but that there may be interest from the perspective of a strategic partner.

For b. and c., one firm said that the problems would be the disclosure requirements, compensation pressures and mobility. The interests of non-lawyers could introduce a level of instability into the practice.

Another firm was amenable to these ideas, with the return linked either to profits or the particular matter (like the class action financing) if requisite controls were built in. There is no reason in theory not to have non-lawyer shareholders – it would depend on the restrictions on the shares. The Law Society's rules are to ensure that professional standards are not compromised, but law firms are in fact businesses and certain forces are driving the profession that were not present in earlier times.

With respect to the risks, the "harms" would have to be considered and guarded against. These include threats to privilege and confidentiality and focussing too much on the bottom line. If the risks cannot be managed, these things will not happen. But do firms not make certain disclosures to banks now, for example, for financing work in progress?

7. Certain financing vehicles require consideration of factors such as
   - Disclosure
   - Cost
   - Flexibility
   - Interest rate exposure
   - Risk
   - Acquisition currency

   Would these factors have a bearing on or influence your decision to use certain forms of financing?

While most of these issues are touched on elsewhere, one firm commented that if money were more readily available, firms would try new things (opening more foreign offices). But firms do not need this funding now to operate a law firm in Canada.

8. Would your firm ever consider "going public"?

Most firms said they had not given this much thought. One firm said that it would depend on what other firms were doing. If the rules changed and firms decided to go public, it would change the perspective. Right now, the regulatory restrictions do not need to be removed.

9. Would any of the following be an incentive for your firm to offer public investment in the firm:
   a. The ability to purchase the legal talent you would like,
   b. The ability to make more flexible compensation arrangements,
   c. The potential for capital appreciation.

One firm said that if more money were available, this would push up compensation at the top tier, with no net benefit. Admittedly, capital appreciation is an important consideration,

especially for retirement, in a way that does not affect the net position. It may be that going public could be a one time "big win" for the first generation that does it, but after that, who knows. Realistically, Canadian law firms are much too small to go public.

Another firm said that if the landscape changed, it is likely that a number of partners would advocate "going public". While lawyers make a good living, there is no capital appreciation, and if there was a way to accomplish this, some would do it, but it would be a cultural shift. If this happened elsewhere but not in Canada, the legal profession here would be disadvantaged. It was noted that Quebec recently changed is legislation to permit MDPs through a corporation with non-lawyer shareholders.

10. What impact would a public-traded law firm have on self-regulation and professionalism of the legal profession? For example,
    a. could threats to confidentiality and privilege (i.e. as a result of the continuous disclosure requirements for public corporations) and conflicts arise from the arrangements?
    b. would there be concerns about the hierarchy associated with a public corporation, and the loss of lawyer independence, not only in respect of an approach to servicing clients, but as a matter of serving the 'corporate master'?
    c. Related to b, how would governance issues be resolved e.g. structure of the board, directorships, controlling interests, lawyer control, buy-back provisions, rights of first refusal, etc.

One firm said that quarterly results/reporting, and the pressure to disclose results, would be a problem. The rate of return would drive the firm.

One firm said that "we" (meaning presumably the profession and the regulator) should be creative about solving the problems that some arrangements present (i.e. risks to confidentiality/privilege, conflicts, independence).

Two firms mentioned that any changes to Ontario regulations for law firms would have to be reflected in the other Canadian jurisdictions in which they practice to make it work. One firm questioned what the response from United States jurisdictions might be if Canadian jurisdictions permitted innovative forms of financing that might mean expansion into the United States.

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

(a) Copy of "FATF's" (Financial Action Task Force on Money Laundering) "40 Recommendations" with respect to money laundering.
(Appendix 1, pages 34 - 58)

(b) Copy of the Federation of the Law Societies Model Rule.
(Appendix 2, pages 59 - 65)

(c) Copy of a letter from the Criminal Lawyers Association dated November 30, 2004.
(Appendix 3, pages 66 - 68)

(d) Copy of the Clifford Chance Articles about its financing initiative.
(Appendix 5, pages 90 - 95)

(e) Copy of the Law Society of Western Australia Discussion Paper.
(Appendix 6, pages 96 - 117)

(f) Copy of *in camera* memorandum from Carole Curtis dated January 19, 2005.

It was moved by Mr. Pattillo, seconded by Ms. Dickson that Convocation approve the amendments to By-Law 18 (Record Keeping Requirements), By-Law 19 (Handling of Money and Other Property), and an amendment to the commentary to rule 2.02(5) of the *Rules of Professional Conduct* with respect to the prevention of money laundering.

The following suggestions were referred back to the Committee for further consideration:

(1) the terms “financial institution” and “person” be defined;

(2) page 70 of the Report, paragraph 2., subparagraph 1. - after the phrase “the method by which money is received”, add the words “ where the method is by cash”;

(3) page 78 of the Report, paragraph 1.3 - add the words “or receives” so that the paragraph reads:

“Section 1.2 applies when, in respect of a client file, a member engages in or gives or receives instructions in respect of the following activities.”

(4) page 15 of the Report, paragraph 1.4(d) - the “words “provided that any refund out of such receipts is also made in cash” be added or that the phrase be deleted from both paragraphs 1.4(e) and (d)

It was moved by Mr. Aaron but failed for want of a seconder that section 1.4(a) of By-Law 19 on page 79 be amended by adding the words “or municipality”.

It was moved by Mr. Aaron, seconded by Mr. Swaye that section 1.2(1) of By-Law 19 on page 14 be amended by adding the phrase “or series of related client files” after “one client file”.

Lost

The main motion was voted on and carried.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA IN CONVOCATION ASSEMBLED

The Director of Professional Development and Competence asks leave to report:

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 27th, 2005:

Robert George Abramowitz	Bar Admission Course
Dominique Antoine	Bar Admission Course
Carlos Alberto Bernal Perez	Bar Admission Course
Gregory Philip Brant	Bar Admission Course
Elizabeth Jane Bullbrook	Bar Admission Course
Melissa Dawn Capay	Bar Admission Course
Cheryl Ann D'Souza	Bar Admission Course
Harold Augustus Eastmond	Bar Admission Course
Jonathan Andrew Feldman	Bar Admission Course
James Joseph Fera	Bar Admission Course
Naser Iqbal	Bar Admission Course
Patrick Joseph James	Bar Admission Course
Gurpreet Singh Jassal	Bar Admission Course
Samuel Theodore Kulik	Bar Admission Course
Tammy Wing-Yun Law	Bar Admission Course
Damian John Almeida Medeiros	Bar Admission Course
Matias Milet	Bar Admission Course
Joseph Arthur Murray	Bar Admission Course
Israel Daniel Perlin	Bar Admission Course
Thien Tan Phan	Bar Admission Course
Selena Aneta Pieczara	Bar Admission Course
Kurt David Sarno	Bar Admission Course
Michelle Betsy Shabelnikov	Bar Admission Course
Gail Dolores Smith	Bar Admission Course
Deborah Joan Toaze	Bar Admission Course
Michael Kenneth Uster	Bar Admission Course
Dimple Verma	Bar Admission Course
Mehran Youssefi	Bar Admission Course

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

B.1.4. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 27th, 2005:

Rory Matthew Barnable	Province of Newfoundland
Judy Deloris Daniels	Province of Alberta

Richard Maxwell Degroat	Province of Alberta
Vida Lisa Mehin	Province of British Columbia
Brendan Richard Neil	Province of British Columbia
Susan Merle Porteous	Province of British Columbia
Alice Uyen Hoang-Hoa Tu	Province of Manitoba

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

B.1.6. The following candidates have completed successfully the transfer examinations or the academic phase of the Bar Admission Course, filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 27th, 2005:

Myriam Ebrahim	Province of Quebec
Annie Savard	Province of Quebec

ALL OF WHICH is respectfully submitted

DATED this the 27th day of January, 2005.

It was moved by Mr. Hunter, seconded by Mr. Millar that the Report of the Director of Professional Development & Competence setting out the candidates for Call to the Bar be adopted.

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Ms. Harris then presented them to Mr. Justice Romain W. M. Pitt to sign the rolls and take the necessary oaths.

Robert George Abramowitz	Bar Admission Course
Dominique Antoine	Bar Admission Course
Carlos Alberto Bernal Perez	Bar Admission Course
Gregory Philip Brant	Bar Admission Course
Elizabeth Jane Bullbrook	Bar Admission Course
Melissa Dawn Capay	Bar Admission Course
Cheryl Ann D'Souza	Bar Admission Course
Harold Augustus Eastmond	Bar Admission Course
Jonathan Andrew Feldman	Bar Admission Course
James Joseph Fera	Bar Admission Course
Naser Iqbal	Bar Admission Course
Patrick Joseph James	Bar Admission Course
Gurpreet Singh Jassal	Bar Admission Course
Samuel Theodore Kulik	Bar Admission Course

Tammy Wing-Yun Law	Bar Admission Course
Damian John Almeida Medeiros	Bar Admission Course
Matias Milet	Bar Admission Course
Joseph Arthur Murray	Bar Admission Course
Israel Daniel Perlin	Bar Admission Course
Thien Tan Phan	Bar Admission Course
Selena Aneta Pieczara	Bar Admission Course
Kurt David Sarno	Bar Admission Course
Michelle Betsy Shabelnikov	Bar Admission Course
Gail Dolores Smith	Bar Admission Course
Deborah Joan Toaze	Bar Admission Course
Michael Kenneth Uster	Bar Admission Course
Dimple Verma	Bar Admission Course
Mehran Youssefi	Bar Admission Course
Rory Matthew Barnable	Transfer, Province of Newfoundland
Judy Deloris Daniels	Transfer, Province of Alberta
Richard Maxwell Degroat	Transfer, Province of Alberta
Vida Lisa Mehin	Transfer, Province of British Columbia
Brendan Richard Neil	Transfer, Province of British Columbia
Susan Merle Porteous	Transfer, Province of British Columbia
Alice Uyen Hoang-Hoa Tu	Transfer, Province of Manitoba
Myriam Ebrahim	Transfer, Province of Quebec
Annie Savard	Transfer, Province of Quebec

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Review of Rules Related to the Financing of Law Firms

Mr. Pattillo spoke to the information item in the Report on the rules relating to the financing of law firms.

MOTION – MONEY LAUNDERING

MOVED BY: Bob Aaron

SECONDED BY: Gary Gottlieb

The Rules of Professional Conduct be amended by adding the following:

(1) This Rule applies to a lawyer when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

(a) receiving or paying funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail;

(b) purchasing or selling securities, real property or business assets or entities;

(c) transferring funds or securities by any means.

(2) This Rule does not apply to a lawyer when

(a) engaged in activities referred to in subrule (1) on behalf of his or her employer, or

(b) receiving or accepting currency

(i) from a peace officer, law enforcement agency or other agent of the Crown,

(ii) pursuant to a court order, or

(iii) in his or her capacity as executor of a will or administrator of an estate.

(3) While engaged in an activity referred to in subrule (1), a lawyer must not receive or accept an amount in currency of $10,000 or more in the course of a single transaction.

(4) For the purposes of this Rule

(a) foreign currency is to be converted into Canadian dollars based on

(i) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or

(ii) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time, and

(b) two or more transactions made within 24 consecutive hours constitute a single transaction if the lawyer knows or ought to know that the transactions are conducted by, or on behalf of, the same client.

Withdrawn

REPORT OF CHAIR OF COUNCIL OF ONTARIO LAW DEANS ON ACCESSIBILITY STUDY

Dean Bruce Elman presented the Study of Accessibility to Ontario Law Schools prepared by Dr. Alan J. C. King, Wendy K. Warren and Sharon R. Miklas.

STUDY OF ACCESSIBILITY TO ONTARIO LAW SCHOOLS

EXECUTIVE SUMMARY

of the

REPORT

submitted to

Deans of Law

at

Osgoode Hall, York University
University of Ottawa
Queen's University
University of Western Ontario
University of Windsor

Alan J. C. King
Wendy K. Warren
Sharon R. Miklas

Social Program Evaluation Group
Queen's University

October 2004

This project was funded by the Law Foundation of Ontario and the Law Society of Upper Canada

EXECUTIVE SUMMARY

Introduction: The *Study of Accessibility to Ontario Law Schools* was commissioned by the Law Deans from five Ontario universities, and funded by the Law Society of Upper Canada and the Law Foundation of Ontario. The five law schools engaged in the study were Osgoode Hall at York University and the faculties of law at: the University of Ottawa (both the English and French Common Law Programs), Queen's University, the University of Western Ontario and the University of Windsor. The Social Program Evaluation Group at Queen's University conducted the study. The Faculty of Law at the University of Toronto did not participate in this research study because the university had recently completed its own internal study (Neuman, 2003).

Purpose of the Study: The overall purpose of this study was fourfold: (1) to describe the demographic characteristics of law school students in the five Ontario law schools; (2) to

determine whether the demographic characteristics of law students have changed since tuition deregulation; (3) to determine whether there have been changes in the types and amounts of student financial support since tuition deregulation; and (4) to examine the amount of debt incurred by students in law school and the impact of debt on their lives.

The study was not intended to evaluate individual law programs or to identify barriers to entry for prospective applicants to Ontario Bachelor of Laws programs. Neither was the study intended to assess the appropriateness of tuition increases.

Information Sources:

- financial assistance programs, including the Ontario Student Assistance Program (OSAP), Canada Millennium Scholarship Foundation Bursary Program, university and law school financial aid programs;
- Ontario Law School Application Service (OLSAS) data files and yearly reports;
- Statistics Canada;
- a survey of students from Years 1, 2 and 3 in five law schools by means of questionnaires - 2,260 respondents;
- an online or mailed survey of law graduates (years 2000 to 2003) - 966 respondents;
- student focus group sessions held in each of the five law schools;
- interviews with key informants from each law school about admissions and financial aid programs; and,
- an extensive literature review.

Findings:

1. *Who goes to law school?*
    - Ontario law schools have a diverse student population in relation to ethnocultural background, mature student status, disability status and geographic region of origin, in keeping with their admissions goals related to diversity.
    - There are some differences in the characteristics between students at the five Ontario law schools and their approximate age group in the Ontario population; that is, law schools enroll proportionally:
        - more women than men, as is the case with university programs in general;
        - more students from affluent homes headed by parents with a university education (two-thirds of law students come from the top 40 percent of the family income distribution and about 10 percent from the bottom 40 percent of the distribution);
        - more students of Arab, Chinese, Korean and South Asian descent;

- fewer Aboriginal students; and,

- more students from the Greater Toronto Area and fewer from Northern Ontario.

2. *Have there been changes in the characteristics of law students since tuition deregulation?*

- There have been some slight but notable changes in the characteristics of law school enrollees over the past seven years that may be attributed to tuition deregulation. They include:

  - an increase of 4.7 percent in the proportion of law students' parents who earn incomes in the top 40 percent of the average family income distribution for Canada and a decrease in the proportion of students whose parents earn incomes in the middle 20 percent of the distribution;

  - an increase in the proportion of 24 and 25 year old Year 1 registrants; and a decline in the proportion of registrants 23 and younger, indicating that a higher proportion of Year 1 registrants are entering law school later than did their pre-tuition deregulation counterparts;

  - an increase in the proportion of visible-minority students, particularly those individuals of South Asian and Chinese descent;

  - a decrease in the proportion of students whose first language is French; and,

  - a decrease in the already small proportion of students from Northern Ontario.

3. *What are the major sources of financial support for law school students, and have they changed since tuition deregulation?*

Since the deregulation of tuition for professional programs at the end of 1997, tuition fees at four of the five Ontario law schools have more than doubled, and tuition at the other has more than tripled. Over this same period, the cost of law school excluding tuition-i.e., ancillary fees, living expenses and law program expenses (e.g., books, duplicating and other supplies)-has increased by 14 percent based on changes in the Consumer Price Index (between 1998 and 2003).

a. University/Law School Bursaries and Scholarships

- The primary sources of financial aid distributed by the law schools are needs-based bursaries and merit scholarships.

- Over the past five years, there has been a dramatic increase in the total amount of bursary money awarded to students in financial need at the five law schools. This increase parallels the Ontario government's legal requirement of universities to redirect a minimum of 30 percent of all deregulated tuition to needs-based student financial aid.

- One-fifth of current law students cited university/law school bursaries and scholarships as a major source of financial support, and over two-fifths of current students reported that they were at least a moderate source.

- In 2003-04, the average bursary amount granted per student at the five law schools ranged from $2,059 to $4,752 and the percentage of students receiving bursaries ranged from 46.8 percent to 68.5 percent.

- For most students receiving the maximum bursaries, these awards cover the cost of their tuition. However, for over one-half of current students tuition increases have added to the cost of their legal education.

- Scholarships/awards/prizes are typically awarded based on assessments of a student's academic performance; however, at least two of the five law schools have a number of 'needs-based' scholarships that assess a student's financial need in combination with academic achievement.

- There are more entrance scholarships than upper year scholarships, meaning that a disproportionate amount of scholarship money is awarded to Year 1 students.

- Between 11.2 and 18 percent of students across the five law schools received scholarships, awards and prizes in 2003-04 and the average scholarship/award/prize amount granted per student ranged from $1,313 to $3,736.

- While the total monies allocated to scholarships/awards/prizes have increased in recent years, the number of students receiving this type of funding has not changed substantially.

b. Government Loans, Bursaries and Grants

- The provincial and federal governments fund post-secondary educational loans jointly through the Canada-Ontario Integrated Student Loan Program (administered by OSAP). Students who wish to receive government loans must apply to the Ontario Student Assistance (OSAP) and submit evidence of their financial need. Ontario law students are eligible to receive a maximum of $9,350 in government loans per academic year. When surveyed, over one-half of Year 2 and 3 respondents held OSAP-administered student loans. A greater proportion of students than graduates considered OSAP-administered loans to be 'little or no source of financial support.' This result is not surprising given that the maximum amount of OSAP funding has not increased in nine years and has, therefore, decreased in real terms as a proportion of law school costs.

- A Canada Millennium Bursary is a federal government bursary that pays $3,000 per academic year to students in financial need who have already completed some post-secondary education. In Ontario, OSAP assesses students' financial need and overall eligibility for the Canada Millennium Bursary. If a student qualifies for the Millennium Bursary in Ontario, he/she receives an OSAP loan amount that is reduced by the bursary amount. One-quarter of Years 2 and 3 law students and one-fifth of Year 1 law students consider the Canada Millennium Bursary to be a major source of financial

support. The Canada Millennium Bursary was first awarded in 2000 and has not increased in amount since then.

- The provincial government provides funding for part-time student employment through the Ontario Work Study Plan administered by OSAP (up to a maximum of $1,000 per term); nevertheless, very few students appear to take advantage of this program.

- While over 17 percent of law students at the five Ontario law schools are originally from other provinces, less than 3 percent of current students report that out-of-province government loans represent a major funding source. Twice as many graduates as students relied on government loans from other provinces as a major source of financial support.

- Approximately one percent of law students rely on First Nation Education Authority Grant funding as a major source of financial support, a number consistent with the representation of grant-eligible Aboriginal students within the law student population. More current students than graduates report that First Nation Education Authority Grant funding is a major source of financial support.

c. Family Support

- Parents represent a major source of financial support for just over one-quarter of current law students. The proportion of students indicating that their parents are a major source of financial support was similar to that of graduates.

- Students who identify parents as a major source of financial support are far less likely to incur substantial debt while at law school.
- The proportion of students indicating personal loans (typically from parents) as a major source of financial support has increased slight since tuition deregulation. Personal loans are preferable to other types of loans because they involve minimal or no interest payments and tend to have flexible repayment schedules. Approximately 13 percent of Year 2 and 3 students had personal loans.

d. Paid Part-Time/School-Year Jobs

- About one-fifth of Year 1 and about two-fifths of Years 2 and 3 students held part-time jobs at the time of the survey, and one-fifth of the students who worked did so for over 16 hours a week.

- Surprisingly, fewer current law students worked part time than did law graduates.

- The majority of current law students who worked during the school year did so in order to defray program-related costs.

- Although those students who take on paid employment while at school may reduce their debt, some believe that their academic performance is negatively affected due to the time that they are required to spend doing paid work.

- More than half of Year 2 and 3 students who had paid employment worked in law-related positions.

e. Bank Loans, Lines of Credit and Credit Cards

- Of all the sources of financial support available to law students, banks represent one of the few resources providing loans amounts that surpass tuition fees at the Ontario law schools. Some Ontario law schools have recognized the importance of bank funding for students by making special arrangements for their students with a particular bank(s) although most major banks already offer special rates to individuals in professional programs.

- Few students entered a law program holding bank loans; however, when in Years 2 and 3, approximately one-half of students cited bank loans as a major source of financial support.

- Current law students were more likely than graduates to use bank funding to manage their debt.

4. What is the impact of debt on students?

a. What is the extent of law student debt?

- There has been a slight increase in the median debt at program entry reported by students entering the law program at the five Ontario law schools since the deregulation of tuition for professional programs. During this time, nearly one-half of students entered law school with no debt.

- One-fifth of all current law students expected to graduate from law school with no debt, but 27 percent expected to have debt of $40,000 to $70,000 and 13 percent expected to graduate with over $70,000 of debt.

- Current students projected more debt at graduation than the actual debt reported by graduates.

b. What are the characteristics of students with more or less debt?

- Black students and students of South Asian background were more likely than non-minority students to anticipate having debt at exit from their law program (greater than $40,000) and were less likely to anticipate having no-debt at graduation. Students of Southeast Asian background were more likely than non-minority students to anticipate having debt at exit from their law program greater than $60,000. Students of Chinese background were less likely to have high debt and were more likely to have no debt than non-minority students.

- Older students and those students and graduates with dependents tended to project or have had more debt at graduation from law school than did younger students and students and graduates without dependents. For graduates, slightly more women had high debt and more men had low debt.

- For students and graduates with low debt, personal savings and parents were the primary sources of support, while for students and graduates with high debt, bank and government loans provided the major portion of educational funding.

- Graduates, especially those with low debt, relied more than students on their savings as a major source of funding their legal education. Students with low debt were far more likely than graduates to indicate that their parents were a major source of financial support. High-debt students were more likely than graduates to indicate that bank loans were a major source of funding and were less likely than graduates to indicate that OSAP was a major source of financial support.

c. What aspects of students' lives are affected by their debt load?

- Students with debt tended to view it as having a significant adverse impact on important aspects of their academic and personal life, including articling and practicing decisions, satisfaction with the law school experience, basic needs and family/personal relationships. While some students felt that their rapidly accumulating debt was affecting every aspect of their lives, other students were untouched by concerns about debt, the need to work part time and how debt affected career planning.

- Approximately 30 percent of Year 2 students with debt (65.1% of Year 2 respondents) indicated that their debt had a substantial effect on their articling and practicing decisions; for example, many felt obliged to seek out high-paying positions rather than those in public service or smaller communities. A greater proportion of students would have preferred to work in public-service settings than there are employment opportunities available.

- Law students' achievement is functionally linked to the articling process and, ultimately, their professional career from the moment that they begin the law program. Students believe that their financial circumstances limit their ability to achieve academically as well as their opportunities to article and practice in desired settings.

- For current students with high debt, the area of law in which they hoped to practice was the aspect of their academic and personal lives that they believed was most affected by their debt. In comparison, graduates with high debt claimed that their satisfaction with the law school experience was the aspect of their lives most adversely affected by their debt.

- Upper year students in the moderate to high debt categories were the most likely of all respondent groups to report that a particular aspect of their academic or personal lives was affected 'to a great extent' by their debt, while graduates were the least likely of all respondent groups to report that their lives were greatly impacted by their debt.

- It appears that, since tuition deregulation, more students have felt the impact of debt on all aspects of their lives than did graduates.

- The wide variability in student debt and in articling and employment prospects generates tension in an atmosphere where the vast majority of students view a fair and open competition for highly valued articling/practicing positions as extremely important.

Future Directions: The following suggestions for change are general in nature and would require more detailed development prior to implementation.

1. Increase Maximum Assistance from OSAP

The Ontario Student Assistance Program currently has a cap of $9,350 a year. This amount represents less than half of the total annual cost of law school; consequently, more and more law students are turning to banks in order to deal with their debt. OSAP offers better terms as well as standardized conditions of repayment and should, therefore, increase maximum amounts available to students in professional programs such as law.

2. Examine the Feasibility of a Debt-Relief Program

A number of debt-relief programs exist in other jurisdictions and are designed to serve law graduates who enter public service and other relatively low-paying careers. Programs incorporating components such as income-contingent tuition fees and loan forgiveness could be examined for their appropriateness in the management of law students' projected and real debt. If a province-wide debt-relief program were introduced, a standardized approach to administration could be undertaken by an existing agency such as OSAP. This approach would encourage fairness and consistency in program delivery.

3. Refine the Work Study Plan

The Work Study Plan financed through OSAP appears to need fine-tuning. The rate of pay available to students in the program should be consistent with other part-time work opportunities, and the nature of the work funded through the plan should clearly be relevant to the practice of law.

4. Align Bursary Allocations More Consistently with Student Financial Need

There has been a substantial increase in bursary money available to students from law schools over the past few years. Generally speaking, this money has been made available to students on the basis of financial need. More precise targeting of bursary funds to students with the greatest financial need would be beneficial.

5. Ensure Openness, Fairness and Support for Students in Search of Articling Positions

It is difficult to know how to relieve the pressure on students created by the intensely competitive environment in law school regarding academic achievement and the search for optimum articling settings. This tension is further exacerbated by some students' concerns about debt repayment and perceptions of how opportunities for success at school and in their careers are affected by their financial circumstances. Ensuring equal opportunity to participate in articling interviews and law program-related activities for all students is a laudable goal, but may be impossible to achieve. Nevertheless, maintaining and building on the student support system already in place in the law schools is worth the effort required.

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REPORT OF THE EQUITY & ABORIGINAL ISSUES COMMITTEE/ COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Ms. St. Lewis expressed the confidence of benchers in the Treasurer's leadership.

Re: Law Society of Upper Canada's Response to Asian Tsunami Disaster

Ms. St. Lewis presented the Report of the Equity & Aboriginal Issues Committee.

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
January 27, 2005

Report to Convocation

Committee Members
Joanne St. Lewis, Chair
W.A. Derry Millar, Vice-Chair
Marion Boyd
Mary Louise Dickson
Sy Eber
Thomas G. Heintzman
Ronald D. Manes
Tracey O'Donnell
Mark Sandler
William J. Simpson

Purpose of Report: Decision and Information

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

OVERVIEW OF POLICY ISSUES

LAW SOCIETY OF UPPER CANADA'S RESPONSE TO THE ASIAN TSUNAMI DISASTER

Request to Convocation

1. That Convocation approve the proposed recommendations set out at paragraph 37 of the report.

Summary of the Issue

2. The Law Society of Upper Canada has been asked to respond to assist victims of the South and Southeast Asian tsunami disaster of December 26th 2004. As a result, the Treasurer and Chief Executive Officer have asked that a proposal be developed, in consultation with South Asian lawyers' associations and other stakeholders, for Convocation's consideration in January 2005.

3. In consultation with the South Asian Legal Clinic of Ontario (SALCO), the South Asian Lawyers' Association (SALA) and Pro Bono Law Ontario (PBLO), the Law Society developed ideas to assist victims and relatives of the South and Southeast Asian tsunami disaster.

4. The proposed initiative focuses on working with stakeholders to facilitate the provision of pro bono legal services by members of the Law Society, to deliver continuing legal education programming in relevant areas of law such as immigration law, to publish legal resources in various languages, to develop legal information sessions for Ontario members of the communities affected by the disaster and to develop a communication strategy.

5. The proposed initiative falls within the mandate of the Law Society. It will enhance access to justice for Ontario members of the public affected by the disaster and increase the capacity of lawyers to offer legal services to the affected communities.

6. Resources, including in-kind Law Society support and financial resources, will be required from the Law Society to undertake the proposed initiative. Although it is anticipated that the implementation of the initiative will have an impact on the resources of a number of departments such as Equity Initiatives, Communications and Public Affairs and Professional Development and Competence, the Law Society will not have to create new staff positions to implement this initiative. However, the initiative was not

included in the 2005 budget and it is estimated that $44,000 will be required to successfully implement the initiative. The bulk of the money will be used for interpretation and translation costs and material preparation and distribution.

REVIEW OF THE DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM

Request to Convocation

7. That Convocation approve the report entitled *Review of the Discrimination and Harassment Counsel Program* and the proposed recommendations set out at paragraph 104 of that report, presented at Appendix 1.

Summary of the Issue

8. On September 1, 1999 the Discrimination and Harassment Counsel (DHC) Program began operating as a pilot project and on June 22, 2001, Convocation established the DHC Program as a permanent program of the Law Society. By-law 36 – Discrimination and Harassment Counsel outlines the function of the DHC as follows:
    a. To assist, in a manner that the Counsel deems appropriate, any person who believes that he or she has been discriminated against or harassed by a member or student member;
    b. To assist the Society, as required, to develop and conduct for members and student members information and educational programs relating to discrimination and harassment; and
    c. To perform such other functions as may be assigned to the Counsel by Convocation.

9. In 2001, Convocation appointed Mary Teresa Devlin as the first permanent DHC. On November 17, 2002, Ms Devlin was sworn in as a Judge of the Ontario Court of Justice and Cynthia Petersen was later appointed as DHC for a three-year term. The position of Alternate DHC was created in November 2003 and Sylvia Davis was appointed to that position.

10. The purpose of the report entitled *Review of the Discrimination and Harassment Counsel Program*, presented at Appendix 1, is to evaluate the DHC Program, in accordance with Convocation's request that an evaluation of the DHC Program take place after three years of operation. The report also makes recommendations for Convocation's approval.

THE REPORT

Terms of Reference/Committee Process

11. The Committee met on January 13, 2005. Committee members participating were Joanne St. Lewis (Chair), Marion Boyd, Mary Louise Dickson, Dr. Sy Eber, Tracey O'Donnell, Mark Sandler and William J. Simpson. Invited members participating were Daniel Boivin (President of the Association des juristes d'expression française de l'Ontario (AJEFO)), Milé Komlen (member of the Equity Advisory Group (EAG)), Kimberley Murray (member of Rotiio> taties Aboriginal Advisory Group) and Sonia Ouellet (Executive Director of AJEFO). Staff members in attendance were Josée Bouchard, Angela Christopoulos, Sudabeh Mashkuri, Marisha Roman and Rudy Ticzon.

12. The Committee is reporting on the following matters:

Policy - For Decision

- Law Society of Upper Canada's response to the Asian Tsunami Disaster
- Review of the Discrimination and Harassment Counsel Program

Information

- Equity and Diversity Mentorship Program – 2004 Report
- Equity Public Education Events - 2005

LAW SOCIETY OF UPPER CANADA'S RESPONSE TO THE ASIAN TSUNAMI DISASTER

Background

13. The Law Society of Upper Canada has been asked to respond to assist victims of the South and Southeast Asian tsunami disaster of December 26th 2004. As a result, the Treasurer and Chief Executive Officer have asked that a proposal be developed, in consultation with South Asian lawyers' associations and other stakeholders, for Convocation's consideration in January 2005.

14. In consultation with the South Asian Legal Clinic of Ontario (SALCO), the South Asian Lawyers' Association (SALA) and Pro Bono Law Ontario (PBLO), the Law Society developed ideas to assist members of the Ontario public affected by the disaster. They are set out below.

15. The proposed initiative focuses on working with stakeholders to facilitate the provision of pro bono legal services by members of the Law Society, to deliver continuing legal education programs in relevant areas of law such as immigration law, to publish legal resources in various languages, to develop legal information sessions for Ontario members of the affected communities and to develop a communication strategy.

16. The proposed initiative falls within the mandate of the Law Society. It will enhance access to justice for Ontario members of the public affected by the disaster and increase the capacity of lawyers to offer legal services to the affected.

Initiatives in Place

17. A number of organizations, including the Law Society of Upper Canada, have developed initiatives to assist victims and their relatives of the tsunami disaster.

18. Through its internal website, the Law Society provides employees with information about the disaster and a list of official aid organizations accepting monetary donations for emergency relief operations. The Law Society also provides links to relief efforts on its external website.

19. Relief efforts of other organizations include fundraising activities by organizations such as the Red Cross, Unicef and CARE Canada. In the Toronto area, the Scadding Court Community Centre and the Council of Agencies Serving South Asians are organizing a fundraising event that will take place on February 1, 2005.

20. Some law firms, clinics and associations are organizing free legal clinics for victims and relatives of victims of the disaster.

21. The Canadian Bar Association's (CBA) National Immigration Law Section is offering to review immigration applications at no charge for Canadian permanent residents who want to sponsor family members living in areas affected by the tsunami disaster. Approximately 75 CBA members throughout Canada, including about 25 Ontario lawyers, are assisting in this effort. A list of immigration lawyers is posted on the CBA website.

Identification of Need

22. The Law Society, in consultation with SALCO, SALA and PBLO, identified some of the legal needs of members of the Ontario communities affected by the disaster.

23. It is anticipated that Ontario victims and relatives of victims of the disaster will need legal assistance mostly in the area of immigration. They may also need assistance in other areas such as family law, wills and estates and insurance claims. Legal assistance may include advice about sponsoring a family member, sponsoring or adopting a child, obtaining a visa, the immigration application process, proving a relationship with a Canadian citizen, fees and whether they may be waived, entering Canada as a refugee or an immigrant, the length of the process, the likelihood of success, international adoption policies and processes, wills and intestacy issues, insurance issues and issues relating to the presumption of death.

24. Ontario members of the affected communities may also need legal assistance in their own languages. Coastal areas of the following countries have been the most affected: Sri Lanka, India, Indonesia, Thailand, Malaysia, Maldives, Seychelles and Somalia. Languages spoken in the affected areas include Sinhala, Tamil, Aceh, Thai, Moken, Bahasa Malaysia, Mandarin, Hokkien, Maldivian, English, French, Seselwa Creasole French, Somali, Standard Arabic, Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Panjabi, Sanskrit, Sindhi, Telugu, Urdu, Aranadan, Are, Jarawa and Chaura. If the Law Society approves this initiative, it will have to identify, in cooperation with its stakeholders, the languages that are most commonly spoken by Ontario members of the affected communities. Programs would have to be developed, whenever possible, in those languages.

25. It is expected that Ontario members of the affected communities would also benefit from legal information sessions facilitated by lawyers, and, whenever possible, offered in the languages spoken by the communities.

26. Legal assistance or information provided to Ontario members of the affected communities would have to be up-to-date. Emerging legal issues would have to be monitored closely, in collaboration with community legal clinics, consulate offices, community agencies, and constituency offices of MPs, MPPs and city councillors.

27. Continuing legal education programs for lawyers who may wish to volunteer their services to assist members of the affected communities may also be of assistance. The

programs would be custom-designed to address the specific legal issues involved in those cases.

28. Ontario members of the affected communities may also benefit from updated information, resources and links to other organizations. Those should be made readily available in the most common languages spoken by the affected Ontario communities. For example, the Law Society, in cooperation with stakeholders such as SALA and SALCO, may wish to develop a list of questions and answers about relevant legal issues and information about Law Society services and resources offered by other organizations. This information could be posted on the Law Society website and published in other communication media.

29. The Law Society could also enhance awareness of the Law Society's program to affected communities by ensuring ongoing dialogue with constituency offices of MPs, MPPs and city councillors.

Proposed initiative

30. The proposed initiative clearly falls within the mandate of the Law Society to govern the legal profession in the public interest. Its goals are to facilitate access to legal services for the Ontario members of affected communities and to deliver continuing legal education programming to lawyers who volunteer their legal services to the communities.

31. The initiative focuses on facilitating the provision of pro bono legal services, with the assistance of PBLO and other stakeholders, by members of the Law Society of Upper Canada. It also includes the delivery of continuing legal education programs for participating lawyers in areas of law such as immigration, wills and estates, family law and insurance law, the publication in various languages of resources and links, the development of information sessions for victims and their relatives and the development of a communication strategy.

32. The proposed initiative includes the following components:
    a. The Law Society will work in cooperation with PBLO and other stakeholders such as SALA and SALCO to facilitate the provision of pro bono legal services to Ontario members of the affected communities. The services will, whenever possible, be offered in languages spoken by Ontario members of the affected communities.
    b. The Law Society, in cooperation with its stakeholders, will offer continuing legal education programming (CLE) for lawyers who wish to volunteer their legal services to Ontario members of the affected communities. The programs would focus on relevant areas of law. It is anticipated that the primary area of law will be immigration law. Secondary areas of law may include family law, wills and estates and insurance law.
    c. The Law Society will organize legal information sessions preferably within the affected communities. Lawyers with relevant legal experience and knowledge will facilitate the information sessions. The information sessions will, whenever possible, be offered in the languages spoken by the communities.
    d. The Law Society will identify emerging legal issues and ensure that lawyers and members of the public are aware of those issues.

e. The Law Society will publish relevant resources, updated information and links on its website and in other communication media. A comprehensive communication plan will be developed and include the provision of services in languages spoken by members of the affected communities.

33. The Law Society recognizes that a number of communities face exigent circumstances including the ongoing impact of AIDS, the challenge of eliminating world hunger and ongoing conflicts in a number of countries. We not only serve various diverse communities but also are members of those communities as lawyers. The Law Society could enhance awareness of these various issues as they arise and consider developing a communications strategy about the Law Society's relationship to a global humanity.

Budget

34. Resources will be required to support the recommendations included in this report. Law Society resources will include web page development, targeted advertising to members and the South and Southeast Asian communities, news releases, community relations efforts with affected communities and stakeholders, development and delivery of education programs to lawyers and information sessions to the affected communities. Staff of the Law Society will work in cooperation with other stakeholders to implement the recommendations.

35. Although the proposed initiative will require staff involvement, along with a strong commitment by stakeholders, the initiative will not require the creation of additional staff positions. Staff members with expertise to implement this initiative are already in place at the Law Society and stakeholders have already indicated their willingness to work with the Law Society to implement the initiative. It is anticipated that the implementation of this initiative may require resources from the following departments: Equity Initiatives, Communications and Public Relations and Professional Development and Competence.

36. Funding for this project is not included in the 2005 budget. Direct costs are estimated at $44,000 and will cover expenses related to translation and interpretation services and the production and distribution of materials and resources. The Finance Committee considered the initiative and approved the budget at its January 13, 2005 meeting.

Request to Convocation

37. That Convocation approve the following recommendations:
    a. That the Law Society, in cooperation with stakeholders, facilitate the provision of pro bono legal services to members of communities in Ontario who have been affected by the South and Southeast Asian tsunami disaster.
    b. That, if possible, the list of lawyers volunteering their services include lawyers who can provide assistance in languages spoken in the affected communities in Ontario.
    c. That the Law Society monitor emerging legal issues in this and related areas.
    d. That the Law Society publish relevant resources, updated information and links on its website and in other communication media related to access to justice issues in an international human rights context.
    e. That the Law Society, in cooperation with stakeholders, develop a continuing legal education program for lawyers to enhance their knowledge of legal issues relevant to members of affected communities.

f. That the Law Society organize, if appropriate, legal information sessions preferably within the affected communities.
g. That the Law Society develop a comprehensive communication plan about the Law Society activities listed above.
h. That the Law Society approve a budget for the project of $44,000 in 2005.

REVIEW OF THE DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM

38. On September 1, 1999 the Discrimination and Harassment Counsel (DHC) Program began operating as a pilot project and on June 22, 2001, Convocation established the DHC Program as a permanent program of the Law Society. By-law 36 - Discrimination and Harassment Counsel outlines the function of the DHC as follows:
    a. to assist, in a manner that the Counsel deems appropriate, any person who believes that he or she has been discriminated against or harassed by a member or student member;
    b. to assist the Society, as required, to develop and conduct for members and student members information and educational programs relating to discrimination and harassment; and
    c. to perform such other functions as may be assigned to the Counsel by Convocation.

39. In 2001, Convocation appointed Mary Teresa Devlin, who had acted as the DHC throughout the pilot project, as the first permanent DHC. On November 17, 2002, Ms Devlin was sworn in as a Judge of the Ontario Court of Justice and Cynthia Petersen was later appointed as DHC for a three year term. The position of Alternate DHC was created in November 2003 and Sylvia Davis was appointed to that position.

40. The purpose of the report entitled *Review of the Discrimination and Harassment Counsel Program*, presented at Appendix 1, is to evaluate the DHC Program, in accordance with Convocation's request that an evaluation of the DHC Program take place after three years of operation. The report also makes recommendations.

Request to Convocation

41. That Convocation approve the report entitled *Review of the Discrimination and Harassment Counsel Program* and the proposed recommendations set out at paragraph 104 of that report, presented at Appendix 1.

INFORMATION

EQUITY & DIVERSITY MENTORSHIP PROGRAM – 2004 REPORT

Background

42. The objective of the Equity and Diversity Mentorship Initiative is to match experienced members of the bar, with new lawyers, students-at-law, and students in law schools, university, and high schools, who seek guidance and advice about becoming a lawyer and succeeding in the profession. The program is geared to support members of equality-seeking communities.

43. The initiative promotes the profession of law to high school students through high school visits, class presentations and career fairs to encourage students from diverse backgrounds to consider law as a career.

Mentors

44. Since 2003, the number of mentors registered in the program has doubled. There are over 100 lawyers available for various types of mentoring. Mentors come from various backgrounds, different areas of practice, and numerous firms and organizations.

45. The increase in the number of lawyers signing up to be mentors is as a result of increased activities in communication, promotion and outreach to members.

46. Mentors are recruited through various avenues including advertising in the Ontario Reports, articles in the Ontario Lawyers Gazette, Law Society website promotion, and outreach with various sections of the bar and law firms.

Mentees

47. In 2004, 50 lawyers and students applied for a mentor. This represents a significant increase in the number of applications compared to 2003, when the program received 15 applications. Fifty-eight percent of applicants are lawyers, 7 percent are students-at-law, 5 percent are students in law school, 22 percent are university students, and 8 percent are students in secondary school.

48. The significant increase in the number of applications received in 2004, particularly among new lawyers, is as a result of communication and outreach strategies to the membership that have been implemented during the year.

49. The majority of mentees are from Toronto (+90%). The rest are from Ottawa, Windsor, Kitchener, Lindsay, Bancroft, Trenton, Oakville, and Hamilton.

Matches

50. In 2004, 40 mentoring relationships have been established through matching. Matching is coordinated by Equity Initiatives staff through the process of reviewing mentee application forms, conducting the search for mentors, determining the best fit between mentors and mentees, and finally connecting mentees to mentors. Equity Initiatives staff is confident that the remaining number of applicants seeking mentors will be matched in the new year.

51. When a relationship is established, mentors help their mentees in a number of ways including, giving advice and guidance on matters such as the bar admission course and the articling experience and career development. Mentees also benefit from the insights of experienced members of the bar.

52. High school and university students can receive academic and career advice, tips for applying to law schools and participate in job-shadowing and co-op opportunities.

Promotion and outreach

53. A new program brochure in English and French was developed in 2004. It will be mailed out to high schools, teachers and career counsellors, universities, law schools, legal organizations and associations, community agencies, and law firms.

54. The brochure targets lawyers and students to get involved in the program as mentors and mentees.

55. The program is promoted through various avenues including advertising in the Ontario Reports, articles in the Ontario Lawyers Gazette, Law Society website promotion, and outreach with schools and various sections of the bar and law firms.

56. Contact was made with all the career centres at each of the law schools. Staff conducted a visit to University of Western Ontario's law school and delivered a presentation to law students and the Diversity Committee. Visits to the other law schools are planned for 2005.

High school outreach

57. Classes in five high schools (Toronto District School Board, York Region District School Board, Peel Region District School Board) have been visited in 2004, reaching over 200 students considering law as a career. The Law Society also exhibited at a student career fair in November, which involved 500 students in York Region District School Board. In addition, 300 students participating in Law Week 2004 received information about the mentoring program. Over 100 law and civics high school teachers from across the province continue to receive information about the Law Society's activities through the Ontario Justice Education Network.

Process improvements

58. In 2004, the Equity & Diversity Mentorship Initiative has been integrated with the Law Society's Practice Advisory and Articling & Placement mentorship initiatives. The following improvements have been made to the program:
    a. New registration forms for mentors and mentees are in place, and are accessible online. The forms are also available in French.
    b. A dedicated telephone number in the Client Services Centre has been established to route calls about the mentorship program to the appropriate staff.
    c. The Information Services Department has built a shared network drive that houses a complete database that is accessible to the staff coordinating the three initiatives. The database includes contact information of all mentors, tracking of mentor and mentee matches, and electronic copies of registration forms.

Outlook for 2005

59. The goal for 2005 is to increase support for law school students and increase their participation in the program, given that their participation to date is low in comparison to new lawyers. The Equity Initiatives Department will increase the amount of outreach activities at the six law schools in Ontario in 2005. The level of activity for high school and university students will be maintained.

Partners and Participants

60. The following are partners and participants in the mentoring program:
    a. High schools, associations of teachers (Ontario School Counsellors Association, Law and Civics course teachers) and school boards (Toronto, York Region, Peel Region District School Boards);
    b. Universities and law schools;

c. Law Society members (guest speakers), lawyers associations and law students associations (Women's Law Association of Ontario, Canadian Association of Black Lawyers, Black Law Students Association, South Asian Lawyers Association, Rotiio> taties Aboriginal Advisory Group, Sexual Orientation and Gender Committee of the OBA, Association des juristes d'expression française de l'Ontario, the Advocates Society);
d. Governments (Department of Justice Canada, Ministry of the Attorney General);
e. Community agencies (Community legal clinics);
f. Equality-seeking organizations; and
g. Ontario Justice Education Network.

EQUITY PUBLIC EDUCATION EVENTS - 2005

61. The list of equity public education events for 2005 is included at Appendix 2.

APPENDIX 1

Review of the Discrimination and Harassment Counsel Program

January 13, 2005
Prepared by the Equity Initiatives Department

Table of Contents

Charts

Background

1. Recommendation 11 of the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*[1] stated that "the Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession". In the commentary to recommendation 11, the Law Society indicated that it should "develop, train, and monitor a "Safe Counsel" program for the victims of harassment and discrimination […] to provide the complainant with access to a volunteer roster of counsels who are independent of the Law Society and who have been provided with the training necessary to assist complainants in assessing their options".

2. On September 1, 1999 the Discrimination and Harassment Counsel (DHC) Program began operating as a pilot project and on June 22, 2001, Convocation established the DHC Program as a permanent program of the Law Society. By-law 36 – Discrimination and Harassment Counsel outlines the function of the DHC as follows:

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

a. to assist, in a manner that the Counsel deems appropriate, any person who believes that he or she has been discriminated against or harassed by a member or student member;
b. to assist the Society, as required, to develop and conduct for members and student members information and educational programs relating to discrimination and harassment; and
c. to perform such other functions as may be assigned to the Counsel by Convocation.

3. In 2001, Convocation appointed Mary Teresa Devlin, who had acted as the DHC throughout the pilot project, as the first permanent DHC. On November 17, 2002, Ms Devlin was sworn in as a Judge of the Ontario Court of Justice and Cynthia Petersen was later appointed as DHC for a three year term. The position of Alternate DHC was created in November 2003 and Sylvia Davis was appointed to that position.

4. The purpose of this report is to evaluate the DHC Program, in accordance with Convocation's request that an evaluation of the DHC Program take place after three years of operation. The report also makes recommendations.

Methodology Used in this Report

5. The Equity and Aboriginal Issues Committee decided that the evaluation of the DHC Program would be undertaken internally by reviewing the DHC semi-annual reports since the inception of the program to determine statistical trends and areas for improvement. The report makes comparisons, where appropriate, with statistical information provided by other programs such as the Ontario Human Rights Commission. Representatives of each of the following groups participate in the work of the Equity and Aboriginal Issues Committee and participated in the discussions regarding the review of the DHC Program: the Association des juristes d'expression française de l'Ontario (AJEFO), Rotiio > taties Aboriginal Advisory Group and the Equity Advisory Group (EAG).

Programs in Other Provinces

6. There are currently Ombudspersons in British Columbia, Alberta, Saskatchewan and Manitoba performing functions similar to the functions of the DHC in Ontario. All the programs operate at arm's length from the respective Law Societies. Only the programs in Manitoba and Ontario offer services to the public as well as to the profession and law firm staff. Other programs only offer services to the profession, articling students and support staff working for legal employers. As well, the mandate of each Program differs slightly.

7. The first program was established in B.C. in 1995. Originally the focus of the program was to deal with sexual harassment complaints. The mandate was later extended to deal with all types of discrimination and harassment.

8. In 1997, the Law Society of Alberta established its program. The Law Society of Manitoba and Saskatchewan established pilot projects in 2001 and 2002 respectively.

9. In every province, the ombudsperson is a part-time position, typically occupying 1 – 2 days per week.

10. The Ontario DHC Program, which serves more than 30,000 lawyers and the general public is by far the busiest with about 40 calls per month compared to 13, 10 and 8 for B.C., Alberta, and Manitoba respectively.[2]

11. The Ontario DHC communicates regularly with the Ombudspersons in the other provinces. Each year the Ombudspersons in the various provinces hold a meeting at which they share strategies and ideas. Both Ms Devlin and Ms Petersen have indicated that these meetings are extremely helpful in sharing ideas, comparing programs, and discussing the work of the equity ombudspersons.

DHC Reporting Methodology

12. By-law 36 requires that the DHC present a report to the Equity and Aboriginal Issues Committee every six months. Ms Devlin produced reports between September 1999 and November 2002 and Ms Petersen produced three reports for the periods ending in June 2004.

13. The reporting methodology used by Ms Petersen is different than the methodology used by Ms Devlin. Ms Devlin reported statistics on the number of calls she received in a period rather than the number of individual callers who contacted the DHC Program for information or assistance. In contrast, Ms Petersen reports data that is based on the number of individual contacts with the DHC Program.

14. The difference in the way the data is recorded is significant. For example, a week in which the DHC Program received 4 calls from a female lawyer regarding the same sexual harassment issue and 2 calls from two different male members of the public regarding 2 separate incidents of racial discrimination would be recorded in the following way:

Ms. Devlin's recording practice	Ms. Petersen's recording practice
4 sexual harassment calls	1 sexual harassment complaint
2 race discrimination calls	2 complaints of race discrimination
4 calls from women	1 complaint from a woman
2 calls from men	2 complaints from men
4 calls from the profession	1 complaint from the profession
2 calls from the public	2 complaints from the public

15. Based on this example, if the data were to be compared, incorrect inferences could be drawn, such as: that Ms Petersen received fewer sexual harassment calls and that the proportion of sexual harassment complaints has decreased of the overall calls, that fewer women are using Ms Petersen's services and that the percentage of calls from the public has decreased since Ms Devlin's departure. In fact, in this example, the nature of the complaints, the volume and proportion of calls from men and women, and the volume and proportion of calls from the public and the profession remained static.

16. Therefore, it is difficult to make meaningful comparison of the data in order to ascertain trends. This report presents trends while Ms Devlin was DHC and trends for the current DHC separately.

[2] See Semi-Annual report: January 1, 2002 - June 30, 2002.

Analysis of the work of the DHC

Number of calls/contacts between 1999-2003

17. The DHC program has received more than 1656 contacts since its inception in 1999. This number includes all callers between September 1999 and November 2002 (including some repeat callers pertaining to the same issue) and first contacts only between November 2002 and June 30, 2004.

18. Ms Devlin reports having received 1359 calls while she was DHC. Of those calls, she received 246 calls in the first half of 2000, 240 calls in the second half of 2000, 366 calls for the whole of 2001 (about 183 calls per half year), 237 calls in the first half of 2002 and 174 calls in the second half of 2002 (until November 2002). The average number of calls per month is fairly consistent, ranging between 31 and 41 (see Chart 1).

19. Chart 1: Average Number of Calls per Month (Ms Devlin)

(see chart in Convocation Report)

20. Ms Petersen also reports data that indicates consistency in the average of new contacts per month. Between the period of November 2002 and June 30, 2004, 297 new contacts were made to the DHC. The average of new contacts per month ranges between 15 and 19.5, increasing slightly with each reporting period. (see Chart 2).

21. Chart 2: Number of New Contacts (Ms Petersen)

(see chart in Convocation Report)

Language

22. Both Ms Devlin and Ms Petersen[3] are bilingual in French and English and have offered services in both languages. Since the DHC began reporting on the language spoken by callers in January 2001, the DHC has offered services in French to at least 30 French-speaking individuals.

23. Although the majority of people who have contacted the DHC to date speak English or French, a significant number of people who contact the DHC each year speak other languages as their first language. Individuals speaking Cantonese, Greek, Korean, Malay, Hindi, Khmer, Persian, Patois, Dutch, Punjabi, Tagalog and Spanish as their first language have contacted the Program.

Demographics of callers

24. The DHC maintains data on the number of calls from the public and from the profession, and the gender of individuals contacting the DHC Program. Based on this information, it is possible to make the following observations.
    a. While Ms Devlin was DHC, members of the public contacted the DHC Program more than twice as frequently as members of the legal profession.

[3] The Alternate DHC only offers services in English.

b. Since Ms Petersen's appointment as DHC, this trend seems to have changed considerably. Members of the profession are contacting the DHC Program almost as often as members of the public.
c. Since 1999, women have contacted the DHC Program roughly twice as frequently as men.

25. Once the DHC Program was firmly established, the Law Society began to collect more detailed demographic information about the individuals making use of the service. This information allows the Law Society to better understand needs of the public and the profession in relation to discrimination and harassment issues and to continue developing the DHC Program in response to those needs. In July 2002 the DHC began asking individuals who contact the DHC Program by telephone to complete a voluntary demographic survey. Since the survey is voluntary, only some of the individuals who take advantage of the DHC's services in any given period respond. Consequently, the results are helpful in determining the characteristics of individuals who contact the DHC, but give no indication of the total number of members of any group who contact the DHC.

26. The 80 participants in the survey between July 2002 and June 30, 2004 had the following characteristics:
a. Participants were more likely women than men and there was 1 transgender individual.
b. Participants were represented in all age categories. However, most participants were between the ages of 35 and 49.
c. Most identified themselves as White/Caucasian.
d. Participants who were members of the public were more ethno-racially diverse than participants who were members of the profession.
e. Other than White/Caucasian, participants indicated that that they were members of the following racial or ethnic community: Black, Chinese, South Asian, Aboriginal, Arab, Filipino, Southeast Asian, Korean, Latin American and Iranian.
f. One participant identified as bisexual, 5 identified as lesbian/gay and the remaining 74 identified as heterosexual
g. Twenty six participants indicated that they had a disability
h. Both members of the public and members of the profession were most likely from the Greater Toronto Area. Members of the profession were second most likely to be from the National Capital Region while members of the public were second most likely to be from South-western Ontario.

27. During her term as DHC, Ms Devlin received more than twice as many calls from women than from men (see Chart 3).

28. Chart 3: Number of Callers by Gender (Ms Devlin)

(see chart in Convocation Report)

29. Ms Devlin received almost twice as many calls from the public compared with calls from the legal profession. The chart below indicates, however, that the number of calls from the profession gradually increased between 1999 and 2002 (see Chart 4).

30. Chart 4: Number of Callers from Public and Profession (Ms Devlin)

(see chart in Convocation Report)

31. Almost twice as many women as men have contacted the program since the appointment of Ms Petersen (Chart 5).

32. Chart 5: Number of Contacts by Gender (Ms Petersen)

(see chart in Convocation Report)

33. Although more members of the public have contacted the DHC since Ms Petersen's appointment, the difference in numbers between new contacts from the public and the profession is diminishing (see Chart 6)

34. Chart 6: Number of Contacts from Public and Profession (Ms Petersen)

(see chart in Convocation Report)

Respondents

35. The DHC only reported information about respondents for the period from November 21, 2002 to June 30, 2003. Even during that period the DHC noted that she was not able to obtain information in every case. The information she obtained revealed that the respondents fell into the following occupational categories: 9 government lawyers (including federal, provincial and municipal governments as well as Indian Band councils); 9 sole practitioners; 9 lawyers employed at law firms; and 1 in-house legal counsel at a corporation.

Method of Contact

36. Since the inception of the DHC Program, the telephone has remained the most popular method of contact. Email has been the second most popular method of contact with the number of contacts by email generally increasing each year (see Chart 7). The DHC began consistently reporting on the method that individuals used to make first contact with the DHC Program in November 2002. Since that time approximately 75% of individuals who have contacted the DHC Program for the first time have done so by telephone. Between 20% and 25% of individuals who contacted the program for the first time did so by email and a small number of individuals used regular mail or fax.

37. Chart 7: Method of Contact (November 2002-June 2003)

(see chart in Convocation Report)

Contacts Outside the DHC Program Mandate

38. Although a majority of the contacts/calls that the DHC receives are within the mandate of the program, between 20% and 40% fall outside the mandate of the DHC. Ms Devlin reports that typically 80% of the calls to the DHC Program were within the mandate of the DHC. Ms Petersen reports that approximately 60% of the new contacts are within the mandate of the DHC. The statistical differences between the two DHCs may be explained by the fact that Ms Devlin classified calls relating to personal harassment or discrimination that do not fall within one of the enumerated grounds of the *Ontario Human Rights Code* or of the *Rules of Professional Conduct* as matters that are within the mandate of the DHC. In 2003, the Equity and Aboriginal Issues Committee decided

that such matters do not fall within the mandate of the DHC. Therefore, Ms Petersen would be reporting such contacts as outside of the DHC mandate.

39. Matters that are outside the scope of the DHC Program's mandate typically fall within one of the following categories:

a. Complaints that do not involve issues of discrimination or harassment;
b. Complaints of discrimination or harassment against non-lawyers (e.g. complaints against landlords, the police, non-legal employers, and unions); and
c. Complaints against lawyers that do not involve any equity or human rights issues (e.g. billing disputes, conflicts of interest, and negligence allegations).

40. There have been approximately 368 calls outside the mandate of the DHC Program since it began in September 1999. Generally, these calls only made up approximately 1/5 of the calls received by the DHC, but during some six-month periods, the DHC received significantly more calls outside the mandate. This occurred at the beginning of the DHC Program when callers were presumably less informed about the mandate. There was another increase in calls outside the mandate in 2002 and 2003, the explanation for which is less apparent.

41. In 1999 and 2000, the early days of the DHC Program, calls outside the mandate dealt primarily with issues related to the legal system other than discrimination and harassment, such as: general complaints about lawyers, complaints about legal aid, complaints about judges and the judicial system, complaints about the Law Society's internal complaints process and complaints about access to justice (see Chart 8). The DHC was able to deal with each of these calls in 10 minutes on average.

42. Chart 8: Calls Outside Mandate (Ms Devlin)

(see chart in Convocation Report)

43. In 2002 and 2003, the DHC received fewer calls that did not involve any issues of discrimination or harassment (see Chart 9). Rather, the DHC received more calls that were outside the mandate because they dealt with discrimination and/or harassment outside the legal profession or they dealt with personal harassment within the legal profession that did not involve human rights grounds. The DHC was able to deal with calls relating to events outside the legal profession relatively quickly, providing referrals where possible, but calls relating to personal harassment required more time in order to ensure that no human rights issues were involved.

44. Chart 9: Calls Outside Mandate (Ms Petersen)

(see chart in Convocation Report)

45. Individuals who contact the DHC with matters outside the scope of the Program are, whenever possible referred to other organizations. The "out of mandate" contacts typically do not consume much of the DHC time. However, because they constitute a drain on DHC Program resources, every effort is made to reduce the volume of these contacts. The promotional brochures for the Program were revised in 2003 to clarify the scope of the mandate and the new brochures have begun to enter circulation. The DHC website has also been changed to clarify the mandate of the DHC Program.

Contacts within the Mandate

46. Charts 10 and 11 indicate the trends regarding calls that are within the mandate and those outside the mandate of the program.

47. Chart 10: Calls Within and Outside Mandate (Ms Devlin)

(see chart in Convocation Report)

48. Chart 11: Contacts Within and Outside Mandate (Ms Petersen)

(see chart in Convocation Report)

49. The contacts that fall within the mandate of the DHC can generally be categorized as complaints, requests for information, or requests for training (see Charts 12 and 13). Complaints and requests for information originate from both members of the public and members of the profession, including a significant number of student members. On the other hand, requests for training originate primarily from members of the profession.

50. Chart 12: Nature of the Calls within the Mandate (Ms Devlin)

(see chart in Convocation Report)

51. Chart 13: Contacts within the Mandate (Ms Petersen)

(see chart in Convocation Report)

Subject Matter of Calls Within the Mandate

52. In 2001, calls made by women to the program were overwhelmingly calls about sexual harassment and discrimination. Women also called the program to complain about personal harassment (26 calls), discrimination based on disability (13 calls) and discrimination based on race (3 calls) (see Chart 14).

53. In 2002, sexual harassment/discrimination was again the most common types of calls made by women. However, the number of calls based on that ground was much lower than in the previous year (52 compared to 139). The second most likely type of call from women was about discrimination based on sexual orientation (13 calls) and discrimination based on disability (12 calls), with some calls about discrimination based on race (1 call) or other types of discrimination such as religion (see Chart 14).

54. Chart 14: Women Callers –2001 - 2002

(see chart in Convocation Report)

55. In 2001, calls by men complaining about harassment or discrimination were predominantly based on the grounds of disability (13 calls) and sex (13 calls). Five calls were about discrimination based on race, followed by calls about sexual orientation (1 call) and personal harassment (1 call) (see Chart 15).

56. In 2002, the types of calls from men were quite different than in 2001. The overwhelming number of calls from men was about race discrimination (18 calls), followed by disability (11 calls). Men made only 4 calls about sexual harassment/discrimination.

57. Chart 15: Men callers –2001 - 2002

(see chart in Convocation Report)

58. In 2001 and 2002, the most common ground of calls from women were based on sexual harassment/ discrimination (186 calls), followed by personal harassment (31 calls), discrimination based on disability (25 calls), sexual orientation (13 calls) and other grounds of discrimination (13 calls). Calls from men, on the other hand, were about discrimination based on disability (24 calls) and race discrimination (23 calls). Seventeen men called about sexual harassment/discrimination (see Chart 16).

59. Chart 16: Harassment and Discrimination – Women and Men Callers- 2001 - 2002

(see chart in Convocation Report)

Types of Complaints of Opened Files

60. Ms Devlin and Ms Petersen open complaint files based on a subjective determination of whether it is anticipated that there would be ongoing contact with a caller. The types of complaint files opened are a good representation of the types of complaints that the DHC receives. The information below is based on the DHC's Complaint files.

61. The DHC received more complaints about sexual and personal harassment than any other type of discrimination. Of these harassment complaints the large majority originated from women. Many of the complaints received by the DHC involved more than one ground of discrimination. Complainants raised the ground of sex most frequently, alone or in conjunction with other grounds, followed by race, and then disability. Complaints involving discrimination on the ground of race tended to originate more frequently from men than women.

62. Other types of complaints received by the DHC have involved discrimination on the grounds of disability, age, gender (pregnancy), political beliefs, sexual orientation, family status and religion.

63. Chart 17: Number of Complaints 2001 – 2004 (2004 is a six month period)

(see chart in Convocation Report)

Reported Outcomes/Resolution of Closed Files

64. The DHC provides information regarding various resolution options to all individuals who contact the DHC with a complaint. The complainants then decide how they wish to proceed or whether they wish to take any further action in regard to the complaint at all.

65. Some complainants choose to involve the DHC directly in the resolution of the complaint. The DHC offers mediation services and continuing coaching and advice to complainants. Another set of options available to complainants involves resolution processes outside the DHC program, such as making a report to the police, filing a

complaint with the Ontario Human Rights Commission, or initiating a process at the firm or organization involved in the complaint. The DHC does not represent complainants in outside processes. The DHC also provides information regarding filing a complaint with the Law Society. In some cases where the complaint has lead to a hearing, the DHC has provided support to the complainant throughout the hearing process.

66. The types of resolutions pursued by complainants have varied over time. For example, the DHC only conducted one mediation prior to December 31, 2000, but has conducted several mediations since that time. Complainants pursuing external processes, complainants filing complaints with the Law Society, and complainants receiving information and coaching from the DHC all continue to be frequently occurring resolutions.

67. Chart 18: Resolution of Closed Files - 2000 - 2002

(see chart in Convocation Report)

Mediation Requests and Effectiveness of Mediation

68. The DHC offers mediation services to complainants who wish to discuss their complaint with the respondent and generate options to resolve the issues. If the complainant and respondent agree, the DHC can arrange a formal mediation session. Mediation arranged by the DHC is confidential and voluntary. At any time, either the complainant or the respondent can withdraw from the process. The DHC does not take sides in the mediation or make decisions. Instead, the DHC facilitates the discussion. The mediation can take place in a face-to-face meeting or through a conciliation model where the parties meet individually with the DHC. The parties can bring a friend, advocate or their lawyer to the mediation meeting.

69. Mediation does not appear to be a preferred way of proceeding for complainants and respondents. Approximately 2 complainants opt for mediation in each reporting period and respondents often reject the prospect of mediation. Since the inception of the program, less than ten mediations have been successful or have resulted in settlements.

70. Ms Petersen suggests that most complainants who reject the offer of mediation express a desire to have their complaint investigated and/or a preference for an adjudicative approach to the resolution of their complaint. Many also expressed a belief that the respondent would not be willing to participate in mediation.

71. The following table provides information about mediation services offered by the DHC and outcomes.

Year	Number of mediations agreed to by complainant	Outcome
2000	1	Successful resolution
2001	2	2 successful resolutions
2002	4	3 settled 1 respondent does not consent to mediation

2003	4	1 successful mediation 1 unsuccessful mediation 2 unknown resolution
2004 (6 months)	1	1 respondent does not consent to mediation

Promotion of the Program

72. In order to promote awareness of the services available through the DHC Program in various communities, the Law Society distributes brochures about the DHC Program in English, French and Chinese. The Law Society produced 20,000 bilingual brochures (French and English) in 2003, 2,000 English Braille brochures and 1,000 French Braille brochures. The brochures were distributed to courthouses, information centres across Ontario, community legal clinics, law schools/law faculties, law societies, other equity ombudsperson programs and other stakeholders. The Law Society also sent approximately 6,500 Chinese brochures to community organizations and stakeholders.

73. The DHC Program website at www.dhcounsel.on.ca communicates information in French and English regarding the services provided by the DHC and how to contact the DHC. A link to the site is available on the Law Society website. The DHC website has been updated to include relevant information about the program and all semi-annual reports in French and English.

74. Other promotional activities are undertaken to enhance the visibility of the program. The DHC regularly accepts speaking engagements and addresses students in the Bar Admission Course. She communicates with career counselling services in various faculties of law throughout the province and the program is advertised bi-weekly in French and English in the Ontario Reports.

75. The Law Society maintains information about visits to the Law Society's public website and the Discrimination and Harassment Counsel page, the number of DHC website pages viewed, and the traffic on the website. Chart 19 shows that individuals view the DHC web page within the Law Society's website at a fairly consistent rate.

76. Chart 19: Visits of Law Society DHC Web Page

(see chart in Convocation Report)

77. Chart 20 indicates that visits to the DHC website have increased significantly since November 2002.

78. Chart 20: DHC Web Visits Analysis

(see chart in Convocation Report)

79. The following table indicates the pages that are most commonly viewed on the DHC website.

Page Title	Number of Page Views
home page	163835
welcome page	2128
about DHC	1753
definitions	1271
complaints process	1270
services	1160
contact us	1019
FAQs	983
related links	975
publications	966

Educational Activities

80. The DHC, with the Equity Initiatives Department, participates in the development and delivery of continuing legal education programs on addressing and preventing harassment and discrimination. The DHC, with the Equity Initiatives Department, also participates in the design and delivery of custom-designed training or educational programs for law firms. Since the inception of the program, a number of workshops have been designed for large, medium and small law firms and for legal clinics and other organizations.

Budget and Expenses

81. The budget for the DHC was established by Convocation in June 2001 at $100,000 per year. Except for 2001 when spending related to the DHC program slightly exceeded the budget, the DHC program maintained high standard services within its allocated budget. It is anticipated that, in 2004, the DHC program will have, once again functioned under budget.

82. The 2001 spending over budget is largely due to expenses related to the promotion of the DHC program across Ontario. The DHC program is now well known by the profession and clients through regular advertisements in the O.R., the Law Society of Upper Canada and the DHC websites, brochures in various languages and in Braille, media coverage and presentations made by the DHC and the Equity Initiatives Department about the program. It is anticipated that promotion of the program through extensive travelling across Ontario will not be necessary in the near future.

	2003	2002	2001
Spending	79,401	71,412	106,740
Budget	100,000	100,000	100,000
Under/(Over)	20,599	28,588	(6,740)

Comparisons with Ontario Human Rights Commission

83. The Ontario Human Rights Commission (OHRC) collects data regarding the type of complaints it receives.[4] Given the related functions of the OHRC and the DHC, a comparison of the types of complaints received by the OHRC with the complaints that the DHC Program receives is useful in determining how the DHC Program should develop in the future.

84. The types of complaints received by the DHC are similar to those received by the OHRC in that the three most frequent grounds of discrimination are disability, race and colour and sex and pregnancy. The types of complaints differ in two significant ways. First, disability is the most frequently cited ground in complaints received by the OHRC while the DHC Program receives significantly more complaints on the grounds of race and sex than disability. The second obvious difference between the types of complaints received by the OHRC and the DHC Program is that the DHC Program receives significantly more complaints of sexual harassment than any other ground of discrimination while complaints of sexual harassment make up only a small percentage of the complaints received by the OHRC. The differences between the types of complaints received by the OHRC and the DHC Program could be explained by a number of factors and further study would be required to determine the significance of those differences.

Recommendations made by DHC and actions by LSUC

85. Over the years, the DHC has made a number of recommendations to improve the DHC Program, and the Law Society and the DHC have addressed most of those recommendations.

86. For example, the DHC recommended that the Law Society hire an alternate DHC to assist with direct services and replace the DHC when needed. The Law Society established and filled the position of alternate DHC.

87. The DHC also recommended that the Law Society promote more widely the DHC Program in a variety of sources. As noted in this report, the Law Society has taken action to develop a greater awareness of the DHC Program and it will continue to communicate the existence and mandate of the program to the legal profession and the public.

88. The DHC recommended that the Law Society formally exempt the DHC from reporting requirement under the *Rules of Professional Conduct* and amend the *Law Society Act* to extend the duty of confidentiality for the DHC. The Law Society has made the recommended amendments to the *Rules of Professional Conduct* and the *Law Society Act* ensuring the confidentiality of communications with the DHC.

Conclusions

89. Statistical information produced by the DHC indicates that members of the profession and the public use the program regularly. Although the number of members of the profession contacting the program is typically lower than the number of contacts from members of the public, this trend has changed over the years. It appears that in the last 2 years, contacts by members of the profession have increased to a level that is almost

[4] Information regarding complaints filed at the OHRC is available in their annual reports for 1999-2000, 2000-2001 and 2001-2002. More recent reports have not yet been released to the public. The reports are available on the OHRC website at *www.ohrc.on.ca/English/publications/.*

as high as contacts from members of the public. This would indicate that advertisement and marketing activities for the program in various medium and languages have been successful.

90. Services are also offered in both official languages and members of the public and the profession use the services of the DHC in French. Therefore, the services should continue to be offered in both official languages.

91. The review of the semi-annual reports also indicate that the pool of those who access the DHC Program is diverse, including diversity in age, race, ethnic origin, gender, sexual orientation, first language and disability. Individuals who contact the program are from every regions of Ontario, but are more likely to be from the Greater Toronto Area, the National Capital Region and South-Western Ontario.

92. More than half of contacts made with the program are within the mandate of the program.

93. An overwhelming majority of complainants are still women, which is consistent with findings that women are still more likely then men to indicate that they have been subject to harassment and discrimination.[5] It is, however, important to note that the subject matters of contacts and complaints are more diverse and include sexual orientation, disability, race, religion and other grounds. This would seem to indicate that individuals are more informed about the mandate of the program and the types of complaints that may be brought to the attention of the DHC.

94. The DHC semi-annual reports provide aggregate information about the types of complaints. While maintaining the confidentiality of complainants and respondents, it would be valuable to include more detailed information about the complainant and respondent for each complaint, including, when known, information about the race or ethnicity of the complainant and respondent, the gender identity and sexual orientation of the complainant and respondent, whether the complainant and/or respondent is a person with disabilities, the age and/or year of call of the complainant and respondent, the respective positions of the complainant and respondent and the size of firm.

95. Further information about the nature of the complaint would also be valuable, such as, whether harassment cases involve physical and/or verbal harassment and whether discrimination cases involve direct discrimination, adverse impact discrimination or systemic discrimination.

96. Mediation services offered by the DHC have been only moderately successful. Notwithstanding the fact that the DHC regularly offers mediation services free of charge, the services are often not used by either complainants or respondents. However, when mediation services are used, they often lead to a successful resolution or settlement.

97. It is not surprising that complainants or respondents often opt for mechanisms other than mediation services to address issues of harassment and discrimination because of the

[5] F.M.Kay et al., *Diversity and Change: The Contemporary Legal Profession in Ontario* (Toronto: A Report to the Law Society of Upper Canada, September 2004) and F.M.Kay et al., *Turning Points and Transitions: Women's Careers in the Legal Profession* (Toronto: A Report to the Law Society of Upper Canada, September 2004).

imbalance of power that often exists between a complainant and a respondent in cases of harassment and discrimination, complainants may not consider that mediation is the best way to address their issues. Complainants often prefer to have their complaints investigated and/or have a preference for an adjudicative approach to the resolution of their complaint. Mechanisms of choice include filing a complaint to the Law Society, the Human Rights Commission or filing a court action.

98. Also, complainants typically contact the DHC first and discuss their concerns with her. Respondents may feel uncomfortable about the DHC acting as mediator because they might question the DHC's neutrality in the matter. In such cases, it is useful to be able to direct the parties to the Alternate DHC who can act as an independent mediator.

99. The DHC program has functioned effectively and within budget since its inception (with the exception of 2001 when the program exceeded its budget by $6,740). Therefore, assuming that the DHC hourly fees are maintained, it is suggested that the program continue to operate with an annual budget of $100,000 per year.

100. Promotion of the DHC program has lead to increased awareness of the program with the legal profession and members of the public. The program is promoted in French, English and Chinese languages and in Braille. Visits on the website have increased, indicating not only increased knowledge of the program but also the usefulness of maintaining an up-to-date French/English website.

101. The statistical information produced by the DHC Program demonstrates that members of the profession and the public use the program and that the program is effective and functions within budget. The education component of the program also assists in preventing harassment and discrimination in the legal profession.

102. Users of the DHC program are not asked to evaluate the effectiveness of the DHC Program. An evaluation process for users should be developed to ensure that the DHC receives regular feedback from users. Users of the DHC Program should have easy access to the evaluation form. The form could be posted on the website or forwarded to users via mail, fax or email.

103. The Equity and Aboriginal Committee may wish to adopt recommendations that will build on the effectiveness of the program.

Request to Convocation

104. That Convocation approve the following recommendations:

a. That the Discrimination and Harassment Counsel Program (DHC Program) be continued as a permanent program of the Law Society with an annual budget of $100,000, subject to review from time to time;
b. That the Law Society undertake a review of the DHC Program every three years to determine how to improve the program's effectiveness;
c. That, while maintaining the confidentiality of complainants and respondents, the semi-annual reports of the DHC include more detailed information about the complainant and respondent in each case and the nature of each complaint;
d. That an evaluation process be developed for users of the DHC Program, and that users be provided with easy access to the evaluation process;
e. That the role of the DHC continue to be actively promoted to students in the Bar Admission Course program and to students of the licensing process (to be

implemented in 2006), articling students and students in all Ontario law schools to ensure that they understand the mandate of the DHC and to enhance access to the program;

f. That the Law Society consider strategies to encourage the profession to enhance awareness of the DHC services;

g. That the Law Society continue to promote the DHC Program to various equality-seeking communities through written information in different languages or presentations at public education events;

h. That the Law Society continue its promotional activities of the DHC program by including information about the program in a broad range of sources such as model policies, practice management guidelines, self-assessment tools, and Law Society staff resources;

i. That, in cooperation with the DHC, the Law Society continues to offer and promote education programs for the legal profession on the issue of harassment and discrimination.

APPENDIX 2

EQUITY PUBLIC EDUCATION EVENTS SCHEDULE - 2005

Black History Month – Comparing Racial Equality Rights in Canada and South Africa
Event date: February 23, 2005

Marking the 20th anniversary of the enactment of section 15 - equality rights - of the Charter.

Speakers will discuss the constitutional frameworks and judicial interpretations to compare progress of substantive equality rights in these two diverse and multi-racial nations with similar structures in democracy.

Workshop: Museum Room - 3:00 p.m. to 5:30 p.m.
Reception: Convocation Hall - 5:30 p.m. to 8:30 p.m.

International Women's Day - The Role of Lawyers in Preventing and Addressing Domestic Violence
Event date: March 8, 2005

The workshop will include perspectives from practitioners and/or community workers in the area of family law, immigration law, criminal law and poverty law.

Workshop: Museum Room - 3:00 p.m. to 5:30 p.m.
Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.

International Day for the Elimination of Racial Discrimination
Event date: March 21, 2005

Workshop: Museum Room - 3:00 p.m. to 5:30 p.m.
Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.

National Holocaust Memorial Day
Event date: April 18, 2005

Workshop: Museum Room - 3:00 p.m. to 5:30 p.m.
Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.

South Asian Heritage Month
Event date: May 5, 2005

Workshop: Museum Room - 3:00 p.m. to 5:30 p.m.
Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.
National Access Awareness Week
Event date: May 31, 2005

Workshop: Museum Room – 3:00 p.m. to 5:30 p.m.
Reception: Convocation Hall - 5:30 p.m. to 8:30 p.m.

National Aboriginal Day
Event date: June 8, 2005
Workshop and reception: Convocation Hall: 3:00 p.m. to 8:00 p.m.

Pride Week Reception
Event date: June 23, 2005
Reception: Convocation Hall: 5:00 p.m. to 8:00 p.m.

It was moved by Ms. St. Lewis, seconded by Mr. Sandler that the following recommendations be approved as set out at paragraph 37 of the Report:

a. That the Law Society, in cooperation with stakeholders, facilitate the provision of pro bono legal services to members of communities in Ontario who have been affected by the South and Southeast Asian tsunami disaster.

b. That, if possible, the list of lawyers volunteering their services include lawyers who can provide assistance in languages spoken in the affected communities in Ontario.

c. That the Law Society monitor emerging legal issues in this and related areas.

d. That the Law Society publish relevant resources, updated information and links on its website and in other communication media related to access to justice issues in an international human rights context.

e. That the Law Society, in cooperation with stakeholders, develop a continuing legal education program for lawyers to enhance their knowledge of legal issues relevant to members of affected communities.

f. That the Law Society organize, if appropriate, legal information sessions preferably within the affected communities.

g. That the Law Society develop a comprehensive communication plan about the Law Society activities listed above.

h. That the Law Society approve a budget for the project of $44,000 in 2005.

Mr. Wright proposed an amendment to add a recommendation (i) "that the Law Society collaborate with other legal organizations where appropriate in the activities listed above".

The amendment was accepted.

The main motion as amended was voted on and carried unanimously.

Re: Review of the Discrimination and Harassment Counsel Program

It was moved by Ms. St. Lewis, seconded by Mr. Sandler that Convocation approve the Report entitled *Review of the Discrimination and Harassment Counsel Program* and the following recommendations set out at paragraph 104 on page 53 of that Report:

a. That the Discrimination and Harassment Counsel Program (DHC Program) be continued as a permanent program of the Law Society with an annual budget of $100,000, subject to review from time to time;

b. That the Law Society undertake a review of the DHC Program every three years to determine how to improve the program's effectiveness;

c. That, while maintaining the confidentiality of complainants and respondents, the semi-annual reports of the DHC include more detailed information about the complainant and respondent in each case and the nature of each complaint;

d. That an evaluation process be developed for users of the DHC Program, and that users be provided with easy access to the evaluation process;

e. That the role of the DHC continue to be actively promoted to students in the Bar Admission Course program and to students of the licensing process (to be implemented in 2006), articling students and students in all Ontario law schools to ensure that they understand the mandate of the DHC and to enhance access to the program;

f. That the Law Society consider strategies to encourage the profession to enhance awareness of the DHC services;

g. That the Law Society continue to promote the DHC Program to various equality-seeking communities through written information in different languages or presentations at public education events;

h. That the Law Society continue its promotional activities of the DHC program by including information about the program in a broad range of sources such as model policies, practice management guidelines, self-assessment tools, and Law Society staff resources;

i. That, in cooperation with the DHC, the Law Society continues to offer and promote education programs for the legal profession on the issue of harassment and discrimination.

The main motion was voted on and carried.

Items for Information

Equity and Diversity Mentorship Program – 2004 Report
Upcoming Public Education Events – 2005

APPOINTMENT TO THE LAW SOCIETY FOUNDATION

The Treasurer announced that Convocation appointed Mr. Ian Hull a member of the Law Society Foundation.

REPORT OF THE FINANCE & AUDIT COMMITTEE

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

Finance and Audit Committee
January 27, 2005

Report to Convocation

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

Purpose of Report: Decision
Information

Prepared by the Finance Department
Andrew Cawse (947-3982)

THE REPORT:

1. The Finance and Audit Committee ("the Committee") met on January 13, 2005. Committee members in attendance were: Clay Ruby (c), Abdul Chahbar (v.c.), Peter Bourque, Andrew Coffey, Paul Dray, Allan Lawrence, Ross Murray, Lawrence Pattillo, Laurie Pawlitza, Alan Silverstein, Gerry Swaye, and Bradley Wright.

2. Other Benchers attending were Abe Feinstein and Joanne St. Lewis. Michelle Strom from LawPro attended. Staff attending were Malcolm Heins, Wendy Tysall, Zeynep Onen, Terry Knott, Bruce Arnott, Steve McClyment, Fred Grady, and Andrew Cawse.

3. The Committee is reporting on the following matters as indexed on the following page:

FOR DECISION:

B. CAPITAL EXPENDITURE BUDGET

The Finance & Audit Committee recommends to Convocation that projects budgeted in 2004 but not yet completed, be funded in 2005 from the accumulated year-end balance of the Capital Allocation Fund.

22. Capital expenditures for each year are approved in a similar fashion to operating expenditures but capital projects often extend beyond the financial year-end. The schedule below of capital expenditures provides a summary of capital spending by project for the year 2004. The schedule is presented with facilities projects listed from lines 1 through 17 and information systems projects on line 18.

23. The column on the schedule labeled "Spent & Committed" includes actual payments to date as well as outstanding commitments in the form of purchase orders and contracts. Payments against these purchase orders and contracts will be made in 2005 and Convocation needs to approve these payments, as the expenditures were not in the 2005 capital budget.

24. The facilities projects fall into three categories: projects with 2004 budgets and undertaken as planned, projects budgeted but not undertaken and finally the North Wing renovation. In addition, the 2004 capital budget contained a contingency provision that

was utilized but not allocated to cover the costs of projects that exceeded estimates at the time of budget approval. These funds offset the additional costs of the robing rooms and bencher wing restorations.

25. Of the projects undertaken, with the exception of the north wing renovation, all are substantially complete and total costs will be within the total spent and committed to date. The 2004 capital budget is underspent and unapplied funding will be available to carry forward to 2005 for future capital spending.

26. Two relatively small projects budgeted but not undertaken in 2004 included masonry repair and water infiltration suppression. The funding for these projects will remain in the capital allocation fund balance and be available if work is commenced at a future date.

27. The largest single item budgeted was the renovation of the North Wing. The budget of $9,028,000 represents the Convocation approved spending for the project. The construction contract has a value of $5.751 million and construction has begun. The under budget amount of $2.3 million is for items yet to incurred. These include moving expenses, furniture and equipment and a construction contingency. It is expected that the total project will be completed in the spring of 2006 and will be within budget.

28. Information systems projects for 2004 are substantially completed. Additional work on the library automation project and the case management system is budgeted for 2005. Both of these projects will be completed in 2005.

29. Convocation is requested to approve projects budgeted in 2004 but not yet completed, be funded in 2005 from the accumulated year-end balance of the Capital Allocation Fund.

	Capital Projects	Budget	Spent & Committed	(Over) Under
1	Electrical Upgrades	340,000	166,996	173,004
2	Mechanical Upgrades - Ottawa	30,000	6,800	23,200
3	Electronic Security System	25,000	11,495	13,505
4	Masonry	10,000	-	10,000
5	Windows	45,000	80,099	(35,099)
6	Water Infiltration Suppression	45,000	-	45,000
7	Mechanical Upgrades	565,000	560,028	4,972
8	Roof Repair	117,500	87,081	30,419
9	Floor and Wall Finishes	215,000	225,422	(10,422)
10	Great Library Reading Room	68,000	10,485	57,515
11	Benchers Wing Restoration	23,200	92,844	(69,644)
12	Accessibility Alterations	50,000	21,865	28,135
13	Fire and Life Safety	119,000	39,484	79,516
14	Furniture Systems and Equipment	210,000	305,230	(95,230)
15	Barristers' Robing Rooms	173,700	330,750	(157,050)
16	Fence Restoration	160,600	183,832	(23,232)
17	Contingency	210,000	-	210,000
18	Information Systems	545,000	494,030	50,970

19		2,952,000	2,616,440	335,560
20	North Wing Renovations	9,028,000	6,639,692	2,388,308
21	Total Capital	11,980,000	9,256,133	2,723,867

FOR DECISION:

C. ADDITIONAL LEASED SPACE

The Finance & Audit Committee recommends to Convocation that the Law Society enter into an additional lease arrangement summarized as:

- 5,150 additional square feet adjacent to our existing leased space at 393 University Ave, Toronto
- An annual lease cost of approximately $155,000 annually
- The lease for both old and new space would terminate on April 30, 2010
- Leasehold improvement costs of approximately $200,000
- 2005 funding totalling $320,000 from the contingency allowance.

Operating details

30. The Law Society currently leases 10,112 sq. ft. at 393 University Avenue, Toronto. This report seeks approval for the lease of an additional 5,150 sq. ft. at 393 University at a lease cost of $155,000 per annum for five years and the one-time expenditure of $200,000 on related leasehold improvements.

31. Lease payments would commence on April 1, 2005 and funds for the total prorated expenditure in 2005 of $320,000, would come from the Contingency Allowance.

Reason for Increased Space

32. The leased space at 393 University primarily accommodates Trustee Services, Spot Audit and parts of Information Services at the moment.

33. Trustee Services provides a vital function in assisting members and protecting clients when sole practices are wound up or are experiencing problems. Their current case load is in excess of 350 files. The 2005 operating budget reflected the increasing work by increasing staffing for this department by one lawyer. Formal trusteeships – where a court order authorizes the takeover of an entire practice, grew from 8 in 2003 to 14 in 2004. When formally appointed as trustee, Trustee Services takes control of all the records and client files of a practice which can lead to around 500 storage boxes and computers storing electronic records coming on site. For appropriate administration, most of these files must be accessible and stored on site. Therefore storage requirements have virtually doubled in the last year.

34. Increases and changes in other Law Society operations also support the addition of more space. Since the North Wing renovation was first proposed in 2003, staffing numbers have increased from 390 to the 401 approved in 2005. Organisations we support such as the Ontario Justice Education Network have also developed over this

time with OJEN's staff complement now at 4 people. Some specific Law Society space demands come from:

- The office of Complaints Review Commissioner ("CRC") is becoming operational and has unique accommodation needs in order to operate privately and appropriately.
- PD&C has increased staffing by 6 over the last three years in response to exponential growth in CLE attendance and the demands of the BAC transition.
- New areas such as Tribunals need to be accommodated and critical support functions such as Communications and Information Systems have increased in size.
- Spot Audit housed at 393 University is conducting more audits "in-house" rather than retaining external accounting firms.
- Large projects such as Professional Regulation case management and the Education Administration System require a large amount of space for the temporary accommodation of the contractors working on the projects.

Leasehold Improvement Costs

35. The estimate for leasehold improvement costs to tailor the new space to Law Society requirements is $200,000 to be incurred in February and March 2005. This estimate is based on figures provided by the lessor of $32 per square foot (say $165,000) plus mechanical and design allowances. We are fortunate that the available space is contiguous with our existing space.

36. It is proposed that immediate funding for these costs would come from the Contingency Allowance in the 2005 operating budget with accounting treatment dictating that this amount be capitalized for year end reporting purposes.

Lease Costs

37. Our existing lease expires on April 30, 2010 and it is proposed that the new space will be added as an amendment to the existing lease with the same termination date.

38. The annual cost of the new space is more than $4 a square foot less than the cost of the existing space over the remaining term of the lease. We are currently leasing 10,112 sq. ft. at an annual cost of $344,000 and under the contemplated lease arrangement will pay $499,000 for 15,262 sq. ft, an increase of $155,000 for 5,150 sq. ft.

39. It is contemplated that payments on the new space would commence in April 2005 resulting in lease costs of $120,000 for the current year. As this was not included in the approved operating budget, funding would come from the Contingency Allowance. There is currently a balance of $1.2 million in the Contingency Allowance.

FOR INFORMATION:

D. ROLE OF AUDIT SUB-COMMITTEE

The Finance & Audit Committee agreed that LawPro financial statements be presented directly to the Finance & Audit Committee for information and referral to Convocation.

40. The Audit Sub-Committee is not a decision making body but a fact-finding one. The Sub-Committee reports its findings to the Finance & Audit Committee and onwards to Convocation. As a result of Sub-Committee membership changes the Audit Sub-Committee recently reviewed its Charter and reported to the Finance & Audit Committee on one recommended change in process.

41. The Charter of the Audit Sub-Committee includes a paragraph:

> "The Audit Committee may review the minutes of audit committee meetings of LawPro, LibraryCo Inc. and any other subsidiaries for any significant issues or auditor recommendations."

42. LawPro was incorporated in 1990. In its current form, LawPro was established with "an appropriate infrastructure and management, separate and apart from the Society" to operate in a "commercially reasonable manner" when Convocation approved the recommendations of the Insurance Committee Task Force in 1994.

43. The governance structure for the corporate relationship between the Law Society and LawPro is established by the Insurance Committee Taskforce Report of 1994, the management contract of the old E&O Fund and the annual insurance report from LawPro to Convocation every September. LawPro operates in accordance with the regulations of the Ontario Insurance Act, the Ontario Corporations Act and other applicable legislation. Since 1994 it has operated independently with its own management and Board of Directors.

44. The run-off of the Law Society's errors and omissions insurance program prior to 1995 is administered by the Errors & Omissions Fund. Under a Service Agreement implemented in 1995 LawPro administers the Errors & Omissions Fund for the Law Society. There are therefore two different structures for the insurance program - prior to 1995 and after 1995, with different ownership structures for the two program's funds, although for year-end financial reporting purposes the two programs are combined.

45. LawPro has its own Board of Directors. Seven of the fifteen board members also sit in Convocation. Of LawPro's directors, Mr. Swaye is a member of the Law Society's Finance & Audit Committee and Mr. Chahbar is a member of both the Law Society's Finance & Audit Committee and Audit Sub-Committee. Mr. Heins and Mr. Chahbar, two members of LawPro's Audit Conduct Review Committee sit in Convocation. LawPro's annual insurance program is approved by Convocation in September each year.

46. Members of Finance or Audit Committees typically are required to be financially literate. However, LawPro's business as an insurer requires specific specialised knowledge of the insurance industry. While this knowledge is available at the LawPro level from directors recruited with insurance backgrounds, this knowledge is not available at the Law Society level. This makes it difficult for a comprehensive review of LawPro's financial statements to be completed at the Law Society's Audit Sub-Committee level.

47. As detailed above, LawPro has its own governance structures in place and it appears that with so many common members there are adequate lines of communication between the directors and finance committees of the two organisations. It is concluded that the Law Society's Audit Sub-Committee is not required to play a role in the

governance of LawPro. Law Pro will be informed that, until further notice, their quarterly financial statements should be submitted to the Finance & Audit Committee.

FOR INFORMATION:

E. LAW SOCIETY RESPONSE TO TSUNAMI RELIEF

48. The Committee reviewed draft plans for the Law Society's response to Tsunami relief which was being submitted to the Equity and Aboriginal Issues Committee meeting at the same time. The plan includes development, education and communication initiatives to assist affected communities in Ontario. The Committee unanimously supported the draft budget accompanying the plan. Translation costs will comprise the largest part of estimated costs of $44,000, with funding from the contingency allowance.

FOR INFORMATION:

F. PERFORMANCE OF INVESTMENT MANAGER

49. Since Convocation approved their appointment in May 2003, Foyston Gordon and Payne Inc ("Foystons") have managed the long-term investments of the Compensation Fund. Foystons also assumed the management of the long-term General Fund portfolio in March 2004.

50. The Compensation Fund portfolio has a current market value of $21 million and the General Fund portfolio has a current market value of $10 million. Foystons has a total of $7 billion in client funds under management.

51. The comparison of actual rates of return compared to benchmark are set out on page 18 and 19. Since the 18 and 8 months from inception, performance has been slightly lower than benchmark for both portfolios. For the Compensation Fund the annual rate of return since inception has been 6.6% compared to the benchmark of 6.7%, a difference of 0.1%. For the General Fund the annual rate of return since inception has been 1.1% compared to the benchmark of 1.7%, a difference of 0.6%.

52. The actual rates of return have been particularly adversely affected by the recent performance of a small number of U.S. equities. We will continue to monitor performance as a longer management history develops. We obtain beneficial management fee rates from Foyston's investment management relationship with LawPro.

THE LAW SOCIETY GENERAL FUND

Time Weighted CDN$ Rates of Return
Period Ending November 30, 2004

	2 Months	Since Inception (March 31, 2004)
Total Fund	1.3%	1.1%
Benchmark	1.5	1.7
Short Term	0.6	1.5
Bonds	1.2	1.7
SCM Short Term Index	1.4	1.8
Canadian Equities	2.8	8.8
S&P/TSX Composite Index	4.4	6.4
U.S. Equities (CDN$)	1.0	-8.1
S&P 500 Index (CDN$)	-0.5	-4.2

Investment Objectives

- Outperform market index returns.
- Outperform benchmark 87% SCM Universe Short Term Bond Index, +13% (50% S&P/TSX +50% S&P 500).

THE LAW SOCIETY OF UPPER CANADA

Time Weighted CDN$ Rates of Return
Period Ending November 30, 2004

	2 Months	YTD	1 Year	Since Inception (May 31, 2003)
Total Fund	1.8%	4.8%	6.4%	6.6%
Benchmark	1.9	5.8	7.9	6.7
Short Term	0.7	2.3	2.6	2.7
Bonds	1.8	5.7*	6.7	5.7
SCM Short Term Index	1.4	4.6*	5.6	5.0*
SCM Universe Index	1.9	5.9*	7.5	5.6*
Canadian Equities	2.8	14.0	21.7	24.6
S&P/TSX Composite Index	4.4	11.5	16.9	22.2
U.S. Equities (CDN$)	1.0	-7.7	-2.8	5.2
S&P 500 Index (CDN$)	-0.5	-1.2	3.6	5.7

*The portfolio was lengthened in maturity in January 2004, as the benchmark was changed from the SCM Short Term Index to the SCM Universe Bond Index.

Investment Objectives

- Exceed inflation by 3% on average over a four-year period.
- Outperform market index returns.
- Above median over four-years using an independent performance measurement service.
- Outperform benchmark 87% SCM Universe, +13% (50% S&P/TSX +50% S&P 500).

FOR INFORMATION:

G. BUDGET LEVY – FEDERATION OF LAW SOCIETIES OF CANADA

53. The Federation of Law Societies of Canada charges the provincial bodies an annual levy based on the number of members in each province. The rate per member has been $10.50. The Federation's Council has approved an increase in this rate to $13.00 per member commencing on July 1, 2005. The effects of this increase on the Law Society is mitigated as an increase was expected, because of the timing of the increase and because membership numbers for the levy are calculated two years in arrears. The Law Society's 2005 budget includes $310,000 for the Federation's membership levy, compared to the annual charge based on the new levy of approximately $364,000 which will come into effect half way through the year.

FOR INFORMATION:

H. INTERIM FINANCIAL STATEMENTS

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

- The financial statements of the General Fund for the nine months ended September 30, 2004 (page 23).
- The financial statements of the Lawyers Fund for Client Compensation for the nine months ended September 30, 2004 (page 27).
- The financial statements of LibraryCo Inc for the six months ended June 30, 2004 (page 29).
- Investment Compliance Report at September 30, 2004 - General Fund Short - Term Investments (page 31)
- Investment Compliance Report at September 30, 2004 - General Fund Long - Term Investments (page 33)
- Investment Compliance Report at September 30, 2004 - Lawyers Fund for Client Compensation Short - Term Investments (page 35)
- Investment Compliance Report at September 30, 2004 - Lawyers Fund for Client Compensation Long - Term Investments (page 37).

55. The Committee discussed the ongoing issue of financial reporting from LibraryCo. It was noted that the Audit Sub-Committee had reviewed LibraryCo's second quarter financial statements at a meeting on October 28, 2005, nearly two months after the Audit Sub-Committee meeting to review all other second quarter financial statements. This review resulted in requested improvements in the timing and format of the financial statements. These improvements have not been implemented. LibraryCo's financial statements for the third quarter had only recently been sent to the Audit Sub-Committee by e-mail in an unchanged format from the second quarter. The receipt of these statements was nearly three months after quarter-end and nearly a month and a half after the Sub-Committee's requested delivery date. The Audit Sub-Committee has not had an opportunity to meet and review these statements.

56. It was concluded that the Chair would communicate with Mr. MacKenzie, Chair of LibraryCo's board, and Mr. Murphy, Chair of CDLPA in an effort to expedite the implementation of improvements in the timing and content of LibraryCo's financial statements.

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

(1) Copy of the financial statements of the General Fund for the nine months ended September 30, 2004.

(pages 23 - 26)

(2) Copy of the financial statements of the Lawyers Fund for Client Compensation for the nine months ended September 30, 2004.

(pages 27 - 28)

(3) Copy of the financial statements of LibraryCo Inc for the six months ended June 30, 2004.

(pages 29 - 30)

(4) Copy of the Investment Compliance Report at September 30, 2004 - General Fund Short -Term Investments.

(pages 31 - 32)

(5) Copy of the Investment Compliance Report at September 30, 2004 - General Fund Long-Term Investments.

(pages 33 - 34)

(6) Copy of the Investment Compliance Report at September 30, 2004 - Lawyers Fund for Client Compensation Short-Term Investments.

(pages 35 - 36)

(7) Copy of the Investment Compliance Report at September 30, 2004 - Lawyers Fund for Client Compensation Long-Term Investments.

(pages 37 - 38)

It was moved by Mr. Ruby, seconded by Mr. Murray that:

(1) Convocation approve payments from the J. Shirley Denison Fund (in camera).

(2) Projects budgeted in 2004 but not yet completed, be funded in 2005 from the accumulated year-end balance of the Capital Allocation Fund.

(3) The Law Society enter into an additional lease arrangement summarized as:

- 5,150 additional square feet adjacent to our existing leased space at 393 University Avenue, Toronto
- An annual lease cost of approximately $155,000 annually
- The Lease for both old and new space would terminate on April 30, 2010
- Leasehold improvement costs of approximately $200,000
- 2005 funding totaling $320,000 from the contingency allowance.

Carried

Mr. Ruby also presented the following information items set out in the Report:

(a) Role of Audit Sub-Committee
(b) Law Society Response to Tsunami Relief
(c) Performance of Investment Manager
(d) Budget Levy – Federation of Law Societies of Canada
(e) Interim Financial Statements

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GOVERNANCE TASK FORCE REPORT

Re: Amendments to By-Law 6 (Treasurer)

Mr. Ruby presented the Governance Task Force Report.

Governance Task Force
January 27, 2005

Report to Convocation

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

Purposes of Report: Decision

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

OVERVIEW OF POLICY ISSUE

AMENDMENTS TO BY-LAW 6 (TREASURER)

Request to Convocation

1. Convocation is requested to approve amendments to By-Law 6 as described below. Language reflecting the amendments that Convocation approves will be provided at a subsequent Convocation in a motion to amend By-Law 6.

Summary of the Issue

2. By-Law 6 (Treasurer) sets out the procedures for the Treasurer's election. Three amendments are proposed to these procedures as follows:

   a. A "run off" vote for candidates tied for last place in an election in which more than two candidates are running;
   b. A housekeeping amendment to redesignate the day the advanced poll opens to be the second Thursday in June; and
   c. A housekeeping amendment to clarify that only one ballot box is to be used for the election.

THE REPORT

Terms of Reference/Committee Process

3. The Task Force met on December 2, 2004. Task Force members in attendance were Clay Ruby (chair), Andrew Coffey, Sy Eber, Abraham Feinstein, Richard Filion, Vern Krishna and Laura Legge. Jim Varro and Malcolm Heins also attended.

4. The Task Force is reporting on the following matter:

   For Decision
   · Amendments to By-Law 6 (Treasurer)

THE ISSUES

5. The Task Force reviewed two issues related to procedures for the Treasurer's election in By-Law 6 (Treasurer). Two housekeeping amendments to the By-Law were also considered.

6. The current By-Law appears at the end of this report.

The First Issue

7. The first issue arises in the situation where, following the close of nominations[1] , there are two candidates for the position of Treasurer. If, prior to voting, one candidate is no longer able to become Treasurer (e.g. appointment to the Bench, illness), the second candidate is acclaimed.

8. Some benchers have expressed concern about this possibility and have suggested that a process be instituted that would allow nominations to be reopened.

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[1] Subsections 2 (3) and (4) read:
(3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.
Exception
(4) In a year in which there is an election of benchers under section 3 of By-Law 5, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

9. The most often cited argument in favour of this change is the following: if the situation described in paragraph 7 arose the day after voting (e.g. the elected Treasurer was appointed to the bench), a new election would have to be conducted. The view is that the same situation occurring the day before voting is held should not result in an acclamation.

10. The Task Force reviewed wording prepared by Brad Wright for an amendment to the By-Law. It reads:

> If, between the close of nominations for Treasurer and the election of the Treasurer, a nominated candidate dies, becomes incapacitated or accepts an appointment or position incompatible with being Treasurer, the Secretary shall send a notice to all benchers advising that the nominations have been reopened and specifying that new nominations may be made within seven days of the notice. In the event that there are fewer than seven days remaining before the election day, the election day shall be postponed as necessary and the sitting Treasurer shall continue in office until replaced. The notice shall specify that, in the event that some votes were already cast, they shall be destroyed without being examined, and all benchers will be asked to vote anew.

11. After discussing the issue, the Task Force did not see the need for such a process and concluded that no amendment to the By-Law with respect to this issue is required. This, or any similar situation has never occurred. Moreover, there was sympathy for the premise that the candidate who benefits from the sudden withdrawal had the courage to run and deserves his or her victory, even in these unlikely circumstances.

The Second Issue

12. The second issue relates to section 13(2) of the By-Law, which provides that in a situation where there is a tie vote, and an additional vote would entitle one or more candidates to remain in the election, the Treasurer shall randomly select the candidate to be removed as a candidate. This would arise when the ballot has more than two candidates, and the candidate who receives the fewest votes is removed from the election.

13. The Task Force agreed that a fairer process would be a form of “run off” where Benchers would choose between the two candidates who are tied for last place. The Task Force proposes that section 13(2) be amended to create the run off voting procedure.

Housekeeping Issue #1

14. Section 9(1) of the By-Law currently provides that the advance poll for the Treasurer’s election begins on the day in June on which standing committees meet. Standing committees no longer meet on the same day each month.

15. For clarity, the Task Force proposes that section 9(1) be amended to change the day to the second Thursday in June.

Housekeeping Issue #2

16. Section 11(1) suggests that two ballot boxes may be required, one for the advance poll and one for election day. Two ballot boxes were in fact used in the last Treasurer’s election.

17. The Task Force proposes that section 11(1) be amended to clarify that only one ballot box is to be used for the election.

BY-LAW 6

Made: April 30, 1999
Amended:
June 25, 1999
December 10, 1999
May 24, 2001
October 31, 2002

TREASURER

ELECTION OF TREASURER

Time of election
1. (1) There shall be an election of Treasurer every year on the day on which the regular meeting of Convocation is held in June.

First matter of business
(2) Despite subsection 6 (1) of By-Law 8, the election of Treasurer shall be the first matter of business at the regular meeting of Convocation in June.

Nomination of candidates
2. (1) A candidate for election as Treasurer shall be nominated by two benchers who are entitled to vote in Convocation.

Nomination in writing
(2) The nomination of a candidate shall be in writing and signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate.

Time for close of nominations
(3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.

Exception
(4) In a year in which there is an election of benchers under section 3 of By-Law 5, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

Withdrawal of candidates
3. A candidate may withdraw from an election of Treasurer at any time before 5 p.m. on the Friday immediately preceding the first day of the advance poll by giving the Secretary written notice of his or her withdrawal.

Election by acclamation
4. If after the close of nominations, or the time for the withdrawal of candidates from the election has passed, there is only one candidate, the Secretary shall declare that candidate to be elected as Treasurer.

Poll

5. (1) If after the time for the withdrawal of candidates from the election has passed, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

Secret ballot

(2) A poll to elect a Treasurer shall be conducted by secret ballot.

Treasurer is candidate in election

6. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this By-Law.

Right to vote

7. Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

Announcement of candidates

8. (1) Subject to subsection (3), if a poll is to be conducted to elect a Treasurer, the Secretary shall, at the regular meeting of Convocation in May, announce the candidates and the benchers who nominated each candidate.

List of candidates to be sent to benchers

(2) Subject to subsection (3), immediately after the regular meeting of Convocation in May, the Secretary shall send to each bencher entitled to vote in an election of Treasurer a list of the candidates.

Announcement of candidates in year in which there is election of benchers

(3) In a year in which there is an election of benchers under section 3 of By-Law 5, the Secretary shall, as soon as practicable after the close of nominations, send to each bencher entitled to vote in an election of Treasurer a list of the candidates that identifies the benchers who nominated each candidate.

Advance poll

9. (1) For the purpose of receiving the votes of benchers entitled to vote in an election of Treasurer who expect to be unable to vote on election day, an advance poll shall be conducted beginning at 9 a.m. on the day in June on which standing committees meet and ending at 5 p.m. on the day preceding election day.

Methods of voting at advance poll

(2) A bencher may vote at the advance poll by,

(a) attending at the office of the Secretary on any day that is not a Saturday or Sunday between the hours of 9 a.m. and 5 p.m. to receive a ballot and to mark the ballot in accordance with subsection (3); or

(b) requesting a voting package from the Secretary and returning the voting package to the Secretary by regular lettermail or otherwise.

Marking a ballot

(3) A bencher voting at the advance poll shall mark the ballot in accordance with subsection (4) or (5).

Two candidates

(4) If there are no more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

More than two candidates

(5) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballot box

(6) If a bencher is voting at the advance poll under clause (2) (a), after the bencher has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into a ballot box.

Same

(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 9.1 (3) and (4), the Secretary shall remove the ballot envelope from the return envelope and put the ballot envelope into a ballot box.

Ballots not to be opened

(8) Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.

Special procedures: voting by mail

9.1 (1) If a bencher requests a voting package from the Secretary under clause 9 (2) (b), the Secretary shall send to the bencher a voting package that includes a ballot, a ballot envelope and a return envelope and shall specify the address to which the voting package must be returned.

Same

(2) If a bencher is voting at the advance poll under clause 9 (2) (b), the bencher shall,

(a) in accordance with subsection 9 (3), mark the ballot received from the Secretary;

(b) after complying with clause (a), place the marked ballot inside the ballot envelope and seal the ballot envelope;

(c) after complying with clause (b), place the sealed ballot envelope inside the return envelope and seal the return envelope;

(d) after complying with clause (c), sign the return envelope; and

(e) after complying with clause (d), send to the Secretary, by regular lettermail or otherwise, the voting package, that includes the ballot, the ballot envelope and the return envelope, so that it is received by the Secretary not later than 5 p.m. on the day preceding election day.

Receipt of return envelopes

(3) When the Secretary receives a voting package at the specified address, the Secretary shall check to see if the return envelope bears the signature of a bencher to whom a voting package was sent.

Discarding ballots

(4) The Secretary shall discard a voting package that the Secretary receives,

(a) at an address other than the specified address;

(b) that does not bear the signature of a bencher to whom a voting package was sent; and

(c) after 5 p.m. on the day preceding election day.

Procedure for voting on election day: first ballot

10. (1) On election day, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a first ballot listing the names of all candidates.

Second ballot

(2) On election day, if a Treasurer is not elected as a result of the votes cast at the advance poll and on the first ballot, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a second ballot listing the names of the candidates remaining in the election at the time of that ballot.

Application of subs. (2) to second and further ballots

(3) Subsection (2) applies, with necessary modifications, to the second ballot and any further ballots in an election of Treasurer.

Marking ballot

(4) Each bencher shall vote for one candidate only on each ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

Ballot box

(5) After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into the ballot box.

Counting votes

11. (1) On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined on a ballot, the Secretary shall, in the absence of all persons but in the presence of the Treasurer,

(a) open the ballot box used on election day, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate; and

(b) open the ballot box used at the advance poll, remove all the ballots and any ballot envelopes from the ballot box, remove the ballots from any ballot envelopes, open the ballots and count the votes cast for each candidate.

Counting votes cast at advance poll

(2) If at the advance poll votes were cast for candidates by rank of preference, in counting the votes cast for each candidate at the advance poll, the Secretary shall assume that a bencher's candidate of choice was the candidate on the ballot given the highest rank by the bencher.

Application

(3) This section applies to the count of votes on the first ballot in an election of Treasurer and, with necessary modifications, to the count of votes on the second ballot and any further ballots in an election of Treasurer.

Report of results: two candidates

12. (1) If on any ballot there are no more than two candidates, immediately after counting the votes cast for each candidate, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the Secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the largest number of votes.

Same

(3) If on any ballot there are three or more candidates and, after counting the votes, the Secretary determines that no candidate received more than 50 percent of all votes cast for all candidates, the Secretary shall report to Convocation that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect a Treasurer.

Further ballot required

(4) If a further ballot is required under subsection (3), the Secretary shall report to Convocation the candidate on the previous ballot who received the smallest number of votes and that candidate shall be removed as a candidate in the election.

Casting vote

13. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall give the casting vote.

Same

(2) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election, the Treasurer shall randomly select the candidate to be removed as a candidate from the election.

TERM OF OFFICE

Taking office

14. (1) In an election of Treasurer under section 1,

(a) a bencher elected as Treasurer by acclamation shall take office at the regular meeting of Convocation in June following his or her election; and

(b) a bencher elected as Treasurer by poll shall take office immediately after his or her election.

Term of office

(2) Subject to any by-laws providing for the removal of a Treasurer from office, the Treasurer shall remain in office until his or her successor takes office.

HONORARIUM

Treasurer's entitlement to receive honorarium

15. The Treasurer is entitled to receive from the Society an honorarium in an amount determined by Convocation from time to time.

VACANCY IN OFFICE

Vacancy

16. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected bencher to fill the office of Treasurer until the next election of Treasurer under section 1.

ACTING TREASURER

Acting Treasurer

17. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 16, the chair of the standing committee of Convocation responsible for financial matters, or if he or she for any reason is unable to act, the chair of the standing committee of Convocation responsible for admissions matters, shall perform the duties and exercise the powers of the Treasurer until,

(a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or

(b) a Treasurer is elected under section 16 or 1.

It was moved by Mr. Ruby, seconded by Mr. Feinstein that Convocation approve the following amendments to By-Law 6. The amended By-Law will be presented at a subsequent Convocation.

a. A provision for a "run off" vote for candidates tied for last place in an election in which more than two candidates are running;

b. Change the day the advance poll opens to be the second Thursday in June; and

c. Clarify that only one ballot box is to be used for the election.

It was moved by Mr. Wright, seconded by Mr. MacKenzie that the issue of whether nominations should be reopened if one of two candidates for Treasurer withdraws from the election following the close of nominations go back to the Governance Task Force for further study.

Carried

An amendment by Ms. Ross was accepted that the advance poll be changed to "Wednesday".

The balance of the main motion as amended was voted on and carried.

INVESTIGATIONS TASK FORCE REPORT

Re: Terms of Reference

Mr. Cherniak presented the Investigations Task Force Report.

Investigations Task Force
January 27, 2005

Report to Convocation – Terms of Reference

Task Force Members
Earl Cherniak, Chair
Carole Curtis
Allan Gotlib
Laurie Pattillo
Heather Ross
Mark Sandler
Beth Symes

Purposes of Report: Decision

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

OVERVIEW OF POLICY ISSUE

TERMS OF REFERENCE

Request to Convocation

1. Convocation is requested to approve the terms of reference for the Investigations Task Force, appearing at paragraph 11 on page 5.

Summary of the Issue

2. On November 25, 2004, Convocation approved the creation of the Investigations Task Force. At its first meeting on January 19, 2005, the Task Force agreed on terms of reference for its work, which are reported to Convocation in this report for approval.

THE REPORT

Terms of Reference/Committee Process

3. The Investigations Task Force ("the Task Force") held its first meeting on January 19, 2005. Task Force members in attendance were Earl Cherniak (chair), Allan Gotlib, Laurie Pattillo, Heather Ross, Mark Sandler and Beth Symes. Law Society staff members Naomi Bussin, Professional Regulation Counsel, Zeynep Onen, Director, Professional Regulation and Jim Varro, Policy Advisor, also attended

4. The Task Force is reporting on the following matter:

   For Decision
   - Terms of Reference

A. INTRODUCTION

5. On November 25, 2004, Convocation agreed to create a task force that would examine the process of investigations of allegations of professional misconduct and conduct unbecoming, with a specific focus on the timeliness of investigations. The members of the Task Force are Earl Cherniak (chair), Carole Curtis, Allan Gotlib, Laurie Pattillo, Heather Ross, Mark Sandler and Beth Symes.

6. The Task Force met on January 19, 2005 and prepared terms of reference at paragraph 11 for Convocation's approval.

B. BACKGROUND

7. In keeping with its regulatory mandate, the Law Society must act in the public interest and exercise its regulatory authority in a timely and effective manner.

8. An investigation under the Law Society Act is commenced on the basis of a reasonable suspicion of misconduct under section 49.3 of the Act. The investigative product forms the basis for any regulatory action taken against a member, including formal disciplinary action. As such, a timely and effective investigation is a critical component of the regulatory process and a core function of the Law Society. The timely completion of an investigation is necessary to maintain public confidence in the Law Society's regulation of lawyers.

9. Convocation recently established the Tribunals Task Force, and its terms of reference include a consideration of the timeliness of the tribunals process. In setting these terms of reference, Convocation also determined that the timeliness of investigations should be considered. Timeliness of investigations is an issue which was previously identified in a report prepared for the Law Society by The Honourable W.D. Griffiths in 2000 and is an element of the recent decision of the Supreme Court of Canada in Finney v. Barreau de Quebec, [2004] 2 S.C.R. 17. In light of the importance of the investigations process, and the continuing need to ensure timeliness in the regulatory process, Convocation decided to establish a Task Force focusing on the timeliness of the investigations process.

10. The Task Force is aware of current independent examinations of aspects of the regulatory mandate that bear on the Task Force's proposed work. The Tribunals Task Force and the ongoing work at the Professional Regulation Committee are two examples. The Task Force plans to monitor these initiatives and where appropriate, co-ordinate its work with that of the other committees or task forces dealing with related issues.

C. PROPOSED TERMS OF REFERENCE

11. The Task Force proposes the following terms of reference:

    a. The Task Force will review the investigations process at the Law Society, and in particular will:

        i. Review the current status and efficiency of the investigations process,
        ii. Review performance and production targets,
        iii. Identify issues which may inhibit timely production and completion of investigations, and
        iv. Consider the necessary and available resources.

    b. After conducting its review, the Task Force will prepare a report including its recommendations for determining appropriate timelines and any policy, process or legislative changes required to improve the process.
    c. The Task Force plans to report to Convocation with its recommendations by June 2005.

It was moved by Mr. Cherniak, seconded by Ms. Ross that the following terms of reference be approved:

    a. The Task Force will review the investigations process at the Law Society and in particular will:

        i. Review the current status and efficiency of the investigations process,

        ii. Review performance and production targets,

        iii. Identify issues which may inhibit timely production and completion of investigations, and

        iv. Consider the necessary and available resources.

b. After conducting its review, the Task Force will prepare a report including its recommendations for determining appropriate timelines and any policy, process or legislative changes required to improve the process.

c. The Task Force plans to report to Convocation with its recommendations by June 2005.

Carried

REPORT FOR INFORMATION ONLY

Professional Development, Competence & Admissions Committee Report
- New Licensing Program - Skills and Professional Responsibility Program
- Professional Development and Competence Director's Benchmark Quarterly Report

Professional Development, Competence & Admissions Committee
January 27, 2005

Report to Convocation

Purpose of Report: Information

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

THE REPORT

Terms Of Reference/Committee Process

1. The Committee met on January 13, 2005. Committee members George Hunter (Chair), Bill Simpson (Vice-Chair), Peter Bourque, Kim Carpenter-Gunn, Gary L. Gottlieb, and Bonnie Warkentin attended. Staff members Diana Miles and Sophia Sperdakos also attended.

2. The Committee is reporting on the following matters:

Information

- New Licensing Program – Skills and Professional Responsibility Program
- Professional Development and Competence Director's Benchmark Quarterly Report

INFORMATION

NEW LICENSING PROGRAM – SKILLS AND PROFESSIONAL RESPONSIBILITY PROGRAM

3. In December 2003, Convocation approved a new licensing program to commence in 2006. The Professional Development and Competence department has been directed to design and implement the new program and present the proposed new approach to Convocation for approval.

4. In June 2004 Convocation received an information report setting out the competencies that will underlie the new program. In September 2004 Convocation received an information report on the blueprinting portion of the Licensing Examination development process. In November 2004 Convocation received a report on those aspects of the articling program that were to be considered in the course of designing the new licensing program, namely the length of the articling term and enhanced educational supports. In addition, Convocation was advised of the Director of Professional Development and Competence's plan to establish advisory groups to provide ongoing annual assessment of the examination process and the skills and professional responsibility component of the program.

5. The final component of the design is the proposed curriculum plan for the skills and professional responsibility program. The Director of Professional Development and Competence's report, with the proposed curriculum, is set out at APPENDIX 1 for Convocation's information. If benchers have questions or require further information on the skills and professional responsibility program they should contact the Director of Professional Development and Competence.

6. To date, over 1700 lawyers in Ontario have had substantial input into the development of the new licensing process. Lawyers will continue to be substantially involved in the process over the coming months.

7. Convocation has now been provided with information on all the component parts of the licensing program design. The Committee will return to Convocation in February for its consideration of those aspects of the licensing model not already approved.

DIRECTOR'S QUARTERLY BENCHMARK REPORT

8. APPENDIX 2 contains the Director of Professional Development and Competence's quarterly benchmark report for Convocation's information.

APPENDIX 1

LICENSING PROCESS FOR ADMISSION TO THE BAR IN ONTARIO

Curriculum Plan for the Skills and Professional Responsibility Program

Prepared for:
Professional Development, Competence & Admissions Committee

Prepared by:
Diana Miles, Director
Professional Development & Competence
416-947-3328
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January 2005

The Licensing Process: Curriculum Design Plan for the Skills and Professional Responsibility Program

Introduction

1. The curriculum design plan for the Skills and Professional Responsibility Program ("the Program") is the final of three main components of the Licensing Process. Information on the Licensing Examinations and Articling Term and Enhancements were presented to the Professional Development, Competence and Admissions Committee and Convocation in September 2004 and November 2004 respectively.

2. The curriculum design plan is attached as Appendix A of this Report.

3. The competencies for the Program were developed through a series of focus group discussions with members throughout the Province in the spring of 2004.

4. This first draft of the competencies was further refined and validated using a Delphi panel approach. This Delphi approach is used to achieve consensus among panels of practitioner experts and has been successfully used by other professions (including the

judiciary) in order to determine essential skills and knowledge and to plan the teaching and development of professional standards.

5. In this instance five Delphi panels were created. The panels represented different sizes of firms – under 5 lawyers, 6-30 lawyers, 31-99, and 100 lawyers or more – and a fifth panel comprised of the judiciary. Each panel had approximately 10 members and within each panel a balance of gender, ethnicity and experience was struck. Participants of each Delphi panel were asked to comment on two separate occasions on the evolving competencies.

6. The final version of the competencies and the priority of skills identified by the Delphi panel participants are ones they consistently viewed as most important for a newly called lawyer to possess. These priorities formed the core of the curriculum design plan. The taxonomy of skills and professional responsibility competencies is attached as a reference at Appendix B.

7. This list of competencies was then assessed against the professional responsibility competencies that were validated through the Licensing Examination's consultation process, which involved extensive time and effort of over 500 lawyer participants.

Program Objectives

8. There are two foundational concepts upon which all curriculum design decisions for this Program are based:

    a) That future lawyers should be effective, self-initiated problem-solvers who are able to identify the elements of what they need to know and to be able to do to carry out a task, even if they were approaching it for the very first time; and

    b) That future lawyers should be cognizant and respectful of their obligations as professionals in the service of the public.

9. The learning objectives of the Skills and Professional Responsibility Program are to ensure that candidates:

    a) demonstrate effective problem-solving skills that have been applied to a range of tasks and functions and shall form the foundation of continued professional development; and

    b) function effectively and ethically as newly called lawyers in relation to:

        i. legal research, both paper-based and computer-based;
        ii. legal writing, including memoranda, opinion letters and drafting simple legal documents;
        iii. personal client contact, including interviewing, offering options and advice, and keeping the client informed;
        iv. the management of transactions and applications including fact investigation, the preparation of relevant documents and strategic planning regarding dispute resolution;

v. the management of dispute settlement processes including planning with the client, reviewing a range of possible processes, and preparing and implementing the chosen dispute resolution approach;
vi. practice management tasks including time and file management; and
vii. the recognition and analysis of ethical and professional issues which arise in the course of file management.

Program Teaching Methods

10. The learning objectives will be achieved using a problem-based learning method (PBL) in combination with other instructional methods such as self-directed learning, small group activities, teaching sessions, and web-based exercises. All of the learning activities will be designed to provide the students with opportunities to increase their awareness of issues relating to ethics and professionalism, to improve their ability to identify issues when they arise and to develop their analytical skills in dealing with the issues they will confront in the practice of law.

11. Problem-based learning requires that students learn to work together collaboratively and efficiently in order to develop strategies for the handling of model files. Each of the files developed for the Program will be designed to raise both explicit and implicit professional responsibility, ethical and practice management issues. Students will be expected to identify those issues as they arise and propose ways to deal with them that are consistent with the Rules of Professional Conduct and with their own ethical framework.

12. The PBL methodology is an excellent "fit" with the type of professional, ethical and collegial practices the Law Society wishes to encourage and promote. The small group work which is the foundation of PBL requires the students to treat each other with respect and courtesy, emphasizes co-operative work with peers and encourages the integration of professional attitudes with appropriate knowledge and skills.

Problem-based Learning Environment

13. Students will be divided up into firms of at most 6 and will handle a number of model files over the course of the Program. Files will be based on sample client matters in the most active areas of practice in the profession.

14. Each firm generally represents a client (and in some cases another group will represent the other side in the file) and will draw on various forms of real-life documentation, including an originating memorandum with instructions from a principal, correspondence, contracts, attendance notes from interviews, etc. In the course of their work on the file, students may, for example, interview their client and perhaps others, plan for and conduct a negotiation with the other side, proceed through discoveries, pre-trial motions and perhaps participate in a mediation or case settlement conference.

15. Each file is constructed as a jigsaw puzzle of facts and materials and effectively simulates file management, time management and other practice management issues. Students will be asked to docket billable time, to review trust accounts, and other critical management activities. Each PBL file will also contain a series of professional ethical dilemmas that students must identify and address.

16. PBL instructor(s) will act as facilitators and coaches. The PBL instructors are not traditional classroom instructors but are practitioners valued for their practical experience. Their primary function is to guide the firms of students assigned to them through the challenges the students will encounter working on the files and to encourage the students to approach all difficulties by using problem-solving and appropriate professional attitudes.

17. In addition to the facilitation role, the instructors will also provide formative assessment and feedback on student work. It is anticipated that there will be assignments and assessments in the following areas:
    a) legal research;

    b) client relationships – interviewing assessment;

    c) managing a client file (dispute resolution) – negotiation and advocacy assessments;

    d) managing a client file (transactions and applications) – writing and drafting assessments; and

    e) practice management, ethics and professionalism – integrated in the PBL exercises.

18. All assessments will be based on a student's individual work and performance and assessments are on a pass/fail basis.

19. Prior to the commencement of the Program, all PBL instructors will receive comprehensive training on facilitating in a small group learning environment, group dynamics, conflict resolution, skills development and how to apply the assessment criteria consistently.

20. The students will be coached in teamwork and conflict resolution at the beginning of the Program. Students will also be rotated in their firms at specified times during the Program.

Program Structure and Scheduling

21. Based on the defined competencies, the Skills and Professional Responsibility Program learning objectives will be achieved in five weeks of half-day sessions. Attendance at the Program is mandatory during the five weeks.

22. The Program will commence mid-May each year, which will allow students who are receiving OSAP assistance in law school to continue to take advantage of that support for this Program.

23. A five-week Program is required to enable the students to practice and improve the skills identified by the practitioners consulted in the development of the critical entry-level competencies and which form the basis of the curriculum design plan.

24. A sixth week will be built into the Program for reassessment in the event of a failed standing in an exercise. This will ensure that all students have a full opportunity to

successfully complete the Program without uncertainty as to their standing extending into their articling term. Students will be advised in advance of commencement of the Program to keep week six free of commitments.

25. The curriculum design plan takes into consideration the substantial number of students (approximately 1400) who will enter into the Licensing Process each year. In Toronto alone, it is anticipated that there will be more than 1100 students. The availability of classrooms for small group work impacts on the scheduling of the Program.

26. Due to these constraints, the Program will be offered in a half-day format over the five weeks with 4 instruction days and 1 assessment day each week. The Program will be offered in Toronto, Ottawa (in both English and French), London and Windsor. This format will enable the Law Society to maximize the efficient use of available space, personnel and resources.

27. In Toronto and Ottawa students will be divided into morning and afternoon sessions. In the remaining centres the Program will only be offered in the morning.

28. Students will engage in structured, in-class learning activities for 4 hours each day for a total of 80 hours over the five weeks. In addition, Fridays will be devoted to assessment for which attendance is mandatory. On average students will require 4 hours a week to prepare for the assessments for a total of 20 hours devoted to assessments.

29. In addition to the scheduled hours of instruction, students will be required to complete individual, self-directed learning activities outside of the classroom including assignments and web-based exercises. It is estimated that this work will require approximately 5 to 8 hours per week for a total of 25 to 40 hours over the five-week period.

30. In summary, adding in the maximum number of estimated hours required to complete individual work outside the structured in-class time to the hours of mandatory attendance, students will be required to devote 140 hours over the five weeks of the Program. This compares to 35 hours of skills instruction and 15 hours of professional responsibility instruction currently being provided in the admissions program.

Hypothetical Curriculum

31. The curriculum design plan in Appendix A illustrates on pages 27 to 31 how the learning activities may be structured in a hypothetical “typical” week. The five weeks of the Program will use standardized lessons plans that will be made available to the instructors. Students will also receive appropriate materials to enable them to prepare and complete all assignments and assessments.

32. Selection and development of the substantive law content of the model files will be developed in consultation with the profession and it will vary from year to year. The files and accompanying assessments will rotate from year to year. The Program stresses the development of skills, professional and ethical behaviour and practice management best practices in relation to these model files and is not designed to teach substantive law, although students will do legal research and have to understand legal concepts.

Conclusion

33. The curriculum design plan contains the data, rationale, and planning structure for a new integrated and innovative approach to teaching skills and professional responsibility. The plan builds on a skills audit fully validated by the profession and will utilize the very best in professional teaching methods. The plan pays particular attention to the challenge of developing professional and ethical sensibilities among future legal practitioners.

34. To be prepared for the May 2006 implementation, the Professional Development and Competence Department will commence with the development of the five-week Program immediately.

Appendix A

A CURRICULUM DESIGN PLAN
FOR SKILLS-BASED PROFESSIONAL LEGAL EDUCATION

A Proposal for a 5-week Program for the Licensing Program
of the Law Society of Upper Canada

Dr Julie Macfarlane
&
Professor John Manwaring

January 2005

Contents

ii. Formative feedback to students
iii. Assessment methods
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3. Program Structure and Teaching Methods

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b. Other teaching methods – lecture, in-tray exercises, web-based exercises

c. Course Overview: Scheduling and structure

i. Contact hours
ii. Course structure
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i. PBL tutors
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iii. Orientation and training for tutors

c. Use of technologies in program delivery

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5. Conclusions

1. Overview

Professional legal education in Ontario is facing a number of challenges, both practical and substantive. Practically speaking, the increasing number of students seeking to qualify for admission to the Bar means that the Law Society of Upper Canada must accommodate a growing and increasingly diverse student body while also seeking to responsibly contain administrative and financial costs for students and for the Society. Substantively, the practice of law is evolving to include new forms of dispute resolution and an ever-increasing volume of regulation, caselaw and legislation. These challenges must be faced within the context of the Society's commitment to ensure and maintain the competence and professionalism of newly qualified lawyers in Ontario.

The program we are proposing in this Curriculum Plan reflects the results of our research and discussions with practitioners and judges across Ontario, as well as the directions provided to us by the Task Force on the Continuum of Legal Education and Convocation itself. It will usher in a new era of professional legal education in Ontario in which professional training is intensive, demanding, directed to the tasks and skills of newly qualified lawyers, and explicitly committed to the promotion of professionalism and ethical legal practice.

The most significant change is the adoption of Problem-Based Learning as the core teaching and learning tool of the new curriculum. Following the lead of other advanced programs of professional education, including not only professional legal education but also medical education and professional training for dentists, veterinarians, teachers, engineers and architects, the new Ontario program will provide students with an intensive and realistic file management environment in which they will encounter an array of issues and demands in the course of file assignments designed to teach skills not substantive law. In small work teams or firms, students will identify, address and manage a range of issues which will involve them in legal research, a variety of forms of writing and drafting, client interviewing, negotiation and mediation, and other forms of dispute resolution advocacy, and the management of a range of transactions. Throughout the program students will also apply the skills and tools of effective practice management, and work co-operatively and collegially with colleagues in both their own, and "opposing", firms. Throughout the file management process, students will encounter challenges relating to professionalism and professional ethics that they must identify and address. In short, unlike other teaching models which teach law "as stripes", PBL teaches legal practice as "plaid"[1], integrating knowledge, skills and attitudes.

The program that we are proposing would address, we believe, the concerns and criticisms that have sometimes been voiced about the Bar Admission Program. These include the growing recognition that the traditional classroom model of bar admission needs to be reassessed in light of new teaching pedagogies (including those that make use of new technologies); that the program content needs to be brought up-to-date and its relationship to legal practice in the 21st century reappraised and strengthened[2]; and that students (whatever their employment destination) and employers must feel that the program is worth the time and money they invest in it[3]. There has also been a sense among some firstly that the Skills Phase of the BAC has sometimes been insufficiently demanding and rigorous and has sometimes taught skills in isolation from their practice context, and secondly that assessment models require diversification in order to accommodate students from a range of cultural backgrounds[4].

The new skills program will centre on a series of realistic file management exercises in teams or "firms" in which skills can be practiced, the typical tasks of articling rehearsed and issues relating to ethics and professionalism addressed. It will set clear standards that would require students to fulfill numerous assessments and others commitments and emphasize early,

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[1] "Law Schools Teach Law as Stripes: Legal Practice is Really Plaid" Mary Hanna quoted in Myers, E "Teaching Good and Teaching Well: Integrating Values with Theory and Practice" 47 Journal of Legal Education (1997) 401.

[2] See also Canadian Bar Association, Attitudes, Skills, Knowledge: Proposals for Legal Education to Assist in Implementing a Multi-Option Civil Justice System in the 21st Century Committee responding to Recommendation 49 of the Systems of Civil Justice Task Force Report, 1999.

[3] Task Force on the Continuum of Legal Education: Report to Convocation Oct 23 2004 at 4.

[4] Task Force on the Continuum of Legal Education: Report to Convocation Oct 23 2004 at 34.

detailed feedback to enable students to raise the level of their competence throughout the program. Finally, it will provide students with a toolbox of skills, both hands-on and conceptual, to enable them to move into practise with a strong foundation and a sense of how to learn what they need to know as, inevitably, they continue into unfamiliar and new areas of practice. As the Epstein Committee put it in 1998,

> "No program of legal education would be sufficient if it did not also engender a capacity, openness and willingness to change and be a career long student".[5]

2. The Development of a General Teaching and Learning Philosophy

a. The Identification of Overall Curriculum "Drivers"

The concept of a curriculum "driver' is a foundational concept or set of concepts upon which all subsequent curriculum design and pedagogic decisions are based[6]. The teaching methods adopted and used, the learning objectives developed, the assessment processes and the criteria applied for student assessment must be consistent with and further these goals.

The twin "drivers' for the Curriculum Plan reflect our many discussions with members of the Bar and Bench over the past 9 months. The recurrent themes of those discussions were that future lawyers should be:

(i) effective, self-initiated problem-solvers who were able to identify the elements of what they needed to know and to be able to do to carry out a task, even if they were approaching it for the very first time. Whether discussing civil procedure, writing and drafting skills, inter-personal skills practice management issues or professional responsibility, this theme prevailed throughout our discussions. It is consistent with a similar recognition by other Bars (England and Wales, NSW, other) as well as the path-breaking work of the McCrate Report in the US;

(ii) cognizant and respectful of their obligations as professionals in the service of the public. If the cognitive and intellectual thread that ran through our discussions was that of problem-solving, the attitudinal thread was professionalism. We should note that this is still an aspirational rather than a concrete concept for many – it was generally easier for discussants to describe what professionalism was not rather than what it is – but we take seriously the need to reflect a desire for more than efficiency and efficacy as goals in professional legal education. Moral and attitudinal development is as important as, and goes hand in hand with, cognitive competence and maturity.

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[5] The Bar Admission Course Review Working Group (chaired by Philip Epstein QC) "Discussion Paper" Report to Convocation Feb 27 1998 at 5. Similar statements about the overarching need for professional legal education to develop the capacity for lifelong learning appear in (for example) MacCrate, R. Legal Education and Professional Development - An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, American Bar Association, 1992; Marre Committee A Time for Change: Report of the Committee on the Future of the Legal Profession General Council of the Bar/The Law Society, 1988; and Australian Law Reform Commission Managing Justice: A Review of the Federal Justice System Report No. 89, 1999 chapters 2 and 3 (www.austlii.edu.au/au/other/alrc/publications/reports/89).

[6] Task Force on the Continuum of Legal Education: Report to Convocation Oct 23 2004 at paras 82-84.

These drivers imply the following assumptions in the development of the Curriculum Plan:

(i) That the program should emphasise how to learn what to do in new and unfamiliar situations (i.e., to problem solve) as much, or more than, to teach given knowledge;

(ii) That there should be a commitment to reflective practice, self-improvement and growth, both as a matter of intellectual and attitudinal development;

(iii) That the program should set incremental and developmental goals for students as well as summative ones and that this should be reflected in teaching and assessment practices;

(iv) That the program should in all respects choose teaching and learning methods that relate attitudinal development to cognitive development, emphasising the identification of dilemmas, the reconciliation of differences, and principled decision-making;

(v) That learning about professionalism, professional responsibility and ethics should be integrated into all PBL activities throughout the course.

b. The Development of Program Objectives

The program objectives flow directly from the Taxonomy of Skills (see Appendix B) and from the curriculum "drivers" (above). We propose that these are articulated as follows:

"The Skills Program shall aim to teach and encourage the highest standards of ethical conduct and professionalism including the values of client service, civility and collegiality.

By the end of the Skills Program successful candidates will be able to

i. demonstrate effective problem-solving skills that have been applied to a range of tasks and functions and shall form the foundation of continued professional development;
ii. function effectively and ethically as newly qualified lawyers in relation to:

A. legal research, both paper-based and computer-based;
B. legal writing, including memoranda, opinion letters and drafting simple legal documents (contracts, settlement minutes, pleadings, other);
C. personal client contact, including interviewing, offering options and advice, and keeping the client informed;
D. the management of transactions and applications including fact investigation, the preparation of relevant documents and strategic planning regarding dispute resolution;
E. the management of dispute settlement processes including planning with the client, reviewing a range of possible processes, and preparing and implementing the chosen dispute resolution approach;
F. practice management tasks including time and file management;
G. the recognition and analysis of ethical and professional issues which arise in the course of file management."

c. The Development of a Methodology for the Incorporation of Ethics into the Curriculum

One of the most important objectives in designing this program is to provide student members who are starting their articles with a thorough grounding in professional ethics and professionalism. In the Taxonomy of Skills, these two areas of learning were given the highest priority. Professionalism, as used in the Taxonomy, relates to a constellation of professional values such as excellence, competence, civility, collegiality and commitment to public service.[7]

Professional ethics are obviously related to, but are not synonymous with, professionalism. The learning of professional ethics requires knowledge and understanding of the Rules of Professional Conduct, development of the lawyer's own ethical framework and commitment to ethical dealings with the professional, the public and the courts.

i. The "pervasive" method

In the curriculum model we propose, professional ethics and professionalism will be dealt with using what one author calls the "pervasive method"[8]. This method involves a multi-pronged approach using multiple, complementary learning strategies which ensure that relevant issues and topics are addressed in different forms throughout the curriculum. Instead of dedicating one particular course to teaching ethics, ethical and professional issues are raised, identified and debated throughout the curriculum.

Law schools have been criticized for doing little to teach professional ethics.[9] Programme and course descriptions available on the Internet suggest that, while all faculties offer at least one course which examines the profession and the lawyer's responsibilities, such courses are usually optional and are often offered as seminars open only to a limited number of students[10]. Some have argued that the pervasive method has been a failure in the law schools[11] because legal ethics get "lost in the cracks" when no one course has responsibility for their teaching. According to this critique, in reality issues relating directly to professionalism and professional ethics are given cursory attention in most law courses as parentheses in

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[7] Fred Zacharias states at p. 1307 in "Reconciling Professionalism and Client Interests", 36 Wm. & Mary L. Rev. 1303 (1995 that "No term in the legal lexicon has been more abused than 'professionalism'". It is important not to fall into the trap of romanticizing the past and bemoaning the present. However, the "professionalism" debate can be used as an opportunity for discussing the highest aspirations of the legal profession but only if we acknowledge the failures of the past such as racism and sexism and formulate a vision of professionalism that promotes equality and justice within the profession as well as society at large. See Kronman, A. The Lost Lawyer: Failing Ideals of the Legal Profession Harvard University Press 1993 and "Professionalism" (1999), 2 Journal of the Institute For the Study of Legal Ethics 89.

[8] Deborah Rhode, "Ethics by the Pervasive Method" 42 J. Legal Educ. 31, 41 (1992).

[9] See Cotter, W.B. Professional Responsibility Instruction in Canada: A Coordinated Curriculum for Legal Education, Montreal: Conceptcom, 1992.

[10] It would be silly to suggest that students are not exposed to ethical issues of vital concern to society in general. Constitutional law courses, for example, deal with equality rights, reproductive rights, individual freedoms and minority rights. However such issues are generally couched as broadly substantive issues and are seldom related to the lawyer's own professional values and ethical behaviour.

[11] See the discussion in Rhodes, supra note 8 and Cotter supra note 9.

discussions relating to substantive law (above). If it is true that most students do not take courses on legal ethics and professionalism while in law school and that they encounter such issues in the context of substantive law courses where the focus is elsewhere, it is vital that the Law Society provide an opportunity for all entering lawyers to learn about, and reflect on, their obligations as members of the Bar of Ontario.

In a professional training program of short duration which uses Problem-Based Learning as its basic learning methodology in combination with other teaching and learning methods (see discussion below), it is possible to ensure that relevant issues are built into all exercises and didactic instruction. All of the learning activities will be designed to provide the students with opportunities to increase their awareness of issues relating to ethics and professionalism, to improve their ability to identify issues when they arise and to develop their analytical skills in dealing with the issues they will confront in the practice of law. It will be important to develop realistic problems and to avoid simplistic answers, which trivialize the issues. The ethical norms of the profession and the forms of professional regulation need to be understood but also analyzed critically with a view of furthering the development of moral autonomy on the part of the students[12]

The teaching of professionalism raises slightly different issues. It is challenging to teach character, civility and collegiality without falling into platitudes and empty rhetoric. It is worth stressing that one very important professional obligation of the lawyer is to provide her clients with the most competent legal services possible.[13] The model of professional skills training proposed here is specifically designed to help new lawyers develop the skills necessary to provide such services. In this sense, the entire program relates to professionalism and promotes the development of high professional standards.

ii. Components of a pervasive approach for teaching professional ethics and professionalism

We are proposing a multi-pronged approach involving multiple, complementary learning activities to ensure that issues of legal ethics and professionalism permeate the entire curriculum. The Curriculum Plan addresses these issues in four ways.

First, we propose the establishment of two annual lectures: the Annual Lecture on Professionalism and Legal Ethics which would take place at the outset of the program and the closing Annual Lecture on Legal Practice and Public Service. Each year the Law Society would invite exemplary practitioners to address the class in each centre. These prestigious lectures would honour the lawyer recognized for her or his outstanding professionalism and ethics. These lectures would also provide young lawyers with role models and exemplars. The annual lectures would be supplemented with live or recorded panel sessions which would address relevant issues as they arise in more specific areas (for example, criminal law).

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[12] Other reading on ethics and professionalism include Beverly Balos, "The Bounds of Professionalism: Challenging Our Students; Challenging Ourselves", 4 Clinical L. Rev. 129 (1997), William Braithwaite, "Hearts and Minds: Can Professionalism Be Taught?", A.B.A.J., Sept. 1990, at 72-73; Paul Brest, "The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers", 58 L. & Contemp. Probs. 5 (1995); Jack L. Sammons, "The Professionalism Movement: The Problems Defined", 29 Ga. L. Rev. 1035 (1993); and David B. Wilkins, "Redefining the "Professional" in Professional Ethics: An interdisciplinary Approach to Teaching Professionalism", 58 L. & Contemp. Probs. 241 (1996).

[13] Rule 2, Rules of Professional Conduct

Second, we plan to make extensive use of web-based exercises that students would be required to complete as part of their training. These exercises would require student to learn the Rules of Professional Conduct and apply them to particular scenarios. This self-directed learning would ensure that all the students enrolled in the Bar program would familiarize themselves with the Rules of Professional Conduct and apply them to specific problems raising issues such as conflict of interest, trust accounting, or the appropriate way to handle a withdrawal from a case.

A third component is the requirement that students individually complete In-Tray Exercises throughout the program, which would raise numerous professional ethical issues. These exercises simulate tasks that might appear in the in-tray of an articling student or newly qualified lawyer and will be introduced throughout the program. We anticipate that a significant element of In-Tray Exercises will be identifying and responding to actions that raise questions relating to the Rules of Professional Conduct.

The fourth component – and, in our view, the most significant for achieving a pervasive approach to teaching professional ethics and professionalism - is the use of Problem-Based Learning or PBL (for a description of PBL and its use in professional education, see the discussion below). PBL exercises involve students in the handling of model files. PBL requires that students learn to work together collaboratively and efficiently in order to develop strategies for the handling of files. Each of the files developed for this program would be designed to raise both explicit and implicit ethical issues. Students would be expected to identify those issues as they arise and propose ways to deal with them that are consistent with the Rules and with their own ethical framework. The model files will be designed to raise issues relating the obligations of the lawyer to his or her client as well as his or her obligations to the profession and society in general. Assessed exercises would also include such issues and the students would have to identify and suggest strategies for dealing with them.

Problem-Based Learning methodology is an excellent "fit" with the type of professional and collegial work practices that the Society wishes to encourage and promote[14]. The small group work, which is the foundation of PBL, requires students treat their firm associates as well as members of other firms with respect and courtesy. PBL encourages the integration of attitudes with appropriate knowledge and skills, "…reflected in choices and actions which assess and determine priorities, recognise conflicts and …respond to the wider societal demands involved in moral and ethical questions."[15] When combined with didactic instruction, web-based work and individual work on in-tray exercises, PBL provides a context for the modeling of professional behaviour (including but not limited to collegiality, teamwork, delegation and collective effort) and for a critical discussion of the norms of professionalism.

[14] Other profession as such as medicine have adopted PBL for similar reasons. See for example "Teaching Ethics using Small-Group, Problem-Based Learning" JW Tysinger, LK Klonis, JZ Sadler and JM Wagner Journal of Medical Ethics, Vol 23, Issue 5 315-5318.

[15] Dall'Alba, G. & Sandberg, J. "A Competency-Based Approach to Education and Training HERSDA News (1995) 15(1) 2-5.

d. Student Feedback and Testing

i. Principles for assessment

The basis of assessment on the program is driven in part by the particular teaching methods adopted and the importance of reflecting these principles in evaluation processes (see below). In addition, there are some important principles for developing an assessment system, which will create an effective learning environment while evaluating the competency of future legal professionals[16].

a. Assessment should reflect the achievement of the program objectives.
b. Assessment should provide opportunities for additional learning as well as for evaluation of learning.
c. Similarly, assessment should be formative as well as summative; that is, it should occur throughout the program to enable students to improve their performance rather than only at the end of the program (for example, before each summative assessment there shall be an opportunity to "practise" in a formative assessment context).
d. Performance assessment shall be criterion-referenced using validated criterion-referenced instruments and tutors should be trained to consistently apply the criteria to performance.
e. Assessments should reflect the same attitude of openness and willingness to continuously learn that the program aspires to foster in students, for example assessments in this program should promote the learning goals of problem-solving and not of rote learning.
f. The adoption of a variety of assessment formats (for example instructor assessment, performance assessment, written assessment) should provide a range of sources of feedback for students. A variety of assessment methods also respects the diversity of learning styles among students.
g. The final designation for each student will be pass/fail, along with narrative commentary by assessors.
h. Students will ultimately be assessed for the purposes of pass/fail on the basis of individual work and effort.
i. We suggest that awards be created to recognize exceptional work in specific skills areas.

A key proposal (g) is that each discrete assessment and the student's final assessment should be classified as Pass or Fail. It is crucial that both instructors and students be able to clearly identify and articulate in advance the passing standard, including any thresholds (for example in relation to recognition of ethical issues) that may be set for passing any one assessment. The passing standard should be clear, consistently applied, and rigorous. This will require training for instructors participating in assessment to ensure that they are able to understand and apply the assessment criteria consistently and to give reasons explaining their application of the criteria to a student assessment in any given case.

[16] Sometimes a difficult balance to strike. See Macfarlane, J. "Assessing the Reflective Practitioner: Pedagogic Principles and Certification Needs" 5(1) International Journal of the Legal Profession (1998) 63.

ii. Formative feedback to students

Another crucial dimension of the teaching and learning environment proposed in this Curriculum Plan is that students should receive sufficient feedback to be able to develop and enhance their skills and competencies throughout the program. A primary vehicle for formative assessment and feedback will be the products of each week's PBL exercise or exercises, which the PBL tutor will be responsible for providing. This may take the form of verbal or written feedback, delivered either to the team or to individuals who either request such feedback or are deemed to need it. Sometimes formative feedback may take the form of a model answer allowing for self-assessment.

Investment in this aspect of the program via the terms of agreements with tutors and enabling space for tutor feedback to take place both inside and outside program hours is essential to the quality and effectiveness of the model of teaching and learning that we are proposing (see also below, Resources).

iii. Assessment methods

Formative assessment will be based on both group and individual work. Feedback will be provided in order to enable students to improve their performance. Summative assessment will be based on individual work. Assessment methods (both formative and summative) shall include the following:

a. written work that is individually completed by each student (In-Tray Exercises, contribution to firm work on PBL);
b. web-based exercises (for example on communication skills);
c. individual performance assessment (for example in interviewing, negotiation and trial advocacy);
d. PBL tutor observation and feedback on firm work on PBL including role plays and development of written documentation
e. program-long development of individual Student "Portfolio". The Portfolio will include a designated sample of a student's best individual work from exercises conducted throughout the program (PBL, In-Tray Exercises, other). The student will already have received feedback on earlier versions of his or her work and will be able to revise the material before submitting it as part of the Portfolio. The student will also be required to include a reflective paper in ethical and professional issues encountered and dealt with throughout the firm work in his or her Portfolio.

iv. Assessments

The *summative* assessments planned at this time in relation to each dimension of the Taxonomy are as follows:

Legal Research: In-Tray Exercises (likely in Weeks One and Two), plus a component of the student's final Portfolio containing stipulated documents generated during PBL

Client Relationships: Criterion-based performance assessment of a client interview

Managing a Client File (Dispute Resolution): Criterion-based performance assessment of a negotiation; criterion-based performance assessment of mediation advocacy; criterion-based performance assessment of an administrative law application

Managing a Client File (Transactions and Applications) : see under Writing and also under Managing a Client File, Dispute Resolution

Writing: stipulated documents prepared for the student's Portfolio (see above). For example, these might include the advice letter, file analysis, statement of claim/defense, motions application, affidavit, and completed application in an administrative proceeding.

Practice Management: stipulated documents prepared for the student's Portfolio (see above) and an In-Tray Exercise

Ethics and Professionalism: integrated throughout all formative and summative assessments above and in a reflective paper included in Student Portfolio.

All summative assessment will be based on individual work. Students must pass each summative assessment or they will be required to retake that assessment in week 6.

2. Program structure and teaching methods

a. PBL Objectives and Instructional Mechanics

Problem-based learning (PBL) is a teaching and learning method used widely in medical and other programmes of professional education[17], and increasingly in law[18] . The rationale for

[17] See, for example, Problem-Based Learning in Education for the Professions, Boud, D. (ed) HERDSA (Australia), 1985; Neufeld, V. & Barrows H., "The 'McMaster Philosophy' an Approach to Medical Education", (1974), 49 Journal of Medical Education 1040; and Barrows, H.S. & Tamblyn, R.M., Problem-Based Learning: an Approach to Medical Education, (New York: Springer, 1989). There is now a voluminous literature on the application of PBL to medical education, in programs ranging from Canada, the US, Australia, the UK and Europe; see for example the bibliography provided at the website of the Problem-Based Learning Initiative, among many others (www.pbli.org). While beginning in medical education, PBL is now used also in engineering (for example see "Problem-Based Learning at the Manchester School of Engineering" at www.pble.ac.uk and the Project Based Learning in Engineering program at the universities of Nottingham, Loughborough, Trent and DeMonfort, UK at www.pble.ac.uk), veterinary medicine (for example Rivarola V. & Garcia, M. "Problem-based learning in veterinary medicine" 28(1) Biochemical Education (2000), social work (see for example English, B. Gaha, J. & Gibbons, J. "Educating Social Workers for an Uncertain Future" in Chen, S. Cowdroy, R. Kingsland, A. & Ostswald, M. (eds) Reflections on Problem-Based Learning Australian Problem-Based Learning Network, Sydney, Australia 1994, and for an evaluation of the PBL program at the University of Newcastle, Australia, see Gibbons, J. & Gray, M. "An Integrated and Experience-Based Approach to Social Work Education" Journal of Social Work Education (2002), and architecture (University of Newcastle, Australia), among others.

[18] For example, PBL is being used to teach law in the UK (see the UK Centre for Legal Education Problem-Based Learning Working Group, at www.ukcle.ac.uk/pbl). The College of Law is actively involved in this initiative. For a description of a professional course (offered by university law schools in the UK) which is taught using PBL see Payne, R. "Peer Learning at University" 37(2) The Law Teacher (2003) 143. In Australia, PBL is being used at the College of

its use in legal education is the same as that in medicine, engineering and other professional programs – by focusing on tasks and skills PBL attempts to replicate the actual "messiness" (or "plaid") of practice rather than to teach "recipes' for the accomplishment of the same. Instead students are faced with problems which they do not always have the means to solve and must develop a process for finding the answers – whether research, talking with a mentor or a peer, or simply trial and error. As well, PBL is seen as a means of equipping future professionals to "manage" rather than assimilate knowledge, in an environment where curricula can no longer expand to cope with the demands of the ever expanding knowledge base of individual professions[19]. Students who have learned using PBL are able to retain knowledge longer and are much better than students taught in traditional classrooms at integrating knowledge and clinical skills[20].

Students work in "firms" of at most six persons and will handle a number of files over the course of the proposed five-week program. Each group generally represents a client (and in some cases another group will represent the other side in the file) and draws on various forms of real-life documentation, including an originating memorandum with instructions from a principal or supervisor, correspondence, contracts, attendance notes from interviews, etc. In the course of their work on the file, students might also be asked interview their client and perhaps others, to plan for and conduct a negotiation with the other side, to proceed through discoveries, pre-trial motions and perhaps participate in a mediation or case settlement conference. Each file is constructed as a jigsaw puzzle of facts and materials and effectively simulates file management, time management and other practice management issues. No one student could possibly handle the volume of work required and therefore delegation of work among the team followed by regular joint briefing is the norm. In this program, each PBL file will also contain a series of professional ethical dilemmas that students must identify and address.

The instructor or tutor in PBL plays the role of facilitator and coach rather than the traditional didactic role of instructor[21]. She or he does not teach substantive law and is not expected to be an expert in all of the areas covered by the files. The tutor meets regularly with the group to assess their progress. She or he may sometimes make suggestions or comments about the path or paths they are following. Both the philosophy of the method - which clearly requires students to take greater responsibility for their own learning than is customary in a didactic program - and the multi-dimensional and open-ended nature of the problem itself means that the tutor's role is that of a "sounding board" and a consultant on the process of

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Law New South Wales (see Winsor, K. "Applying-Problem-Based Learning to Practical Legal Training" in Boud, D. & Feletti G. The Challenge of Problem-Based Learning 2nd edition 1997 Kogan Page). The Hong Kong Professional Legal Training Program at the City University of Hong Kong was taught using PBL from 1991 - 1995 (see for example Macfarlane, J. & Boyle, P. "Instructional Design and Student Learning in Professional Legal Education: from Theory into practice" 4 Legal Education Review (1993) 63 (with Pat Boyle)). See also, Cruickshank, D. "Problem-Based Learning in Legal Education" in Webb, J., & Maughan, C., Teaching Lawyers' Skills, (London: Butterworths, 1996).

[19] Savin-Baden, M. (2000) *Problem-based Learning in Higher Education:* Untold Stories. SRHE/Open University Press.

[20] Norman GR, Schmidt HG. "The Psychological Basis of Problem-Based Learning: a review of the evidence" Acad Med 1992; 67(9): 557-65.

[21] See Pallie, W. & Carr D.H. "The McMaster Medical Education Philosophy in Theory, Practice and Historical Perspective", (1987), 9 Medical Teacher 59 at 66-67; and Moust, J.C. & Nuy, H.J. 'Preparing Teachers for a Problem-Based Student-Centred Law Course' 5 Journal of Professional Legal Education (1987) 16.

problem-solving, rather than as a subject expert. The tutor will also provide feedback on all formative exercises and summative assessments, which must be included in the student's Portfolio (see above). This role requires quite different pedagogical skills to those traditionally expected of a didactic instructor, but also takes advantage of the unique practical wisdom and experience that practitioners can bring to law students. Each firm would have a tutor assigned who would meet with them for a short time during each day as they worked on their files (see below). Because the course is not focussed on substantive law and the role of the tutor does not include substantive law instruction, students may encounter some difficulties in handling the files which the tutor cannot resolve. To ensure that this is not a problem, access to a subject-matter expert could be provided, perhaps in the form of telephone or e-mail consultations.

To be effective, PBL must be utilised as the pedagogic base of the curriculum and not merely as an add-on or occasional divergence. This is because the essence of PBL is to encourage free enquiry and the management of items some of which will be unfamiliar to the student[22]. Thus to a significant extent, PBL replaces regular lectures with group work on simulated problems, which, in law, usually take the form of a client file. In this program, didactic instruction on skills and practice development, when necessary, would usually be offered at the start of the half-day, and students would spend the rest of the class time working in firms (see also below). At least some of the information necessary to "solve" the problem is new material in the sense that it may require some updating research or the identification of a relevant precedent. This is appropriate in the context of professional legal education since, by this stage, students should be able to demonstrate competence in research without "canned notes' or other materials. As a research-based learning method, PBL will also enable students to further develop and enhance their research skills in a practical context, and to quickly identify their weaknesses.

Because problems and the appropriate responses are encountered in a dynamic way as work on a simulated file progresses, the artificial division of students learning into skills-focused "blocks" or "modules" can be replaced with a more integrated process, in which students encounter a variety of skills-based tasks (in this case those identified via the research process and prioritised by Delphi respondents) over and over and to an increasingly high level of difficulty. For example, the research and writing tasks required for the first file can be relatively simple, and a client interview fairly routine – in a second and third file all these elements can be made more complex and challenging for students, and other elements may be added, such as negotiation with the other side on the file either in writing or face-to-face, bringing a motion, or attending a mediation.

Another reason for the popularity of PBL in professional education is its widely acknowledged capacity to motivate students[23]. Learning on a "need-to-know" or `discovery' basis, using materials which attempt to simulate the reality of professional practice, is both a more effective and a more motivating way to learn than via didactic methods such as lectures.

Problem-based learning emphasizes co-operative work with peers. Law schools are unaccustomed to teaching teamwork as a basic skill, but there are signs that this is becoming

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[22] Barrow, H. "Generic Problem-Based Learning Essentials" in The Problem Based Learning Initiative (PBLI) at www.pbli.org (South Illionis University).

[23] See for example Stepien, W. & Gallagher, S. (1993, April). "Problem-Based Learning: As authentic as it gets" Educational Leadership, pp. 25-28; Stepien, W. Gallagher, S. & Workman, D. (1993). "Problem-Based learning for traditional and interdisciplinary classrooms". Journal for the Education of the Gifted, 16 (4), pp. 338-35.

increasingly important to prospective employers (both law firms and others). Teamwork is fundamental to PBL and PBL learning activities cannot be designed as individual exercises without defeating their role in the development of learning through shared reflection. Acting effectively as a team member is crucial to the successful practice of law. Even individual practitioners need to know when to consult and work with colleagues. Teamwork is also critical in the development of collegiality and professionalism. However we should stress that in the design of this course, learning will be a reflective group activity but summative assessment will be based on individual work (see above at 2 (d)).

Small group work can be very challenging for students – problems include dealing with differential contribution, different styles and approaches to the problem, and personality clashes. However, all these are real life problems that need to be faced and dealt with in a professional context. The demands of PBL motivate students to develop effective skills in consensus decision-making, dialogue and discussion and conflict resolution, skills which the PBL tutor can assist them with[24]. The students will be coached in teamwork and conflict resolution at the beginning of the course. The tutors will also be trained to handle these issues (see below at 4 (b)). In addition, students will given the opportunity to change teams at specific points in the course and work with different colleagues. The authors of this Curriculum Plan have had considerable experience in running PBL exercises and managing the issues that can arise at an early stage in the development of group dynamics and expectations[25]. From our experience we feel strongly that initial conflict resolution and teamwork training will be crucial to the success of the program, and also exemplifies the spirit of professionalism that is a core goal of the program.

Problem-based learning is also designed to emphasize the process dimensions of learning. Students in PBL groups are encouraged to think about how they went about the task they were assigned, to reflect on what problem-solving techniques they are developing, and what worked and did not work to produce good results, both as a matter of group process and individual work. In the body of literature which has grown up around the use of PBL in medical education, this is sometimes described as `double loop' or `reiterative' learning[26] . `Double loop' learning encourages constant critical reflection on process and challenges us and our students to regularly rethink the basis of our actions and decisions. In PBL, students should be encouraged to engage in this process of reflection throughout the exercise - for example by keeping personal journals, or by regularly debriefing with their group.

b. Other Teaching Methods – lectures, In-Tray Exercises, web-based exercises

In addition to PBL, the program would also include didactic instruction – live or recorded lectures or other formats - which focus on skills development. These would be directed at specific topics that students are encountering in their ongoing work on PBL files, although they would not necessarily precede these demands. These lectures will be delivered by experts who may include lawyers but also specialists in communication, dispute resolution, practice management and other aspects of skills development. We anticipate that some of these lectures

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[24] See for example the discussion in "Skills to Enhance Problem-based Learning" at www.med-ed-online.org/f0000009.htm Michael Peterson, Ed.D. University of Delaware, College of Health and Nursing Sciences.

[25] Macfarlane, J. & Manwaring J. "Using Problem-Based Learning to Teach First Year Contracts" 16 Journal of Professional Legal Education (1998) 271

[26] See for example the discussion Woods, D. "Problem-Based Learning and Problem-Solving" in Problem-Based Learning in Education for the Professions Boud, D. (ed) above note.

could be recorded and archived for ongoing access. There will be no lecturing on substantive law issues.

Students would also be required to complete a sequence of "In-Tray Exercises". This is a learning device which simulates a task, request or instruction that might appear in the in-tray of an articling student or newly qualified lawyer. For example, an in-tray exercise might ask a student to provide and complete a precedent for a real estate transaction; respond to a motion; deal with a trust accounting matter; or provide preliminary advice in a legal memo. Work on assigned In-Tray Exercises will be completed individually and outside class time. It will be reviewed by the PBL instructor or students will be offered a self-marking guide or "best practice" model with which to compare their own work.

Similarly work on web-based interactive exercises dealing with (for example) skills exercises[27] or professional conduct issues will be required outside class time and students will complete this individually. Each exercise shall be designed to enable self-assessment and to allow the tutor to view the student's work and results.

c. Course Overview: Scheduling and Structure

We are proposing a five-week course with a sixth week which will allow any students who have failed any required assessment to redo any failed assessment(s) (see details above at 2 (d)), and therefore satisfy the requirements for successful completion of the course. A five-week course is required to enable students to practise and improve the skills identified by the practitioners consulted in the process of developing the skills taxonomy which forms the basis of this proposal. The skills identified by our consultations are extremely varied and sophisticated and, in our opinion, cannot be learned to the required threshold level of an articling lawyer in a shorter time.

The sixth week will ensure that all students have a full opportunity to successfully complete the course in a reasonable period of time without any uncertainty extending into the articling period. The exact content of the sixth week will not be examined here because it will depend in part on the areas where failing students encounter difficulties; and these will vary from year to year. However, the Curriculum Plan recognizes the need to provide students who encounter difficulties with a full and fair opportunity to remedy their failing marks and will build in the required opportunities to rectify failing performance. Moreover, the use of continuous feedback during the course will also enable students to revise any work/assignments that will be included in the student Portfolio in order to meet the criteria for successful completion of the course. In the event that a student's final submitted Portfolio is deemed to be a fail, they will have an opportunity to produce new work for inclusion in a revised Portfolio submitted at the end of week 6.

This section will describe the overall structure of the proposed program. At this stage it is premature to provide a detailed description of the teaching units and the course materials. The outline below suggests a progression through the teaching units and exercises but it is important to stress at the outset that the actual content of the units has not yet been decided definitively.

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[27] Professors Zweibel and Manwaring of the Common Law Section of the University of Ottawa have developed such a web-site for the first-year Introduction to Dispute Resolution course. The site is only open to students but can be accessed with permission of the professors at www.uottawa.ca using the virtual campus icon.

i. Contact hours

The Task Force Report envisages 96 hours of instruction during the skills program. The Curriculum Plan for the program is designed to achieve that objective. There are a number of constraints that have been taken into consideration in designing the course. For example, the availability of classrooms and rooms for small group work will definitely have an impact on the organization of the program. The number of students who will be taking the program each year will be substantial. We are estimating that approximately 1400 students will take this five-week program in any given year.

Because of these constraints, we are proposing that the program be offered in a half-day format over five weeks with four instruction days and one assessment day each week. In our opinion, a five-week course is necessary given the varied and diverse number of skills identified by focus groups, and the complexity and range of professional responsibility issues that need to be addressed. This format will also enable the Law Society to maximize the efficient use of available space, personnel and resources.

In each centre, the students will be divided into two groups - one group of students will attend in the morning and the other in the afternoon. The morning section would meet from 8.30am – 12.30pm, the afternoon section from 1.00pm-5.00pm.

This will mean that students receive 16 hours of training a week for a total of 80 contact hours over five weeks. All required firm or group work will take place during the mandatory attendance hours. In addition, Fridays will be devoted to assessment for which attendance will be mandatory. While the exact amount of time required to complete the assessment activities will depend on the nature of the assessment, the maximum would be 4 hours per week for a total of 20 hours devoted to assessment. The total number of hours of instruction including assessment time (100 hours) meets the target envisaged in the Task Force Report.

In addition, the scheduled hours of instruction will be supplemented by individual learning activities outside the classroom including completion of in-tray exercises and web-based learning exercises. We estimate that this work will require approximately 5 to 8 hours per week for a total of 25 to 40 hours over the five-week period. If the maximum estimated number of hours required to complete individual work outside course time is added to the hours of mandatory attendance, students will be required to devote at most 140 hours over 5 weeks to this course, or 28 hours per week[28].

ii. Course structure

Because the course will be organized on the basis of the PBL methodology, most of the learning will occur in the context of work in teams or firms on files which simulate the realities of the practice of law. The format of the course will be flexible and students will not follow the same schedule each day. Students will engage in structured learning activities for four hours each day. There will often be some initial time devoted to didactic instruction addressing issues related to skills development, professional responsibility and professionalism. This didactic component can be delivered in different ways:

[28] Students will also be asked to reserve a sixth week in case they are required to repeat one or more assessments.

i. a short lecture by an invited expert;
ii. an archived video of an expert lecturing on the topic which the students can watch out of class time;
iii. a briefing by their PBL tutor (perhaps with a group of 24 students) at the start of each day's exercises during which the tutor can review the material, provide information, answer questions and so on.

The rest of the time students will engage in work in their firms on the files. This work will be focused on the development of the skills identified in our consultations with practitioners.

iii Files

The students will be placed in firms of at most 6 lawyers. Students will have the opportunity to change firms at specified times during the course. This will help deal with any intra-firm conflicts. This approach will also permit the inclusion of conflict of interest issues as students changing firms and the firms themselves ensure that they meet the requirements of Rules 2.04 and 2.05.

The firms will be expected to deal with a number of files over the five weeks of the program. Students will handle at most 6 files during the five weeks. There is no magic in the number of files and the amount of work required on each file depends on its design. The decision as to the number of files should be made to accomplish the program's learning objectives. It will be important to develop files that provide opportunities to work on all of the skills identified by our consultation, including practice management. Each file will also include professional responsibility issues and ethical dilemmas that the students will be expected to identify and respond appropriately to, sometimes with the guidance of their PBL tutor.

The substantive law content of these files has not yet been decided but will vary from year to year. The program stresses the development of skills in relation to these files and is not designed to teach the substantive law, although students will do research and have to understand relevant legal concepts. The files will rotate from year to year. We recommend the initial development of sufficient files for three years of instruction. If it is not possible to develop three sets of completely different files, it would be possible to add new information and "twists" to files to ensure that the exercises are not the same each year. In addition, different assignments could be required from the students in relation to the files. (For example, one year file 1 could be used for memo drafting while the following year it would be the basis of a client interview and the drafting of an advice letter.)

It will be important for students to work on more than one file at one time at some point during the program in order to practise time and file management skills. There must be a sufficient number of files to allow the structuring of the firm work in such a way that the students have to make choices about the appropriate handling of files and establish priorities.

iv. A Typical Week

To illustrate how the learning activities would be structured, we will describe a hypothetical "typical week". The course will consist of learning activities designed to permit a progression through the skills identified as essential to success as a lawyer in the Taxonomy of Skills based on consultation with the legal profession and members of the Bench. Each week of the course will be designed to help students develop their skills in a specific area. For purposes

of our example, the week described would focus on writing and drafting, managing the client relationship and file management in relation to dispute resolution. This would not be the first week of the course and is offered here only as an illustration of how the program might unfold. Note that students would have already been introduced to client interviewing prior to the beginning of this week.

Day One

Instruction on day One begins with an overview of dispute resolution strategies ranging from negotiation to litigation, and the criteria for choice of strategy in light of client objectives. Additional themes include the development of a dispute resolution strategy and the management of client expectations.

When students move into their firms, the PBL component of this day would include a second interview with the client for one current file (File 1). The PBL group would prepare for the interview (in which the client would be played by an actor) by reviewing the initial client interview (which took place the previous week) and any legal research conducted subsequently. In the second interview the client would present some new information and an ethical issue will be raised. The interviewer would work with the client to develop a strategy for dispute resolution and help the client to develop realistic expectations for the outcome.

At the end of the interview the PBL group along with their tutor would debrief, review the skills, substantive and ethical issues raised by the interview. Also following the interview, the students would prepare an advice letter to the client. The group would decide on next steps in File 1 and distribute work accordingly. They will review these next steps and their “game plan” with the tutor.

Students would receive an In-Tray Exercise assignment which would have to be completed and handed in for assessment on the following Friday. The exercise would require legal research and legal writing on a specific topic.

Day Two

The instructional component of Day Two would focus on the development of a dispute resolution strategy and client communication issues. For example, students could be asked to listen to a pre-recorded practitioner “panel” or a lecture by a single expert discussing the role of advice letters in the relationship with the client and the types of ethical issues which the lawyer can encounter when working with the client on dispute resolution strategy. Alternatively these issues could be reviewed with a large group (perhaps four PBL groups or 24 students) by their PBL tutor.

The PBL component on this day would deal with a second file (File 2). The firm members receive a letter from the lawyer representing the other party. The firm may not have taken any action on this file at this point so that they will be required to suddenly pay attention to a file that has been on the back burner. The students would have to analyse the information they have available quickly and plan for a first interview with the client (played by an actor).

In order to make this exercise more challenging, the client actors would be instructed to raise more difficult communication issues. Within File 2, there could be a limitation period issue which students will be expected to uncover and respond to in an appropriate manner. Finally,

they would be expected to draft a letter in response to counsel for the opposing party which could be reviewed with their PBL tutor.

Day Three

On Day Three the focus would shift to negotiation theory and practice. The instructional component would focus on negotiation styles and strategies with a discussion of different theories of negotiation, including interest-based and position-based theories. Some models for planning for negotiation, regardless of the strategy chosen, would be described and applied to fictional situations. This component of instruction on Day Three could involve negotiation exercises in the group of 24, as well as more theoretical presentations. The program could also make use of web-based exercises here to help students learn negotiation theory.

The PBL component of Day Three would require students to engage in file-related negotiation. The firm would either send a proposal to, or receive a proposal from, the firm representing the other side regarding a negotiation meeting regarding File 1 (see above). Students would be required to communicate appropriately with opposing counsel to discuss the parameters of the meeting. They would also have to make choices about the information they may want to exchange in advance of negotiation. They would also decide the composition of the negotiating team and the role of each member. For the purposes of this exercise, clients would not be present. Students would be expected to clarify the extent of their bargaining authority ahead of time. This exercise could include ethical issues relating to the desire of the client to hide information and the demands of professionalism in the context of negotiation.

Day Four

Day Four would be a continuation of the previous day's work on negotiation theory and practice. The PBL component will involve the actual negotiation meeting which students prepared for yesterday. The firm's negotiators will meet with the negotiators for counsel representing the opposing side of File 1 (students from another PBL group). The remainder of each group will watch the negotiation, in order to provide feedback. The PBL tutor for these groups will watch at least part of the negotiation.

Students will then debrief their negotiation performance back in their firms, with their PBL tutor participating for some of this time. Students would receive feedback on their performance in preparation for Friday's assessed negotiation simulation. In addition, the firm would have to follow up on the limitation issue raised by File 2 (see Day Two) and deal with it appropriately. The final assignment for the week would be the individual preparation of a file analysis including a proposed plan for future action on File 2 to be submitted on Friday.

Day Five

Day Five would be devoted to assessment. Students would work in their firms to complete any research and other tasks relating to the handling of their ongoing files. Because practice management issues will be built into the course, students would be expected to docket their time spent on each file for the week and perhaps prepare client billing.

The analysis and plan for future action on File 2 (above) would be submitted to their PBL tutor and students would receive feedback. Students would also hand in their completed In-Tray Exercise. Note that both the file analysis and the In-Tray Exercise would be completed individually.

The main assessment activity for this week would be a “live” negotiation simulation where students would negotiate with one another in relation to a new problem, and their performance assessed on the basis of stipulated criteria. Students would be given a fixed period to prepare for and then conduct the negotiation. Students would be expected to act ethically and with appropriate professionalism in the context of this negotiation. The evaluation criteria communicated to the students ahead of time would explicitly include professional ethics and professionalism.

4. Resources

a. Student and Tutor Materials

The five weeks of this program will be developed using standardized lesson plan formats that will be made available to tutors and other instructors.

Student materials specified below could in each case be provided in hard copy or via a dedicated website.

Students working on PBL and in-tray exercises will be substantially responsible for identifying and locating relevant primary and secondary materials using Internet and other resources. Therefore the volume of this type of material which will need to be provided to students for the purposes of these exercises will be significantly less than in traditional teaching programs.

i. Problem-Based Learning

Each of the PBL files will be designed to include the following:

I Tutor Master Sheet for the PBL File

This shall include

a. student learning objectives
b. transactional focus
c. skills required and practised in this exercise
d. ethical and professional conduct issues
e. a sequential list of tasks to be completed
f. assessment for this file
g. a list of resources provided to students (see below)
h. tutors’ notes for the file. These will include a description of the challenges anticipated as students handle the file and the direction and advice that can be given, as well as a briefing on the ethical and professional conduct issues raised by the file.

II Student Master Sheet for the PBL File including

This shall include

b. student learning objectives
c. transactional focus

d. skills required and practised in this exercise
e. a sequential list of tasks to be completed (in the first few files only, this list will become less complete and specific as the program progresses requiring students to take more initiative for identifying the tasks and their appropriate sequence)
f. assessment for this file
g. a list of resources provided (see below)

III Resource Package for the PBL File

Materials supplied with the file (eg memo to file, interview attendance notes, pleadings, as well as primary and secondary source material where appropriate)

ii. In-Tray Exercises

Each of the individual In-Tray Exercises will be designed to include the following:

I Tutor Master Sheet for an In-Tray Exercise

This shall include:

a. instructions for the task required
b. timelines for completion
c. student learning objectives
d. transactional or substantive focus
e. any ethical and professional conduct issues
f. assessment for this in-tray exercise (other than summative assessments, possibly self-assessment using model answer)
h. a list of resources provided to students (these will be minimal eg a memo from a partner, a precedent, etc)
i. tutors' notes for the in-tray exercise. These will include a description of the challenges anticipated as students handle this in-tray exercise, as well as a briefing on any ethical and professional conduct issues raised by this in-tray exercise. The tutors' notes will also include a model or sample answer which will be either distributed to students if they are undertaking self-assessment or used by the tutor to provide feedback

II Student Master Sheet for an In-Tray Exercise

This shall include:

a. instructions for task required
b. timelines for completion
c. student learning objectives
d. transactional or substantive focus
e. assessment for this in-tray exercise (self-assessment, hand in for feedback from tutor, summative)
f. a list of resources provided and attached (these will be minimal eg memo from a partner, precedent)

iii. Web-based Exercises

Information about web-based exercises will be distributed to students as and when they are required to undertake such work. The requirements and parameters of the exercise will be set out following a similar format to an In-Tray Exercise (above) except that students will then be directed to the appropriate URL to complete the task

I Tutor Master Sheet for a Web-Based Exercise

This shall include:

a. description of the task that students will undertake using the web-based medium,
b. timelines for completion
c. student learning objectives
d. skill focus
e. any ethical and professional conduct issues
f. tutors' notes for the web-based exercise. These will include a description of the challenges anticipated as students handle this web-based exercise, as well as a briefing on any ethical and professional conduct issues raised.

II Student Master Sheet for a Web-Based Exercise

This shall include:

a. overview of exercise
b. timelines for completion
c. student learning objectives
d. skill focus

Assessment of web-based exercises will be undertaken online either by tutors or using built-in self-assessment tools used by students

iv. Lectures

Students and tutors shall also receive a list of all forms of didactic instruction throughout the five-week program. This shall include the subject matter of the instruction (i.e. the skill area which will be the focus of the instruction), assigned reading materials, and a list of questions for discussion and reflection.

v. Assessments

Students and tutors shall also receive a written description of each assessment (written, skills-based) to include:

a. the task to be completed
b. timelines for completion or time allotted
c. detailed assessment criteria
d. standards relating to criteria i.e. what is required for a pass or fail
e. appeal mechanism (if available)
f. requirement of reassessment where an assessment is failed (in week 6)

g. opportunities for practice and feedback (for example, previous skills-based exercise during PBL)

Assessments will be both formative and summative. Summative assessment will be of individual work while formative assessment with feedback will be based on both individual and group work.

b. Tutors and Instructors

The Curriculum Plan requires a range of teaching supports for students.

i. PBL Tutors

The core of teaching support for this program is provided by the PBL tutors. Tutors in PBL play a somewhat different role than that of the traditional instructors (see discussion above "PBL objectives and mechanics"). PBL tutors are not traditional classroom teachers but are lawyers valued for their practical expertise. They are neither required nor deemed to be experts in the relevant substantive law and do not lecture on the law relevant to the files[29]. In fact experts are not appropriate as PBL tutors, because their role is not to tell the students what to do or how to do it, but rather to guide them through the challenges they will encounter, and encourage them to approach all difficulties by using problem-solving and appropriate professional attitudes. Tutoring in this model is a form of focused mentoring and modeling, which the Task Force emphasized as an important means of student learning[30]. In some ways this role is less demanding on practitioners than asking them to teach didactically – having been trained to use the method (see below), their preparation should be minimal. The role of the PBL tutors in many ways utilises the wisdom and experience of practitioners far better than more traditional methods of teaching on the BAC (e.g. lecturing).

PBL tutors will spend some time each day (excepting Assessment days when PBL does not run) with their assigned firm or firms. One tutor could work with 3 or 4 firms since he or she would probably spend 30 and no more than 45 minutes at most with each, with the firm working on tasks the remainder of the time.

PBL tutors also serve the crucial role of providing formative assessment or feedback on student work before they reach the point at which they are summatively assessed. This may take the form of verbal or written feedback, to the whole group or to individuals as that is deemed necessary. It may involve an informal discussion with the group about the steps they have taken on a file; the more formal review of a PBL product; and the observation of a client interview, negotiation, mediation etc. It may also be appropriate to utilise the PBL tutors to provide feedback on In-Tray Exercises (see above).

Because it is critical that PBL groups are made up of, at most, six persons, there will need to be some thought given to retaining PBL tutors who can work with a number of firms or groups. It may also be desirable to utilize different PBL tutors, with differing expertise, for different PBL exercises. Assuming 1400 students will take the Skills Program at any one time,

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[29] It is desirable for PBL tutors to have access by phone or email to a subject expert for the purposes of consultation who could play a larger role in the process by agreement.

[30] Task Force on the Continuum of Legal Education: Report to Convocation Oct 23 2004 at Para 56.

this means approximately 234 groups of 6 students. However, as mentioned above, a PBL tutor could be responsible for up to four firms and could rotate among these in any one morning or afternoon session.

ii Guest Lecturers

In addition to recruiting and training PBL tutors, it will also be necessary to identify appropriately qualified individuals to present the "didactic instruction" segments of the program which in some cases will not be delivered by the tutors themselves. The arrangement and use of lecture time is such that it is unlikely that any one lecturer will present more than one or two lectures in his or her area of expertise. The topics of this instruction will be skills development and practice in the various areas, not substantive law. This may require the identification of experts new to the BAC – for example in communication skills, mediation, client management, time management practices, etc - who could be asked to record archival material for the Program. If this material could be recorded and delivered via non-traditional formats such as the web it would be possible to access high profile experts, and to ensure that an excellent quality of didactic instruction can be provided efficiently to all students.

iii Orientation and Training

Orienting prospective PBL tutors to the theory and practice of PBL is an important step in creating the new program, no matter how experienced the tutors might be as didactic instructors. We shall propose a custom-designed orientation workshop for PBL tutors in the new program, which shall include training in:

I the theory and practice of problem-based learning
II the role of the tutor in PBL
III methods for encouraging and generating learning in PBL
IV the challenges in facilitating and managing small group work including intergroup conflict resolution in the PBL context
V assessment in PBL

One of the authors developed a workshop for this purpose in Hong Kong in 1991-92. Since that time training and orientation materials have been developed in other professional and university settings, which can be adapted and modified for use by the Society[31].

c. Use of Technologies in Program Delivery

The enormous expansion of Internet-based technologies and the potential these present for student learning must be effectively harnessed in the new program. Universities are

[31] See fore example "Generating Productive Learning Issues in PBL Tutorials: An Exercise to Help Tutors Help Students" * www.med-ed-online.org/t0000013.htm.
Kathleen M. Quinlan, Ph.D., Office of Educational Development, College of Veterinary Medicine, Cornell University; Murray, I. and Savin-Baden, M. (1999) Staff development in Problem-based learning. Teaching in Higher Education 5 (1); Schmidt, H.G. and J.H.C. Moust (1995) 'What Makes a Tutor Effective? A Structural Equations Modelling Approach to Learning in Problem-Based Curricula" Annual Meeting of the American Educational Research Association, San Francisco, CA., Schmidt, H.G. and J.H.C. Moust (1998) "Processes That Shape Small-Group Tutorial Learning: A Review of Research"

beginning to incorporate strategic goals that relate to the most effective use of technologies, and professional legal education should be no different. Access to databases such as CANLII, QUICKLAW and LEXIS will also enhance the work of the PBL firms as they carry out preliminary research[32]. The appropriate licenses to allow students free access to the necessary databases will be required.

It is strongly recommended that, whatever physical space is identified for the location of the program, it should be equipped with wireless technology in order that students can work on their own laptops during their work in small groups. (This does not mean that students should be encouraged to rely exclusively on web-based research however; see below). The availability of wired space for PBL group activities will ensure that students can work efficiently and effectively.

The program we propose also anticipates the development and use of web-based exercises, primarily in the area of skills practice and in relation to the Rules of Professional Conduct. Students will access and complete these exercises in their own time. Some of these types of exercises are already available and others can be developed specifically for the purposes of this program, using widely available software. Where necessary, tutors will have secure access to these programs in order to appraise student performance.

We are also recommending that the course make use of video-archived lectures by recognized legal experts. It would be most efficient to make these available via the web in order to allow students to have access to them when their schedule permits.

While many students will have their own laptop computers – which wireless rooms could take full use of – some students of course will not be so equipped. It is recommended that a small computer laboratory be made available at each site for the use of these students.

d. Student Support Needs

We note the significant development of the Society's Education Support Services and in particular its e-learning resources[33]. These are a critical resource and should be updated and aligned to the new skills program.

A significant aspect of student support needs - including students who belong to groups that in the past have failed the BAC at a disproportionately high rate – relates to the need to identify as early as is possible students who are experiencing difficulties, and offer them additional individual support and tutoring before they face summative testing. In a PBL model there will be a far greater emphasis on small group and individual coaching and mentoring than in the traditional classroom structure. Even where skills seminars comprised relatively smaller groups of students, it was still possible for weaker students to get "lost" or be overlooked. That potential does not exist in the same way with PBL, with its intensive focus on very small student groups and tutoring by a PBL tutor.

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[32] Other disciplines and professional programs which use PBL are experimenting and evaluating a range of potential enhancements offered by both online and multimedia technologies. See for example Oliver, R. & Omari, A. "Using online technology to support problem-based learning" 15(1) Australian Journal of Educational Technology (1999) 58.

[33] Task Force on the Continuum of Legal Education: Report to Convocation Oct 23 2004 at Para 50-51.

An additional problem has been the perception of cultural bias in testing models especially those which favour formal knowledge tested via examinations. The range and diversity of assessment methods which we are proposing in this Curriculum Plan will assess students in a range of different formats, including conventional written work produced to a deadline but also performance assessments, work produced over the 5 weeks of the program, work completed both individually and as part of a group, and work completed online and in "real time". There will also be time to revise work submitted as part of the student Portfolio.

We anticipate, therefore, a significant alleviation of the problems that were identified in relation to inadequate student support, especially in relation to students who are members of visible minority, aboriginal and francophone groups[34]. However we also recommend the maintenance of the Law Society's Educational Support Service and especially its e-learning resources to support and complement the new program.

5. Conclusions

The Curriculum Plan we are presenting here contains the data, rationale, and planning structure to support a new skills program for the Law Society of Upper Canada. The skills program we propose will build on the 2004 "skills audit" and will utilize the very best in professional pedagogies and relevant technologies. In developing this Plan we have paid especial attention to the challenge of developing professional and ethical sensibilities among future legal practitioners.

We believe the model of teaching and learning proposed here – albeit in a short time frame of five weeks of instruction – is likely to be far more effective in meeting these goals and enhancing the reputation of both the Society and the profession in Ontario than either abandoning skills teaching altogether, or continuing with a primarily didactic approach emphasizing a model of core skills which may no longer be current in legal practice. In short, the model of professional legal education presented here will enable effective and efficient skills training for prospective law students as the legal profession evolves in the 21st century.

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Appendix B

Skills and Professional Responsibility Program
Taxonomy of Skills and Professional Responsibility Competencies

A. Ethical Issues

i. identifying professional ethical dilemmas as and when they arise in practice and dealing with these appropriately, in particular

   a. identifying and responding appropriately to potential and actual conflicts of interest
   b. understanding and respecting the extent and limits of the confidentiality obligation
   c. carrying out fiduciary duties to clients and others (Ranked #1)

ii. knowing the Rules of Professional Conduct and practicing law accordingly (Ranked #1)
iii. articulating his or her own ethical framework for making choices that respond to ethical dilemmas
iv. dealing ethically with members of the profession (Ranked #2)
v. dealing ethically with members of the public
vi. dealing ethically with courts, government agencies, tribunals and regulatory bodies
vii. developing a mentoring relationship with a more experience lawyer (or lawyers) in order to seek advice on ethical, professional, competency and other issues that arise in the practice of law.

B. Professionalism

This section strictly speaking deals with professional values rather than skills as such. The competent lawyer, at the outset of her or his career, should:

i. demonstrate a commitment to excellence and professionalism (Ranked #2)
ii. demonstrate a commitment to civility
iii. demonstrate a commitment to collegiality
iv. demonstrate a commitment to providing effective and competent legal services to advance the client's interests while upholding the law (Ranked #3)
v. demonstrate a commitment to public service (including pro bono work)
vi. deal with staff, colleagues, clients and courts with courtesy and respect (Ranked #1)
vii. deal appropriately and professionally with news media and press in all forms
viii. demonstrate a commitment to continuing professional education and development
ix. demonstrate a commitment to continuing his or her own legal education.
x. demonstrate a commitment to the promotion of justice
xi. demonstrate a commitment to serving with respect and dignity the many peoples of Ontario

C. Client relationships

i. interviewing to understand problem, issues, context and goals or objectives of the client and to gather relevant information (Ranked #1)
ii. determining if one is competent to handle the file, identifying the steps necessary to become competent or referring the file to someone else
iii. identifying the client's special needs and, where necessary, providing appropriate accommodation
iv. demonstrating cultural and logistic awareness and sensitivity
v. retaining services necessary to enable the client to communicate effectively (i.e. an interpreter) where necessary
vi. advising the client about decisions that must be made and options that are available (Ranked #1)
vii. preparing the initial retainer letter
viii. establishing consultation fee
ix. communicating effectively with clients (Ranked #3)
x. identifying the fraudulent or unscrupulous client
xi. managing client expectations
xii. identifying and dealing with troubled or difficult clients
xiii. terminating client relationships

D. Managing a Client File (Dispute Resolution)

i. understanding client goals
ii. assessing what facts need to be obtained and from which sources and documents those facts can be obtained
iii. investigating, marshalling and understanding the facts
iv. developing strategies for obtaining necessary facts from the client
v. identifying all the parties involved in the dispute
vi. communicating effectively with all parties involved in the dispute, including unrepresented parties
vii. communicating with third parties while taking into account privacy law and confidentiality implications
viii. developing a theory of the file

ix. assisting the client to identify and establish realistic expectations regarding possible outcomes (Ranked #1)
x. developing a dispute resolution strategy with the client (including making choices and decisions for file direction) (Ranked #2)
xi. preparing and presenting an ADR/litigation budget and ensuring that the client understands and accepts it
xii. with the client, assessing the strengths and weaknesses of various dispute resolution strategies according to agreed criteria (eg. cost-analysis, efficiencies of time) and likelihood of achieving client goals
xiii. planning strategy in light of applicable limitation periods
xiv. preparing for the different forms and forums of dispute resolution available at the various stages of the case (Ranked #2)

a. negotiation
b. mediation
c. case settlement conferences
d. arbitration
e. motions
f. discoveries
g. pre-trial
h. trial/hearing
i. sentencing/speaking to remedy
j. appeal

xv. implementing the dispute resolution strategy (above) and using the skills of advocacy appropriate to the chosen forum
xvi drafting the settlement agreement
xvii communicating effectively with the client at all stages of the process
xviii ensuring that any agreement or decision is implemented
xix keeping the entire process open to new ideas and new information

E. Managing a Client File (Transactions and Applications)

i. understanding the result sought by the client
ii. investigating and understanding the facts
iii. developing a theory of the transaction/application
iv. with the client, identifying the range of possible strategies available
v. with the client, assessing the strengths and weaknesses of the possible strategies according to agreed criteria (eg cost analysis, efficiencies of time) (Ranked #1)
vi. with the client, developing a strategy for successfully completing the transaction/application (Ranked #1)
vii. identifying the appropriate regulatory agency or forum/parties/players
viii. identifying and determining any third party requirements (eg insurance)
ix. identifying, completing and filing the appropriate documentation (Ranked #1)identifying the need for expert advice and the sources of such advice
x. conducting a negotiation
xi. reaching an agreement OR
xii. preparing for dispute resolution (see (D)).
xiii. communicating effectively with the client at all stages of the process

xiv. assisting the client with advice and recommendations designed to expedite future transactions
xv. keeping the entire process open to new ideas and new information

F. Legal Research

i. developing a research plan in order to address the problem raised by file and deal with relevant issues
ii. conducting electronic research using relevant legal and non-legal data bases
iii. conducting library/paper-based research
iv. identifying relevant legal concepts (Ranked #2)
v. analyzing results, including sorting cases, legislation and secondary legal materials according to relevance, identifying leading cases and trends in the law, and citing all sources appropriately (Ranked #1)
vi. identifying conflicting lines of jurisprudence, making appropriate analogies and distinctions, determining how to resolve ambiguities in judicial decisions, among judicial decisions and in legislation
vii. updating cases and legislation as required
viii. analyzing and applying legislation
ix. conducting research appropriate to transactions (eg review of Official Plans, zoning by-laws and other relevant regulatory sources)
x. drafting a legal memorandum which analyzes and presents the results of the research in an effective manner and makes recommendations for client action (Ranked #2)

G. Writing

i. writing clear, concise and accurate English (Ranked #3)
ii. writing appropriately for the given purpose (letters, memos, presentations) and for a specific audience (client, colleague, judiciary, member of the public) (Ranked #2)
iii. drafting clear and straightforward contracts and corporate documents
iv. providing practical and clear written advice based on research
v. drafting clear and cogent written advocacy (affidavits, pleadings, mediation briefs, case settlement briefs, facta) (Ranked #1)
vi. ensuring that, where necessary, documents are translated or made available in formats appropriate to the audience
vii. drafting clear concise memos to file

H. Practice Management

i. managing time and setting priorities (Ranked #1)
ii. docketing
iii. securing a retainer
iv. billing and collecting
v. trust accounting
vi. using a tickler system (Ranked #3)
vii. opening a file
viii. maintaining an orderly and up-to-date file, including documenting actions taken on a file (Ranked #2)
ix. closing a file

x. storing and/or destroying files in an appropriate manner
xi. managing (including recruiting and termination) staff
xii. dealing with insurance and liability issues
xiii. developing and using a knowledge management system (precedents, databases etc.)
xiv. dealing with client complaints (over billing or other issues) including those made in the media and to LSUC
xv. dealing effectively with the stresses and pressures of the practice of law

APPENDIX 2

QUARTERLY BENCHMARK REPORT
PROFESSIONAL DEVELOPMENT & COMPETENCE DEPARTMENT
(Product Usage Statistics as at December 31, 2004)

FOR INFORMATION ONLY

Prepared by:

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January 2005

BENCHMARKS AND KEY INDICATORS REPORT

Practice Management Guidelines

Web traffic report for Practice Management Guidelines (number of visits)

Guideline	November & December 2002	2003	2004
Executive Summary Page	741	5,085	2,934
Client Service & Communication	71	1,488	5,088
File Management	108	930	3,317
Financial Management	93	553	1,190
Technology	71	597	1,723
Professional Management	43	584	1,620
Time Management	83	924	2,287
Personal Management	33	423	1,691
Closing Down Your Practice	32	558	1,365
Total	1,275	11,142	21,215

Best Practices Self-assessment Tool

The Best Practices Self-assessment Tool was launched on June 25, 2004.

	2004
Registered Users	654

Certified Specialist Program

The Certified Specialist Program redesign was launched in January 2004.

	2001	2002	2003	2004
Number of Specialists	617	611	609	682
Specialists in Toronto Area	349	344	341	384
Specialists outside Toronto	268	267	268	298
Number of Specialty Areas	10	10	10	13

Continuing Legal Education

	2001	2002	2003	2004
Total number of CLE programs *(all formats)*	67	63	71	72
Attendance at all CLE programs *(all formats)*	8,539	11,788	18,269	20,187
Average attendance per program	127	187	262	280
Number of programs for law clerks *(included in total)*	-	10	5	8
Number of programs on ILN *(included in total)*	-	-	35	45
Attendance at ILN locations	-	-	4,014	3,595
Average attendance at ILN locations per program	-	-	115	80
Number of Teleseminars *(included in total)*	-	-	5	9
Attendance at Teleseminars	-	-	2,468	3,762
Average attendance at Teleseminars	-	-	494	418
Number of live webcast programs on BAR-eX	N/A	N/A	12	29
Attendance at live webcast programs	N/A	N/A	213	1,198
Average attendance at live webcast programs	N/A	N/A	18	41
Bursaries provided	140	151	243	215
Units/publications sold (paper, CD and PDF)	8,249	11,424	11,028	12,963

e-Transactions Site

	2003	2004
Number of visits on CLE page of e-Transactions	38,954	70,890

Web purchase report for CLE portion of e-Transactions site

Product	2003	2004
Book purchases	524	1,259
Program registrations	1,103	1,651
ILN program registrations	503	536

Teleseminar registrations	321	517
Video streams	27	90
PDF purchases	36	45
CD-ROM purchases	9	167

Practice Advisory

	2001	2002	2003	2004
Total member calls for advice	5,435	5,715	5,303	5,780

Breakdown of Callers

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

Practice Advisory Mentor Program

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

Spot Audit

Number of Audits Conducted

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

Audits referred to Investigations/ undertakings obtained	42	70	56	57

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

Practice Review

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

Total Practice Reviews Conducted[2]	18	50	45	50

Bar Admission Course

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

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

BAC e-Learning Site

Web traffic report for BAC e-Learning Site

	2003	2004
Number of Visits	55,660	67,496

Articling and Placement Services

	2001	2002	2003	2004
International Articles	29	16	11	15
National Articles		14	16	12
Part time Articles		5	8	7
Joint Articles		0	2	5
Biographic paragraphs posted	53	62	99	93
Job postings	163	129	104	75
New Articling Mentors	N/A	N/A	N/A	5
New Articling Mentees	N/A	N/A	N/A	57

Articling Placement

	2001	2002	2003	2004
Students actively seeking placement as at December of each year	N/A	N/A	130	124
Number of BAC students	N/A	N/A	1,257	1,435

Education Support Services

	2001	2002	2003	2004
Distance education - number of locations	15	29	71	62
Distance education - number of students[3]	28	46	103	66
Number of students who have received accommodation[4]	11	29	27	38
Number of accommodations provided	N/A	N/A	126	128

[3] Represents individual students and does not account for returning students
[4] Accommodation requests cover issues such as bereavement, pregnancy and time conflicts

Number of students who have received special needs accommodation[5]	47	33	33	56
Number of special needs accommodations provided	N/A	N/A	147	320
Number of students who have received tutoring	60	72	45	47
OSAP - number of applicants	333	258	342	365
Repayable Allowance Program approvals	47	57	37	87
Repayable Allowance Program amount awarded	$170,700	$213,395	$117,167	$290,295

[5] Special Needs Accommodation requests cover issues such as disabilities, medical conditions, dyslexia, and hearing and vision impairments

Great Library

	2001	2002	2003	2004
Materials catalogued and classified	1,806	2,005	2,179	1,305[6]
Number of visits on the Great Library Web site	N/A	651,826	608,781	621,675
Catalogue searches on Web site	N/A	132,923	199,191	166,432
Number of information requests	71,000	47,000	48,800	47,100
Pages copied in custom copy service	68,437	56,159	43,815	40,391
Pages copied on self-copiers	481,473	397,957	337,313	297,223
Seminars held	4	6	12	11
Attendance at seminars	N/A	N/A	43	145
Attendance at orientation tours and general instruction	413	350	360	448
Corporate Records and Archives new entries into records database	N/A	2,157	5,199	5,185

CONVOCATION ROSE AT 12:25 P.M.

Confirmed in Convocation this 24th day of February, 2005

Treasurer

[6] Low due to processing the migrating records into the new electronic catalogue